



**Las Cruces Police Department
GENERAL ORDERS
FIELD OPERATIONS VOLUME 2
GO-291 FIRST AMENDMENT RIGHTS
Revised 5/13/2005**

291 FIRST AMENDMENT RIGHTS

DISCUSSION

As various activities take place within the public eye, law enforcement officers may be called upon to monitor, respond to and / or intervene in situations in which individuals assert their rights under the First Amendment to the U.S. Constitution, particularly street evangelism, distribution of literature, picketing and other protest activity.

The right of freedom of speech, religion and peaceable assembly is guaranteed to all persons by the First Amendment to the United States Constitution. This right grants individuals the power to speak their opinions and beliefs, make proclamations, distribute literature and peaceably assemble together for a common cause. This right is not without some limitation, and it is those limits which this General Order will address.

An officer may become involved in situations in which an individual is asserting his/her protected First Amendment rights, even though another person may take offense. Individual rights under the First Amendment must be protected despite those complaints. The First Amendment does not protect complaining citizens from being offended.

Limitations to the right to freedom of speech and assembly require that a clear and present danger be evidenced before any law enforcement action can be taken. This means that a police officer must observe a clear and present danger to the health, safety and welfare of the general public, or a violation of City Ordinance or State Statutes before he or she may engage in enforcement action against those involved in First Amendment activity.

POLICY

It is neither the intention nor the desire of the Las Cruces Police Department to suppress or restrain lawful speech, assembly, religion or any other lawful activity. The Department will expend whatever resources are necessary to protect those lawfully exercising their rights pursuant to the First Amendment. However, in doing so, the Department also recognizes that observation of a clear and present danger to the health, safety and welfare of the general public, or a violation of the City Ordinances or State Statutes, will require police officers to take appropriate enforcement action.

291.01 FIRST AMENDMENT TO THE U. S. CONSTITUTION



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"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."

291.02 EQUALITY OF TREATMENT

Police Department personnel will treat demonstrators, street evangelists, onlookers, counter demonstrators, and any other individual asserting rights under the First Amendment to the U.S. Constitution equally.

291.03 PERMISSIBLE ACTIONS

Individuals may assemble, preach, distribute literature, picket and protest on public property so long as the actions of individuals engaging in such activity do not constitute a clear and present danger to the health, safety and welfare of the general public and are not in violation of a City Ordinance or State Statute. Public property includes public streets, sidewalks, parks and other common areas so designated. Public property has been defined by the Supreme Court of the United States to be a traditional public forum where individuals may freely express their views, even though those views may be unpopular or offensive to other members of society.

First Amendment activity on public property is fully protected, subject only to reasonable time, place and manner restrictions. Time, place and manner restrictions may be placed on First amendment activity so long as those regulations are content neutral, serve a significant governmental interest, and leave open ample alternative channels of communication. Police department personnel must consider time, location and noise level before attempting to interfere with any First Amendment activity. For example, activities around schools, hospitals, convalescent homes, churches and other specified locations may be subject to time, place and manner restrictions because of the special nature of those businesses. Activities in those specified locations may also be subject to restriction based on City ordinances or State statutes.

Individuals may speak to people passing by or assembled to hear demonstrators and street evangelists in a public location so long as the individual engaging in the activity does not violate City Ordinance or State Statutes.



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Individuals may participate in public parades and public celebrations as long as such participation does not interfere with the rights of other persons or does not constitute a violation of City Ordinances and State Statutes.

Individuals may burn a flag so long as the fire does not endanger the safety, health or welfare of others, or violate City Ordinance and State Statutes.

Police officers may not arrest individuals engaging in lawful First Amendment activity based solely on the complaint of other citizens. Any arrest must be made pursuant to the requirements of probable cause.

291.04 NON-PERMISSIBLE ACTIONS

Individuals engaged in First Amendment activity may not actively obstruct the path of persons utilizing a public sidewalk.

Individuals may not actively interfere with the business of another by use of sound, by blocking entrances to buildings or dwellings, or by obstructing motor vehicles or pedestrian traffic.

Individuals engaged in First Amendment activity may not target or focus picketing or other activity toward a particular household or dwelling in a residential area.

Individuals may not demonstrate, assemble, distribute literature or preach on private property against the will of the owner or lawful tenant of that property. If the elements of a criminal offense such as trespass or harassment are committed by a person engaged in such activity, enforcement action may be taken by the police officer.

Individuals may not commit crimes under City Ordinance or State statutes while asserting First Amendment rights.

291.05 TREATMENT OF PERSONS ASSERTING FIRST AMENDMENT RIGHTS

When police officers are confronted with cases involving demonstrators, counter-demonstrators, street evangelists or other individuals engaged in First Amendment activity in a manner which the officer has reason to believe may constitute a clear and present danger to the health, safety and welfare of the general public or may violate a City Ordinance or State Statute, but does not constitute activity requiring immediate arrest



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(imminent bodily injury and destruction of property), the responding officer shall notify a supervisor who will respond to the scene.

The supervisor, or responding officer upon direction from the supervisor, shall approach the individuals and provide a warning of the suspected offense. If the individuals do not respond to the warning, and do not comply with any time, place or manner restriction suggested by the officer, the responding officer and supervisor, upon probable cause, shall take action necessary to protect the public safety, health and welfare or to prevent the commission of a crime.

If the supervisor has reason to believe that the situation requires legal interpretation, the City Attorney's Office shall be notified and if possible, will respond to the scene. If the City Attorney's Office is unable to respond, officers shall obtain a signed complaint (with the supervisor's approval) from civilian complainant and make a case report. The summons shall not be served but shall be forwarded along with the case report through the chain of command to the City Attorney for review and appropriate action.

If time permits and it is possible, the situation should be videographed by an officer or representative from the Identification Unit.