

First Amendment Assemblies

427.1 VERSION

Review Date	Effective Date	Approving Authority
04/01/2021	07/09/18	Gabriel Camacho, Interim Chief of Police

427.2 POLICY AND PURPOSE

This policy provides guidance for responding to public assemblies or demonstrations. The Harrisonburg Police Department respects the rights of people to peaceably assemble. It is the policy of this department not to unreasonably interfere with, harass, intimidate or discriminate against persons engaged in the lawful exercise of their rights, while also preserving the peace, protecting life and preventing the destruction of property.

427.3 ACCOUNTABILITY STATEMENT

All employees are expected to fully comply with the guidelines and timelines set forth in this policy. Responsibility rests with the supervisor to ensure that any violations of policy are investigated and appropriate training, counseling and/or disciplinary action is initiated. This directive is for internal use only, and does not enlarge an employee's civil liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violation of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.

427.4 DEFINITIONS

Civil disturbance - An unlawful assembly that constitutes a breach of the peace or any assembly of persons, where there is imminent danger of collective violence, destruction of property, or other unlawful acts.

Unlawful assembly - Virginia Code Section 18.2-406; Whenever three or more persons assembled share the common intent to advance some lawful or unlawful purpose by the commission of an act or acts of unlawful force or violence likely to seriously jeopardize public safety, peace or order, and the assembly actually tends to inspire persons of ordinary courage with well-grounded fear of serious and immediate breaches of public safety, peace or order, then such assembly is an unlawful assembly. Every person who participates in any unlawful assembly shall be guilty of a class 1 misdemeanor. If any person carried, at the time of his participation in an unlawful assembly, any firearm or other deadly or dangerous weapon, he shall be guilty of a class 5 Felony.

Civil Disturbance Unit - The Civil Disturbance Unit (CDU) has the capability to respond to large civil demonstrations, labor/civil unrest situations, and provide crowd control for major events. Specially trained and equipped officers of this unit will provide a high profile, organized response to these incidents, in such a manner as to minimize threats to public safety and damage to property.

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427.5 GENERAL CONSIDERATIONS

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 (Va. Const. art. I, § 12).

These rights may be limited by laws or ordinances regulating such matters as:

- Committing acts of terrorism (Va. Code § 18.2-46.5)
- Participating in paramilitary activity (Va. Code § 18.2-433.2)
- Rioting (Va. Code § 18.2-405)
- Committing acts of violence by a mob (Va. Code § 18.2-42.1)
- Partaking in unlawful assembly (Va. Code § 18.2-406)
- Displaying disorderly conduct (Va. Code § 18.2-415)
- Burning objects (Va. Code § 18.2-423.01)
- Wearing masks (Va. Code § 18.2-422)
- Unlawful picketing (Va. Code § 40.1-53)
- Crossing law enforcement lines (Va. Code § 18.2-414.2)
- Trespassing (Va. Code § 18.2-119)
- Obstructing free passage of others (Va. Code § 18.2-404)
- Resisting or obstructing execution of legal process (Va. Code § 18.2-409)

However, officers shall not take action or fail to take action based on the opinions being expressed.

Participant behavior during a demonstration or other public assembly can vary. This may include, but is not limited to:

- Lawful, constitutionally protected actions and speech.
- Civil disobedience (typically involving minor criminal acts).
- Rioting.

All of these behaviors may be present during the same event. Therefore, it is imperative that law enforcement actions are measured and appropriate for the behaviors officers may encounter. This is particularly critical if force is being used. Adaptable strategies and tactics are essential.

The purpose of a law enforcement presence at the scene of public assemblies and demonstrations should be to preserve the peace, to protect life and to prevent the destruction of property.

Officers should not:

- (a) Engage in assembly or demonstration-related discussion with participants.
- (b) Harass, confront or intimidate participants.

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- (c) Seize the cameras, cell phones or materials of participants or observers unless an officer is placing a person under lawful arrest.

Supervisors should continually observe department members under their commands to ensure that members' interaction with participants and their response to crowd dynamics is appropriate.

427.5.1 PHOTOGRAPHS, VIDEO RECORDINGS AND OTHER INFORMATION

Photographs, video recordings and other information may be collected at assemblies and demonstrations as they can serve a number of purposes, such as support of criminal prosecutions, assistance in evaluating department performance, serving as training material, recording the use of dispersal orders and facilitating a response to allegations of improper law enforcement conduct.

Photographs, video recordings and other information shall not be maintained on the political, religious or social activities, views or associations of any individual, group or organization unless those activities, views or associations directly relate to an investigation of criminal activity and there is reasonable suspicion that the subject of the information is involved in criminal conduct.

427.6 RESPONSIBILITIES

427.6.1 PATROL SUPERVISOR

- (a) Assess the immediate situation for seriousness and its potential for escalation. If the disturbance is minor in nature and adequate resources are available, efforts should be made to disperse the crowd.
- (b) If the crowd cannot be immediately dispersed, establish the number of personnel and equipment necessary to contain and disperse the disturbance and advise Emergency Communications Center (ECC) to call in the number of off-duty personnel needed. Clear directions should be given to the responding officers of where to report to and to check in with a designated coordinator. Contact the Special Operations Bureau Commander, Duty Officer, and CDU Commander and brief him/her on the situation. The supervisor should also request mutual aid from the jurisdictions under the mutual aid agreement to assist until additional city officers are on scene.
- (c) Notify an off-duty supervisor and patrol officers to respond and assume the responsibility of patrol functions and calls for service for the other areas of the city.
- (d) The Special Operations Bureau Commander, Duty Officer or a designee shall contact the Chief of Police and other Commanders to brief them on the incident in accordance with the Major Incident Notification Policy.
- (e) Where necessary, ensure that appropriate notification is made to outside agencies to include the Harrisonburg Fire Department, Harrisonburg Rescue Squad, Rockingham County Sheriff's Department, Virginia State Police, James Madison University Police Department, Commonwealth's Attorney, and the Harrisonburg Police Department Public Information Officer.
- (f) Establish an outer perimeter sufficient to contain the disturbance and prohibit entrance into the affected area.

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- (g) Ensure that, to the degree possible, innocent civilians are evacuated from the immediate area of the disturbance.
- (h) Establish a Command Post based on proximity to the scene, availability of communications, available space and security from crowd participants.
- (i) Establish surveillance points and assign personnel to identify agitators, leaders and individuals committing crimes, and to document and report events as they happen. Photographic and videotape evidence of criminal acts and perpetrators shall be generated whenever possible.
- (j) Establish a press area and ensure that it has sufficient staffing.
- (k) Upon the arrival of command staff and the CDU Commander, brief them on the current status of the incident.

427.6.2 INCIDENT SCENE COMMANDER

- (a) Assume over-all command of the incident.
- (b) Evaluate the incident and determine if adequate personnel and resources are in place to contain and disperse the crowd.
- (c) Brief the Chief of Police on events as they happen, based on personal observation and reports from the CDU Commander or other designated personnel.

427.6.3 CIVIL DISTURBANCE UNIT COMMANDER

The CDU Commander will be responsible for the command of the CDU Team. The CDU Commander shall use containment and dialogue to resolve the incident. The objective of containment and dialogue is merely to disperse the crowd. In doing so, the CDU Commander should:

- (a) Ensure that inner perimeters are maintained by CDU formations.
- (b) Establish contact with crowd leaders to assess their intentions and motivation, and develop a trust relationship.
- (c) Communicate to the participants that their assembly is in violation of the law and will not be tolerated, that the department wishes to resolve the incident peacefully and that acts of violence will be dealt with swiftly and decisively.
- (d) Activate Dispersal Order

427.7 UNPLANNED EVENTS

When responding to an unplanned or spontaneous public gathering, the first responding officer should conduct an assessment of conditions, including, but not limited to:

- Location.
- Number of participants.
- Apparent purpose of the event.
- Leadership (whether it is apparent and/or whether it is effective).

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- Any initial indicators of unlawful or disruptive activity.
- Indicators that lawful use of public facilities, streets or walkways will be impacted.
- Ability and/or need to continue monitoring the incident.

Initial assessment information should be promptly communicated to Emergency Communications Center, and the assignment of a supervisor should be requested. Additional resources should be requested as appropriate. The responding supervisor shall assume command of the incident until command is expressly assumed by another, and the assumption of command is communicated to the involved members. A clearly defined command structure that is consistent with the Incident Command System (ICS) should be established as resources are deployed.

427.8 PLANNED EVENT PREPARATION

For planned events, comprehensive, incident-specific operational plans should be developed. The ICS should be considered for such events.

427.8.1 INFORMATION GATHERING AND ASSESSMENT

In order to properly assess the potential impact of a public assembly or demonstration on public safety and order, relevant information should be collected and vetted. This may include:

- Information obtained from outreach to group organizers or leaders.
- Information about past and potential unlawful conduct associated with the event or similar events.
- The potential time, duration, scope, and type of planned activities.
- Any other information related to the goal of providing a balanced response to criminal activity and the protection of public safety interests.

Information should be obtained in a transparent manner, and the sources documented. Relevant information should be communicated to the appropriate parties in a timely manner.

Information will be obtained in a lawful manner and will not be based solely on the purpose or content of the assembly or demonstration, or actual or perceived characteristics such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, economic status, age, cultural group, or disability of the participants (or any other characteristic that is unrelated to criminal conduct or the identification of a criminal subject).

427.8.2 OPERATIONAL PLANS

An operational planning team with responsibility for event planning and management should be established. The planning team should develop an operational plan for the event.

The operational plan will minimally provide for:

- (a) Command assignments, chain of command structure, roles and responsibilities.
- (b) Staffing and resource allocation.

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- (c) Management of criminal investigations.
- (d) Designation of uniform of the day and related safety equipment (helmets, shields, etc.).
- (e) Deployment of specialized resources.
- (f) Event communications and interoperability in a multijurisdictional event.
- (g) An established liaison with demonstration leaders and external agencies.
- (h) An established liaison with City government and legal staff.
- (i) Media relations.
- (j) Logistics: food, fuel, replacement equipment, duty hours, relief and transportation.
- (k) Traffic management plans.
- (l) First aid and emergency medical service provider availability.
- (m) Prisoner transport and detention.
- (n) Review of policies regarding public assemblies and use of force in crowd control.
- (o) Parameters for declaring an unlawful assembly.
- (p) Arrest protocol, including management of mass arrests.
- (q) Protocol for recording information flow and decisions.
- (r) Rules of engagement, including rules of conduct, protocols for field force extraction and arrests, and any authorization required for the use of force.
- (s) Protocol for handling complaints during the event.
- (t) Parameters for the use of body-worn cameras and other portable recording devices.

427.8.3 MUTUAL AID AND EXTERNAL RESOURCES

The magnitude and anticipated duration of an event may necessitate interagency cooperation and coordination. The assigned Incident Commander should ensure that any required memorandums of understanding or other agreements are properly executed, and that any anticipated mutual aid is requested and facilitated (see the Outside Agency Assistance Policy).

427.9 UNLAWFUL ASSEMBLY DISPERSAL ORDERS

If a public gathering or demonstration remains peaceful and nonviolent, and there is no reasonably imminent threat to persons or property, the Incident Commander should generally authorize continued monitoring of the event.

Should the Incident Commander make a determination that public safety is presently or is about to be jeopardized, he/she or the authorized designee should attempt to verbally persuade event organizers or participants to disperse of their own accord. Warnings and advisements may be communicated through established communications links with leaders and/or participants or to the group (Va. Code § 18.2-411).

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When initial attempts at verbal persuasion are unsuccessful, the Incident Commander or the authorized designee should make a clear, standardized announcement to the gathering that the event is an unlawful assembly, and should order the dispersal of the participants. The announcement should be communicated by whatever methods are reasonably available to ensure that the content of the message is clear and that it has been heard by the participants. The announcement should be amplified, made in different languages as appropriate, made from multiple locations in the affected area and documented by audio and video. The announcement should provide information about what law enforcement actions will take place if illegal behavior continues and should identify routes for egress. A reasonable time to disperse should be allowed following a dispersal order.

(a) Activate Dispersal Order

1. **I am (Rank and Last Name) of the Harrisonburg Police Department. I declare this to be an unlawful assembly under Virginia Code Section 18.2-406. You are commanded in the name of the Commonwealth to disperse. If you do not leave you may be arrested or subject to other police action. You have ___ minute(s) to leave. You may exit toward the (direction of exit).**

427.10 USE OF FORCE

Use of force is governed by current department policy and applicable law (see the Use of Force, Handcuffing and Restraints, Control Devices and Conducted Energy Weapon policies).

Individuals refusing to comply with lawful orders (e.g., nonviolent refusal to disperse) should be given a clear verbal warning and a reasonable opportunity to comply. If an individual refuses to comply with lawful orders, the Incident Commander shall evaluate the type of resistance and adopt a reasonable response in order to accomplish the law enforcement mission (such as dispersal or arrest of those acting in violation of the law). Control devices and conducted energy weapons should be considered only when the participants' conduct reasonably appears to present the potential to harm officers, themselves or others, or will result in substantial property loss or damage (see the Control Devices and the Conducted Energy Weapon policies).

Force or control devices, including oleoresin capicum (OC), should be directed toward individuals and not toward groups or crowds, unless specific individuals cannot reasonably be targeted due to extreme circumstances, such as a riotous crowd.

Any use of force by a member of this department shall be documented promptly, completely and accurately in an appropriate report. The type of report required may depend on the nature of the incident.

427.11 ARRESTS

The Harrisonburg Police Department should respond to unlawful behavior in a manner that is consistent with the operational plan. If practicable, warnings or advisements should be communicated prior to arrest.

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Mass arrests should be employed only when alternate tactics and strategies have been or reasonably appear likely to be unsuccessful. Mass arrests shall only be undertaken upon the order of the Incident Commander or the authorized designee. There must be probable cause for each arrest.

If employed, mass arrest protocols should fully integrate:

- (a) Reasonable measures to address the safety of officers and arrestees.
- (b) Dedicated arrest, booking and report writing teams.
- (c) Timely access to medical care.
- (d) Timely access to legal resources.
- (e) Timely processing of arrestees.
- (f) Full accountability for arrestees and evidence.
- (g) Coordination and cooperation with the prosecuting authority, jail and courts.

427.12 MEDIA RELATIONS

The Public Information Officer should use all available avenues of communication, including press releases, briefings, press conferences and social media, to maintain open channels of communication with media representatives and the public about the status and progress of the event, taking all opportunities to reassure the public about the professional management of the event (see the Media Relations Policy).

427.13 DEMOBILIZATION

When appropriate, the Incident Commander or the authorized designee should implement a phased and orderly withdrawal of law enforcement resources. All relieved personnel should promptly complete any required reports, including use of force reports, and account for all issued equipment and vehicles to their supervisors prior to returning to normal operational duties.

427.14 POST EVENT

The Incident Commander should designate a member to assemble full documentation of the event, to include:

- (a) Operational plan.
- (b) Any incident logs.
- (c) Any assignment logs.
- (d) Vehicle, fuel, equipment and supply records.
- (e) Incident, arrest, use of force, injury and property damage reports.
- (f) Photographs, audio/video recordings, Emergency Communications Center records/tapes.
- (g) Media accounts (print and broadcast media).

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427.14.1 AFTER-ACTION REPORTING

The Incident Commander should work with City legal counsel, as appropriate, to prepare a comprehensive after-action report of the event, explaining all incidents where force was used, to include:

- (a) Date, time and description of the event.
- (b) Actions taken and outcomes (e.g., injuries, property damage, arrests, costs).
- (c) Problems identified.
- (d) Significant events.
- (e) Recommendations for improvement; opportunities for training should be documented in a generic manner, without identifying individuals or specific incidents, facts or circumstances.

427.15 TRAINING

Department members should receive periodic training regarding this policy, as well as the dynamics of crowd control and incident management. The Department should, when practicable, train with its external and mutual aid partners.