

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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To establish a policy for the District of Columbia regarding First Amendment assemblies; to require the Metropolitan Police Department (“MPD”) to recognize and implement District policies regarding First Amendment assemblies, to require the Mayor to issue regulations governing the issuance of approved plans for First Amendment assemblies, to prohibit the use of a police line to encircle participants in a First Amendment assembly unless MPD has probable cause to arrest, and has decided to arrest, the participants, to require MPD to adopt a method of identifying officers during First Amendment assemblies that provides for more visible identification, to require that MPD officers document, either in writing or electronically, all arrests made during First Amendment assemblies, to establish a policy regarding the use of restraints while processing persons arrested during a First Amendment assembly, to require MPD to promptly process persons arrested in connection with a First Amendment assembly, to require MPD to provide persons arrested in connection with a First Amendment assembly with a written notice identifying their release options, to require the Chief of Police to issue rules regarding the issuance of police passes for members of the media, and to require appropriate training for MPD personnel who handle First Amendment assemblies; to amend the Office of Citizen Complaint Review Establishment Act of 1998 to give the Police Complaints Board the authority to monitor and evaluate police handling of First Amendment assemblies; to establish a policy of the District regarding MPD’s investigation and surveillance of political activity and organizations, to establish a District policy that all MPD investigations and preliminary inquiries involving First Amendment activities shall be conducted for a legitimate law enforcement objective, to require the Chief of Police to issue regulations governing investigations and preliminary inquiries involving First Amendment activities, to allow MPD to conduct limited preliminary inquiries relating to upcoming First Amendment assemblies without additional authorization, to establish rules for maintaining MPD Intelligence Section files and records, to require that information entered into Intelligence Section files be evaluated for source reliability, and content validity and accuracy, to require the Office of the District of Columbia Auditor to audit annually MPD files and records relating to investigations and preliminary inquiries involving First Amendment activities, and to provide that standards for police conduct may be relied upon by persons exercising First Amendment rights in any action alleging violations of statutory or common law rights; to establish procedures regarding the post-and-forfeit procedure and its use in resolving criminal charges, to require that MPD members, while in uniform, wear or display their nameplate and badge, and not remove or cover this identifying information or prevent persons from reading it, to provide that the provisions of this act establishing standards for police conduct may be relied upon by persons exercising First Amendment rights in any action alleging violations of statutory or common law rights; and to amend the Office of Citizen Complaint Review Establishment Act of 1998 to establish Police Complaints Board jurisdiction over complaints from members of the public alleging that MPD

officers failed to wear required identification or refused to identify themselves when requested to do so by a member of the public.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "First Amendment Rights and Police Standards Act of 2004".

TITLE I. FIRST AMENDMENT ASSEMBLIES.

Sec. 101. Short title.

This title may be cited as the "First Amendment Assemblies Act of 2004".

Subtitle A.

Sec. 102. Definitions.

For the purposes of this title, the term:

(1) "First Amendment assembly" means a demonstration, rally, parade, march, picket line, or other similar gathering conducted for the purpose of persons expressing their political, social, or religious views.

(2) "MPD" means the Metropolitan Police Department.

Sec. 103. Policy on First Amendment assemblies.

It is the declared public policy of the District of Columbia that persons and groups have a right to organize and participate in peaceful First Amendment assemblies on the streets, sidewalks, and other public ways, and in the parks of the District of Columbia, and to engage in First Amendment assembly near the object of their protest so they may be seen and heard, subject to reasonable restrictions designed to protect public safety, persons, and property, and to accommodate the interest of persons not participating in the assemblies to use the streets, sidewalks, and other public ways to travel to their intended destinations, and use the parks for recreational purposes.

Sec. 104. Reasonable time, place, and manner restrictions on First Amendment assemblies.

(a) The MPD shall recognize and implement the District policy on First Amendment assemblies established in section 103 when enforcing any restrictions on First Amendment assemblies held on District streets, sidewalks, or other public ways, or in District parks.

(b) The MPD may enforce reasonable time, place, and manner restrictions on First Amendment assemblies by:

(1) Establishing reasonable restrictions on a proposed assembly prior to its planned occurrence though the approval of a plan, where the organizers of the assembly give notice;

(2) Enforcing reasonable restrictions during the occurrence of an assembly for which a plan has been approved, which are in addition to the restrictions set forth in the approved plan, where the additional restrictions are:

(A) Ancillary to the restrictions set forth in the approved plan and are designed to implement the substance and intent in the approval of the plan;

(B) Enforced in response to the occurrence of actions or events unrelated to the assembly that were not anticipated at the time of the approval of the plan and that were not caused by the plan-holder, counter-demonstrators, or the police; or

(C) Enforced to address a determination by the MPD during the pendency of the assembly that there exists an imminent likelihood of violence endangering persons or threatening to cause significant property damage; or

(3) Enforcing reasonable restrictions on a First Amendment assembly during its occurrence where a plan was not approved for the assembly.

(c) No time, place, or manner restriction regarding a First Amendment assembly shall be based on the content of the beliefs expressed or anticipated to be expressed during the assembly, or on factors such as the attire or appearance of persons participating or expected to participate in an assembly, nor may such restrictions favor non-First Amendment activities over First Amendment activities.

Sec. 105. Notice and plan approval process for First Amendment assemblies--generally.

(a) It shall not be an offense to assemble or parade on a District street, sidewalk, or other public way, or in a District park, without having provided notice or obtained an approved assembly plan.

(b) The purpose of the notice and plan approval process is to avoid situations where more than one group seeks to use the same space at the same time and to provide the MPD and other District agencies the ability to provide appropriate police protection, traffic control, and other support for participants and other individuals.

(c) Except as provided in subsection (d) of this section, a person or group who wishes to conduct a First Amendment assembly on a District street, sidewalk, or other public way, or in a District park, shall give notice and apply for approval of an assembly plan before conducting the assembly.

(d) A person or group who wishes to conduct a First Amendment assembly on a District street, sidewalk, or other public way, or in a District park, is not required to give notice or apply for approval of an assembly plan before conducting the assembly where:

(1) The assembly will take place on public sidewalks and crosswalks and will not prevent other pedestrians from using the sidewalks and crosswalks;

(2) The person or group reasonably anticipates that fewer than 50 persons will participate in the assembly, and the assembly will not occur on a District street; or

(3) The assembly is for the purpose of an immediate and spontaneous expression of views in response to a public event.

(e) The Mayor shall not enforce any user fees on persons or groups that organize or conduct First Amendment assemblies.

(f) The Mayor shall not require, separate from or in addition to the requirements for giving notice of or applying for approval of an assembly plan for a First Amendment assembly, that persons give notice to, or obtain a permit or plan from, the Chief of Police, or other District officials or agencies, as a prerequisite for making or delivering an address, speech, or sermon regarding any political, social, or religious subject in any District street, sidewalk, other public way, or park.

(g) The Mayor shall not require, separate from or in addition to the requirements for giving notice of or applying for approval of an assembly plan for a First Amendment assembly, that persons give notice to, or obtain a permit or plan from the Chief of Police, the Department of Consumer and Regulatory Affairs, or any other District official or agency as a prerequisite for using a stand or structure in connection with such an assembly; provided, that a First Amendment assembly plan may contain limits on the nature, size, or number of stands or structures to be used as required to maintain public safety. Individuals conducting a First Amendment assembly under subsection (d) of this section may use a stand or structure so long as it does not prevent others from using the sidewalk.

(h) The Mayor shall not require, separate from or in addition to the requirements for giving notice of or applying for approval of an assembly plan for a First Amendment assembly, that persons give notice to, or obtain a permit or plan from, the Chief of Police, the Director of the Department of Consumer and Regulatory Affairs, or any other District official or agency as a prerequisite for selling demonstration-related merchandise within an area covered by an approved plan or within an assembly covered by subsection (d) of this section; provided, that nothing in this subsection shall be construed to authorize any person to sell merchandise in a plan-approved area contrary to the wishes of the plan-holder.

Sec. 106. Notice and plan approval process for First Amendment assemblies—processing applications; appeals; rules.

(a)(1) Subject to the appeal process set forth in subsection (d) of this section, the authority to receive and review a notice of and an application for approval of a plan for a First Amendment assembly on District streets, sidewalks, and other public ways, and in District parks, and to grant, deny, or revoke an assembly plan, is vested exclusively with the Chief of Police or his or her designee.

(2) Persons or groups providing notice to and applying for approval of a plan from the District government to conduct a First Amendment assembly on a District street, sidewalk, or other public way, or in a District park, shall not be required to obtain approval for the assembly from any other official, agency, or entity in the District government, including the District of Columbia Emergency Management Agency, the Mayor's Special Events Task Group, or the Department of Parks and Recreation.

(b)(1) The Chief of Police shall take final action on a notice of and an application for approval of a plan for a First Amendment assembly within a reasonably prompt period of time following receipt of the completed application, considering such factors as the anticipated size of the assembly, the proposed date and location, and the number of days between the application date and the proposed assembly date, and shall establish specific timetables for processing an application by rules issued pursuant to subsection (e) of this section.

(2) Except as provided in paragraph (3) of this subsection, where a complete application for approval of a First Amendment assembly plan is filed 60 days or more prior to the proposed assembly date, the application shall receive final action no later than 30 days prior to the proposed assembly.

(3) Following the approval of an assembly plan in response to an application pursuant to paragraph (2) of this subsection, the Chief of Police may, after consultations with the person or group giving notice of the assembly, amend the plan to make reasonable modifications to the assembly location or route up until 10 days prior to the assembly date based on considerations of public safety.

(c) The Chief of Police shall inform the person or group giving notice of an assembly, in writing, of the reasons for any decision to:

- (1) Deny an application for approval of a First Amendment assembly plan;
- (2) Revoke an assembly plan prior to the date of the planned assembly; or
- (3) Approve an assembly plan subject to time, place, or manner restrictions that the applicant has advised the Chief of Police are objectionable to the applicant.

(d)(1) Any applicant whose proposed assembly plan has been denied, revoked prior to the date of the planned assembly, or granted subject to time, place, or manner restrictions deemed objectionable by the applicant, may appeal such decision to the Mayor or the Mayor's designee, who shall concur with, modify, or overrule the decision of the Chief of Police.

(2) The Mayor shall make a decision on appeal expeditiously and prior to the date and time the assembly is planned to commence, and shall explain in writing the reasons for the decision.

(e)(1) Within 90 days of the effective date of this act, the Mayor, pursuant to Title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code 2-501 *et. seq.*), and in accordance with this title, shall issue rules governing the approval of plans to persons or groups seeking to conduct a First Amendment assembly on District streets, sidewalks, or other public ways, or in District parks.

(2) Existing procedures for the issuance of permits to persons or groups seeking to conduct a First Amendment assembly on District streets, sidewalks, or other public ways, or in District parks, that are not inconsistent with this title shall remain in effect pending the issuance of the rules promulgated under paragraph (1) of this subsection..

Sec. 107. Police handling and response to First Amendment assemblies.

(a) The MPD's handling of, and response to, all First Amendment assemblies shall be designed and implemented to carry out the District policy on First Amendment assemblies established in section 103.

(b)(1) Where participants in a First Amendment assembly fail to comply with reasonable time, place, and manner restrictions, the MPD shall, to the extent reasonably possible, first seek to enforce the restrictions through voluntary compliance and then seek, as appropriate, to enforce the restrictions by issuing citations to, or by arresting, the specific non-compliant persons, where probable cause to issue a citation or to arrest is present.

(2) Nothing in this subsection is intended to restrict the authority of the MPD to arrest persons who engage in unlawful disorderly conduct, or violence directed at persons or property.

(c) Where participants in a First Amendment assembly, or other persons at the location of the assembly, engage in unlawful disorderly conduct, violence toward persons or property, or unlawfully threaten violence, the MPD shall, to the extent reasonably possible, respond by dispersing, controlling, or arresting the persons engaging in such conduct, and not by issuing a general order to disperse, thus allowing the First Amendment assembly to continue.

(d) The MPD shall not issue a general order to disperse to participants in a First Amendment assembly except where:

(1) A significant number or percentage of the assembly participants fail to adhere to the imposed time, place, and manner restrictions, and either the compliance measures set forth in subsection (b) of this section have failed to result in substantial compliance or there is no reasonable likelihood that the measures set forth in subsection (b) of this section will result in substantial compliance;

(2) A significant number or percentage of the assembly participants are engaging in, or are about to engage in, unlawful disorderly conduct or violence toward persons or property; or

(3) A public safety emergency has been declared by the Mayor that is not based solely on the fact that the First Amendment assembly is occurring, and the Chief of Police determines that the public safety concerns that prompted the declaration require that the First Amendment assembly be dispersed.

(e)(1) If and when the MPD determines that a First Amendment assembly, or part thereof, should be dispersed, the MPD shall issue at least one clearly audible and understandable order to disperse using an amplification system or device, and shall provide the participants a reasonable and adequate time to disperse and a clear and safe route for dispersal.

(2) Except where there is imminent danger of personal injury or significant damage to property, the MPD shall issue multiple dispersal orders and, if appropriate, shall issue the orders from multiple locations. The orders shall inform persons of the route or routes by which they may disperse and shall state that refusal to disperse will subject them to arrest.

(3) Whenever possible, MPD shall make an audio or video recording of orders to disperse.

(f)(1) Where a First Amendment assembly is held on a District street, sidewalk, or other public way, or in a District park, and an assembly plan has not been approved, the MPD shall, consistent with the interests of public safety, seek to respond to and handle the assembly in substantially the same manner as it responds to and handles assemblies with approved plans.

(2) An order to disperse or arrest assembly participants shall not be based solely on the fact that a plan has not been approved for the assembly.

(3) When responding to and handling a First Amendment assembly for which a plan has not been approved, the MPD may take into account any actual diminution, caused by the lack of advance notice, in its ability, or the ability of other governmental agencies, appropriately to organize and allocate their personnel and resources so as to protect the rights of both persons exercising free speech and other persons wishing to use the streets, sidewalks, other public ways, and parks.

Sec. 108. Use of police lines.

No emergency area or zone will be established by using a police line to encircle, or substantially encircle, a demonstration, rally, parade, march, picket line, or other similar assembly (or subpart thereof) conducted for the purpose of persons expressing their political, social, or religious views except where there is probable cause to believe that a significant number or percentage of the persons located in the area or zone have committed unlawful acts (other than failure to have an approved assembly plan) and the police have the ability to identify those individuals and have decided to arrest them; provided, that this section does not prohibit the use of a police line to encircle an assembly for the safety of the demonstrators.

Sec. 109. Identification of MPD personnel policing First Amendment assemblies.

The MPD shall implement a method for enhancing the visibility to the public of the name or badge number of officers policing a First Amendment assembly by modifying the manner in which those officers' names or badge numbers are affixed to the officers' uniforms or helmets. The MPD shall ensure that all uniformed officers assigned to police First Amendment assemblies are equipped with the enhanced identification and may be identified even if wearing riot gear.

Sec. 110. Documentation of arrests in connection with a First Amendment assembly.

(a) The MPD shall cause every arrest in connection with a First Amendment assembly to be documented, in writing or electronically, by the officer at the scene who makes the arrest.

(b) Except as provided in subsection (c) of this section, the arrest documentation shall be completed at a time reasonably contemporaneous with the arrest, and shall include:

- (1) The name of the person arrested;
- (2) The date and time of the arrest;
- (3) Each offense charged;
- (4) The location of the arrest, and of each offense;
- (5) A brief statement of the facts and evidence establishing the basis to arrest the person for each offense;
- (6) An identification of the arresting officer (name and badge number); and
- (7) Any other information the MPD may determine is necessary.

(c)(1) The Chief of Police may implement a procedure for documenting arrests in connection with a First Amendment assembly different from that set forth in subsection (b) of this section where the Chief determines that an emergency exists with regard to a specific First Amendment assembly, and that implementation of the alternative procedure is necessary to assist police in protecting persons, property, or preventing unlawful conduct; provided, that any such procedure shall adequately document the basis that existed for each individual arrest.

(2) The determination of the Chief of Police made pursuant to paragraph (1) of this subsection shall be made in writing and shall include an explanation of the circumstances justifying the determination.

(3) The determination of the Chief of Police made pursuant to paragraph (1) of this subsection shall be valid for a period of 24 hours, and may be renewed by the Chief, or in the Chief's absence, the Chief's designee.

Sec. 111. Use of handcuffs, plastic cuffs, or other physical restraints on persons arrested in connection with a First Amendment assembly.

(a) The MPD shall adhere to the standard set forth in subsection (b) of this section in using handcuffs, plastic cuffs, or other physical restraints on any person arrested in connection with a First Amendment assembly who is being held in custody in the following circumstances:

(1) The arrestee is being held in a police processing center:

(A) To determine whether the arrestee should be released or the method for release;

(B) To determine whether the arrestee should be presented to court; or

(C) Pending presentation to court;

(2) The arrestee is being held in an unsecured processing center, and is not being held in a cell; or

(3) The arrestee is charged solely with one or more misdemeanor offenses, none of which have, as one of their elements, the commission of a violent act toward another person or a threat to commit such an act, or the destruction of property, or a threat to destroy property.

(b) With regard to any person who is being held in custody by the MPD in the circumstances identified in subsection (a) of this section, the MPD shall use handcuffs, plastic cuffs, or other physical restraints only to the extent reasonably necessary, and in a manner reasonably necessary, for the safety of officers and arrestees; provided, that no such person shall be restrained by connecting his or her wrist to his or her ankle, and no such person shall be restrained in any other manner that forces the person to remain in a physically painful position.

(c) Nothing in this section is intended to restrict the otherwise lawful authority of the MPD to use handcuffs, plastic cuffs, or other physical restraints on persons arrested in connection with a First Amendment assembly at the time of or immediately following arrest, while arrestees are being transported to a processing center, or while arrestees are being transported to or from court.

Sec. 112. Prompt release of persons arrested in connection with a First Amendment assembly.

(a)(1) The MPD shall promptly process any person arrested in connection with a First Amendment assembly to determine whether the person is eligible for immediate release pursuant to a lawful release option, and shall promptly release any person so eligible who opts for release.

(2) The MPD shall promptly release any person arrested in connection with a First Amendment assembly who, it is subsequently determined, should not be charged with any offense, or as to whom arrest documentation has not been prepared and preserved.

(b)(1) The MPD shall require that an officer holding a supervisory rank document and explain any instance in which a person arrested in connection with a First Amendment assembly who opts for release pursuant to any lawful release option or who is not charged with any offense is not released within 4 hours from the time of arrest.

(2) The MPD shall provide to any person not released within a reasonable time of arrest food appropriate to the person's health.

(c) The Chief of Police shall issue an annual public report that:

(1) Identifies the number of persons in the preceding year who were arrested in connection with a First Amendment assembly and opted for release pursuant to any lawful release option or were not charged with any offense and were not released from custody within 4 hours after the time of arrest;

(2) Discusses the reasons for the delay in processing such persons for release; and

(3) Describes any steps taken or to be taken to ensure that all such persons are released within 4 hours from the time of arrest.

(d) The MPD shall ensure that it possesses an automated information processing system that enables it to promptly process for release or presentation to the court all persons arrested in connection with a First Amendment assembly, and shall ensure that such system is fully operational (with respect to its hardware, software, and staffing) prior to a First Amendment assembly that has a potential for a substantial number of arrests.

Sec. 113. Notice to persons arrested in connection with a First Amendment assembly of their release options.

(a) The MPD shall fully and accurately advise persons arrested in connection with a First Amendment assembly of all potential release options when processing them for release from custody or for presentation to court.

(b)(1) The MPD shall provide a written notice identifying all release options to each person arrested in connection with a First Amendment assembly who is charged solely with one or more misdemeanor offenses. The notice shall clearly indicate that the options are alternative methods for obtaining a prompt release, and that the availability of each option is dependent on a determination that the arrestee is eligible to participate in that release option. The notice shall also identify the misdemeanor charges lodged against the arrestee.

(2) The notice required by paragraph (1) of this subsection shall be offered in the Spanish language to those persons who require or desire notice in this manner, and shall be offered in other languages as is reasonable to ensure meaningful access to the notice for persons who are limited English proficient.

Sec. 114. Police-media relations.

(a) Within 90 days of the effective date of this act, the Chief of Police, pursuant to Title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code 2-501 *et seq.*), shall issue rules governing police passes for media personnel.

(b) Within 90 days of the effective date of this act, the Chief of Police shall develop and implement a written policy governing interactions between the MPD and media representatives who are in or near an area where a First Amendment assembly is ongoing and who are reporting on the First Amendment assembly. The policy shall be consistent with the requirements of subsection (c) of this section.

(c)(1) The MPD shall allow media representatives reasonable access to all areas where a First Amendment assembly is occurring. At a minimum, the MPD shall allow media representatives no less access than that enjoyed by members of the general public and, consistent

with public safety considerations, shall allow media representatives access to promote public knowledge of the assembly.

(2) The MPD personnel located in or near an area where a First Amendment assembly is ongoing shall recognize and honor media credentials issued by or officially recognized by the MPD.

(3) The MPD shall make reasonable accommodations to allow media representatives effectively to use photographic, video, or other equipment relating to their reporting of a First Amendment assembly.

Sec. 115. Training for handling of, and response to, First Amendment assemblies.

The Chief of Police shall ensure that all relevant MPD personnel, including command staff, supervisory personnel, and line officers, are provided regular and periodic training on the handling of, and response to, First Amendment assemblies. The training shall be tailored to the duties and responsibilities assigned to different MPD positions and ranks during a First Amendment assembly. The training shall include instruction on the provisions of this title, and the regulations issued hereunder.

Sec. 116. Use of riot gear and riot tactics at First Amendment assemblies.

(a) Officers in riot gear shall be deployed consistent with the District policy on First Amendment assemblies and only where there is a danger of violence. Following any deployment of officers in riot gear, the commander at the scene shall make a written report to the Chief of Police within 48 hours and that report shall be available to the public on request.

(b)(1) Large scale canisters of chemical irritant shall not be used at First Amendment assemblies absent the approval of a commanding officer at the scene, and the chemical irritant is reasonable and necessary to protect officers or others from physical harm or to arrest actively resisting subjects.

(2) Chemical irritant shall not be used by officers to disperse a First Amendment assembly unless the assembly participants or others are committing acts of public disobedience endangering public safety and security.

(3) A commanding officer who makes the determination specified in paragraph (1) of this subsection shall file with the Chief of Police a written report explaining his or her action within 48 hours after the event.

Sec. 117. Construction.

The provisions of this title are intended to protect persons who are exercising First Amendment rights in the District of Columbia, and the standards for police conduct set forth in this title may be relied upon by such persons in any action alleging violations of statutory or common law rights.

Subtitle B.

Sec. 141. Section 5 of the Office of Citizen Complaint Review Establishment Act of 1998, effective March 26, 1999 (D.C. Law 12-208; D.C. Official Code § 5-1104), is amended by adding a new subsection (d-1) to read as follows:

“(d-1) The Board may, where appropriate, monitor and evaluate MPD’s handling of, and response to, First Amendment assemblies, as defined in section 102 of the First Amendment Rights and Police Standards Act of 2004, passed on 2nd reading on December 21, 2004 (Enrolled version of Bill 15-968), held on District streets, sidewalks, or other public ways, or in District parks.”.

Amend
§ 5-1104

Sec. 142. Section 705.1 of the District of Columbia Municipal Regulations is amended by striking the phrase "regulation." and inserting the phrase "regulation; provided, that the term "parade" shall not include a First Amendment assembly, as that term is defined in section 102(1) of the First Amendment Rights and Police Standards of 2004, passed on 2nd reading on December 21, 2004 (Enrolled version of Bill 15-968)." in its place.

Sec. 143. Chapter 21 of Title 24 of the District of Columbia Municipal Regulations is amended as follows:

DCMR

(a) Section 2102.3 is amended to read as follows:

“2102.3 Passes shall be in the form and number approved by the Chief of Police.”.

(b) Section 2102.4 is repealed.

TITLE II. POLICE INVESTIGATIONS CONCERNING FIRST AMENDMENT ACTIVITIES.

DCMR

Sec. 201. Short title.

This title may be cited as the “Police Investigations Concerning First Amendment Activities Act of 2004”.

Sec. 202. Definitions.

For the purposes of this title, the term:

(1) “First Amendment activities” means constitutionally protected speech or association, or conduct related to freedom of speech, free exercise of religion, freedom of the press, the right to assemble, and the right to petition the government.

(2) “First Amendment assembly” means a demonstration, rally, parade, march, picket line, or other similar gathering conducted for the purpose of persons expressing their political, social, or religious views;

(3) “Informant” means a person who provides information to the police department motivated by the expectation of receiving compensation or benefit, or otherwise is acting under the direction of the MPD.

(4) “Intelligence Section” means the Intelligence Section of the Special Investigations Division of MPD, or its successor section or unit.

(5) “Intelligence Section file” means the investigative intelligence information gathered, received, developed, analyzed, and maintained by the Intelligence Section of the Metropolitan Police Department, pursuant to an investigation or preliminary inquiry involving First Amendment activity.

(6) “Legitimate law enforcement objective” means the detection, investigation, deterrence, or prevention of crime, or the apprehension and prosecution of a suspected criminal; provided, that a person shall not be considered to be pursuing a legitimate law enforcement objective if the person is acting based upon the race, ethnicity, religion, national origin, lawful political affiliation or activity, or lawful news-gathering activity of an individual or group.

(7) “Mail cover” means the inspection and review of the outside of envelopes of posted mail and other delivered items.

(8) “Mail opening” means the opening and inspection and review of the contents of posted mail and other delivered items.

(9) “Minimization procedures” means reasonable precautions taken to minimize the interference with First Amendment activities, without impairing the success of the investigation or preliminary inquiry.

(10) “MPD” means the Metropolitan Police Department.

(11) "Reasonable suspicion" means a belief based on articulable facts and circumstances indicating a past, current, or impending violation of law. The reasonable suspicion standard is lower than the standard of probable cause; however, a mere hunch is insufficient as a basis for reasonable suspicion. A suspicion that is based upon the race, ethnicity, religion, national origin, lawful political affiliation or activity, or lawful news-gathering activity of an individual or group is not a reasonable suspicion.

Sec. 203. Purpose; scope.

This title establishes the responsibilities of and procedures for the MPD relating to investigations and preliminary inquiries, including criminal intelligence investigations and inquiries, that may affect activities protected by the First Amendment. This title does not apply to criminal investigations or inquiries that do not involve First Amendment activities.

Sec. 204. Policy on investigations and inquiries involving First Amendment activities.

The MPD shall conduct all investigations and preliminary inquiries involving First Amendment activities for a legitimate law enforcement objective and, in so doing, shall safeguard the constitutional rights and liberties of all persons. MPD members may not investigate, prosecute, disrupt, interfere with, harass, or discriminate against any person engaged in First Amendment activity for the purpose of punishing, retaliating, preventing, or hindering the person from exercising his or her First Amendment rights.

Sec. 205. Authorization for investigations involving First Amendment activities.

(a) The MPD may conduct a criminal investigation that involves the First Amendment activities of persons, groups, or organizations only when there is reasonable suspicion to believe that the persons, groups, or organizations are planning or engaged in criminal activity, and the First Amendment activities are relevant to the criminal investigation.

(b) Except as provided in subsection (e) of this section, a MPD member may undertake an investigation under this section only after receiving prior written authorization from the Commander, Office of the Superintendent of Detectives, or such other MPD commander of similar rank designated by MPD regulations. No MPD member may conduct an investigation involving First Amendment activities without the authorization required by this section.

(c) To obtain authorization for an investigation under this section, a MPD member shall submit a memorandum to the Commander, Office of Superintendent of Detectives, or such other MPD commander of similar rank as designated by MPD regulations:

- (1) Identifying the subject of the proposed investigation, if known;
- (2) Stating the facts and circumstances that create a reasonable suspicion of criminal activity; and
- (3) Describing the relevance of the First Amendment activities to the investigation.

(d)(1) Written authorization of an investigation under this section may be granted for a period of up to 120 days where the designated commander determines that there is reasonable suspicion of criminal activity.

(2) If the MPD seeks to continue an investigation past 120 days, a new memorandum and approval shall be obtained for each subsequent 120-day period. The new memorandum shall describe the information already collected and demonstrate that an extension is reasonably necessary to pursue the investigation.

(3) The Chief of Police shall approve investigations open for more than one year, and shall do so in writing, stating the justification for the investigation.

(e) If there is an immediate threat of criminal activity, an investigation under this section may begin before a memorandum is prepared and approved; provided, that written approval must be obtained within 24 hours from the Chief of Police or his designee.

(f) An investigation involving First Amendment activities shall be terminated when logical leads have been exhausted and no legitimate law enforcement purpose justifies its continuance.

Sec. 206. Authorization for preliminary inquiries involving First Amendment activities.

(a) The MPD may initiate a preliminary inquiry involving First Amendment activities, to obtain sufficient information to determine whether or not an investigation is warranted, where:

(1) The MPD receives information or an allegation the responsible handling of which requires further scrutiny; and

(2) The information or allegation received by MPD does not justify opening a full investigation because it does not establish reasonable suspicion that persons are planning or engaged in criminal activity.

(b)(1) A MPD member may undertake a preliminary inquiry involving First Amendment activities, to obtain sufficient information to determine whether or not an investigation is warranted, only by receiving prior written authorization from the Commander, Office of Superintendent of Detectives, or such other MPD commander of similar rank designated by MPD regulations.

(2) Except as provided in section 209, no MPD member may conduct a preliminary inquiry involving First Amendment activities without the authorization required by this section.

(c) To obtain authorization for a preliminary inquiry, a MPD member shall submit a memorandum to the Commander, Office of Superintendent of Detectives, or such other MPD commander of similar rank designated by MPD regulations:

(1) Identifying the subject of the proposed inquiry, if known;

(2) Stating the information or allegations that are the basis for the preliminary inquiry; and

(3) Describing the relevance of the First Amendment activities to the inquiry.

(d)(1) A preliminary inquiry under this section may be authorized for a period of up to 60 days.

(2) If the MPD seeks to continue this preliminary inquiry beyond 60 days, a new memorandum and approval must be obtained for an additional 60-day period. The new memorandum must describe the information already collected and demonstrate that an extension is reasonably necessary to pursue the inquiry.

(3) The Chief of Police shall approve a preliminary inquiry under this section that is to remain open for more than 120 days, and shall do so in writing, stating the justification for the preliminary inquiry.

(e) A preliminary inquiry under this section shall be terminated when it becomes apparent that a full investigation is not warranted.

Sec. 207. Techniques and procedures for investigations and preliminary inquiries.

(a) The investigative techniques used in any particular investigation or preliminary inquiry shall be dictated by the needs of the investigation or inquiry.

(b) The MPD shall employ minimization procedures in all investigations and preliminary inquiries involving First Amendment activities. Where the conduct of an investigation or preliminary inquiry presents a choice between the uses of more or less intrusive methods or

investigative techniques, the MPD shall consider whether the information could be obtained in a timely and effective way by the less intrusive means.

(c) The following techniques may be used in an authorized investigation or authorized preliminary inquiry involving First Amendment activities, without additional authorization:

- (1) Examination of public records and other sources of information available to the public;
- (2) Examination of MPD indices, files, and records;
- (3) Examination of records and files of other government or law enforcement agencies;
- (4) Interviews of any person; and
- (5) Physical, photographic, or video surveillance from places open to the public or otherwise legally made available.

(d) Undercover officers, informants, and mail covers may be used in an authorized preliminary inquiry after written approval and authorization is obtained from the Chief of Police or his designee. Mail openings and Wire Interception and Interception of Oral Communications, as defined in D.C. Official Code § 23-541, shall not be used in a preliminary inquiry.

(e) The following techniques may be used in an authorized investigation involving First Amendment activities, after written approval and authorization is obtained from the Chief of Police or his designee:

- (1) Wire Interception and Interception of Oral Communications, as defined in D.C. Official Code § 23-541;
- (2) Undercover officers and informants; and
- (3) Mail covers, mail openings, pen registers, and trap and trace devices.

(f) If there is an immediate threat of criminal activity, verbal authority by the designated MPD commander to use the investigative techniques described in subsection (d) and (e) of this section is sufficient until a written authorization can be obtained; provided, that other legal requirements have been met. The required written authorization shall be obtained within 5 days of the occurrence of the emergency.

Sec. 208. Rules for investigations and preliminary inquiries.

(a) Within 90 days of the effective date of this title, the Chief of Police, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), and in accordance with this title, shall issue rules governing investigations and preliminary inquiries involving First Amendment activities, including the authorization, conduct, monitoring, and termination of investigations and preliminary inquiries, and the maintenance, dissemination, and purging of records, files, and information from such investigations and preliminary inquiries.

(b) The rules issued under subsection (a) of this section shall require the MPD to direct undercover officers and informants to refrain from:

- (1) Participating in unlawful acts or threats of violence;
- (2) Using unlawful techniques to obtain information;
- (3) Initiating, proposing, approving, directing, or suggesting unlawful acts or a plan to commit unlawful acts;
- (4) Being present during criminal activity or remaining present during unanticipated criminal activity, unless it has been determined to be necessary for the investigation;
- (5) Engaging in any conduct the purpose of which is to disrupt, prevent, or hinder the lawful exercise of First Amendment activities;

(6) Attending meetings or engaging in other activities for the purpose of obtaining legally privileged information, such as attorney-client communications or physician-patient communications; and

(7) Recording or maintaining a record concerning persons or organizations who are not a target of the investigation or preliminary inquiry, unless the information is material to the investigation or preliminary inquiry, or the information would itself justify an investigation or preliminary inquiry under this title.

(c) The rules issued under subsection (a) of this section shall require that all members assigned to the Intelligence Section, Special Investigations Branch, attend training on this title and the rules. The rules shall require that all members of the Intelligence Section sign an acknowledgment that they have received, read, understood, will abide by, and will maintain a copy of this title and the rules.

Sec. 209. Preliminary inquiries relating to First Amendment assemblies.

(a) A MPD member may initiate a preliminary inquiry relating to a First Amendment assembly, for public safety reasons, without authorization, as follows:

(1) Members may gather public information regarding future First Amendment assemblies and review notices and approved assembly plans.

(2) Members may communicate overtly with the organizers of a First Amendment assembly concerning the number of persons expected to participate, the activities anticipated, and other similar information regarding the time, place, and manner of the assembly.

(3) Members may communicate overtly with persons other than the organizers of a First Amendment assembly to obtain information relating to the number of persons expected to participate in the assembly.

(4) Members may collect information on prior First Amendment assemblies to determine what police resources may be necessary to adequately protect participants, bystanders, and the general public, and to enforce all applicable laws.

(b) Filming and photographing First Amendment assemblies may be conducted by MPD members for the purpose of documenting violations of law and police actions, as an aid to future coordination and deployment of police units, and for training purposes. Filming and photographing of First Amendment assemblies may not be conducted for the purpose of identifying and recording the presence of individual participants who are not engaged in unlawful conduct.

Sec. 210. Authorized public activities.

Nothing in this title shall be interpreted as prohibiting any MPD member from, in the course of their duties, visiting any place, and attending any event that is open to the public, or reviewing information that is in the public domain, on the same terms and conditions as members of the public, so long as members have a legitimate law enforcement objective; provided, that any undercover activities shall be authorized as required by section 207.

Sec. 211. Files and records.

(a) Information to be retained in an Intelligence Section file shall be evaluated for the reliability of the source of the information and the validity and accuracy of the content of the information prior to filing. The file shall state whether the reliability, validity, and accuracy of the information have been corroborated.

(b) The MPD shall not collect or maintain information about the political, religious, social, or personal views, associations, or activities of any individual, group, or organization

unless such information is material to an authorized investigation or preliminary inquiry involving First Amendment activities.

(c) No information shall be knowingly included in an Intelligence Section file that has been obtained in violation of any applicable federal, state, or local law, ordinance, or regulation. The Chief of Police, or his designee, shall be responsible for establishing that no information is entered in Intelligence Section files in violation of this subsection.

(d) The MPD may disseminate information obtained during preliminary inquiries and investigations involving First Amendment activities to federal, state, or local law enforcement agencies, or local criminal justice agencies, only when such information:

- (1) Falls within the investigative or protective jurisdiction or litigation-related responsibility of the agency;
- (2) May assist in preventing an unlawful act or the use of violence, or any other conduct dangerous to human life; or
- (3) Is required to be disseminated by an interagency agreement, statute, or other law.

(e) All requests for dissemination of information from an Intelligence Section file shall be evaluated and approved by the Chief of Police or his designee. All dissemination of information shall be done by written transmittal or recorded on a form that describes the documents or information transmitted, and a record of the dissemination shall be maintained for a minimum of one year.

(f) Intelligence Section file information shall not be disseminated to any non-law enforcement agency, department, group, organization, or individual, except as authorized by law.

(g) The Chief of Police or his designee shall periodically review information contained in Intelligence Section files and purge records that are not accurate, reliable, relevant, and timely.

Sec. 212. Monitoring and auditing of investigations and preliminary inquiries.

(a) Authorizations of investigations and preliminary inquiries involving First Amendment activities are to be reviewed every 90 days by a panel of no fewer than 3 MPD commanding officers designated by the Chief of Police.

(b) The Commander, Office of the Superintendent of Detectives, or a commander of similar rank designated in the MPD regulations, shall monitor the compliance of undercover officers and informants with the requirements of this title.

(c) The Chief of Police shall annually prepare a report on the MPD's investigations and preliminary inquiries involving First Amendment activities. The report shall be transmitted to the Mayor and Council and a notice of its publication shall be published in the District of Columbia Register. The report shall include, at a minimum,

- (1) The number of investigations authorized;
- (2) The number of authorizations for investigation sought but denied;
- (3) The number of requests from outside agencies, as documented by forms requesting access to records of investigations conducted pursuant to this title;
- (4) The number of arrests, prosecutions, or other law enforcement actions taken as a result of such investigations; and
- (5) A description of any violations of this title or the regulations issued pursuant to this title, and the actions taken as a result of the violations, including whether any officer was disciplined as a result of the violation.

(d)(1) The Office of the District of Columbia Auditor ("ODCA") shall serve as auditor of MPD's investigations and preliminary inquiries involving First Amendment activities in order to assess compliance with this title.

(2) On an annual basis, the ODCA shall audit MPD files and records relating to investigations and preliminary inquiries involving First Amendment activities. In conducting the audit, the ODCA shall review each authorization granted pursuant to sections 205 and 206, requests for authorization that were denied, and investigative files associated with the authorizations. The ODCA shall prepare a public report of its audit that shall contain a general description of the files and records reviewed, and a discussion of any substantive violation of this title discovered during the audit. A preliminary report of the audit shall be provided by the ODCA to the Chief of Police for review and comment at least 30 days prior to issuance of a final audit.

(3) The ODCA shall have access to MPD files and records for purposes of its audit of investigations and preliminary inquiries involving First Amendment activities.

(4) In discharging its responsibilities, the ODCA shall protect the confidentiality of MPD files and records.

Sec. 213. Construction.

The provisions of this title are intended to protect persons who are exercising First Amendment rights in the District of Columbia, and the standards for police conduct set forth in this title may be relied upon by such persons in any action alleging violations of statutory or common law rights.

TITLE III. POST-AND-FORFEIT PROCEDURE; DISPLAY OF IDENTIFICATION BY POLICE OFFICERS.

Sec. 301. Short title.

This title may be cited as the "First Amendment Assembly Enforcement and Procedure Act of 2004".

Subtitle A.

Sec. 302. Enforcement of the post-and-forfeit procedure.

(a) For the purposes of this section, the term "post-and-forfeit procedure" shall mean the procedure enforced as part of the criminal justice system in the District of Columbia whereby a person charged with certain misdemeanors may simultaneously post and forfeit an amount as collateral (which otherwise would serve as security upon release to ensure the arrestee's appearance at trial) and thereby obtain a full and final resolution of the criminal charge.

(b) The resolution of a criminal charge using the post-and-forfeit procedure is not a conviction of a crime and shall not be equated to a criminal conviction. The fact that a person resolved a charge using the post-and-forfeit procedure may not be relied upon by any court of the District of Columbia or any agency of the District of Columbia in any subsequent criminal, civil, or administrative proceeding or administrative action to impose any sanction, penalty, enhanced sentence, or civil disability.

(c) Whenever the Metropolitan Police Department ("MPD") or the Office of the Attorney General for the District of Columbia tenders an offer to an arrestee to resolve a criminal charge using the post-and-forfeit procedure, the offer shall be accompanied with a written notice provided to the arrestee describing the post-and-forfeit procedure and the consequences of resolving the criminal charge using this procedure.

(d) The written notice required by subsection (c) of this section shall include, at a minimum, the following information:

(1) The identity of the misdemeanor crime that is to be resolved using the post-and-forfeit procedure and the amount of collateral that is to be posted and forfeited;

(2) A statement that the arrestee has the right to choose whether to accept the post-and-forfeit offer or, alternatively, proceed with the criminal case and a potential adjudication on the merits of the criminal charge;

(3) If the arrestee is in custody, a statement that if the arrestee elects to proceed with the criminal case he or she may also be eligible for prompt release on citation, or will be promptly brought to court for determination of bail;

(4) A statement that the resolution of the criminal charge using the post-and-forfeit procedure will preclude the arrestee from obtaining an adjudication on the merits of the criminal charge;

(5) A statement that the resolution of the criminal charge using the post-and-forfeit procedure is not a conviction of a crime and may not be equated to a criminal conviction, and may not result in the imposition of any sanction, penalty, enhanced sentence, or civil disability by any court of the District of Columbia or any agency of the District of Columbia in any subsequent criminal, civil, or administrative proceeding or administrative action;

(6) A statement that the agreement to resolve the charge using the post-and-forfeit procedure is final after the expiration of 90 days from the date the notice is signed and that, within the 90-day period, the arrestee or the Office of the Attorney General may file a motion with the Superior Court of the District of Columbia to set aside the forfeiture and proceed with the criminal case; and

(7) A statement that, following resolution of the charge using the post-and-forfeit procedure, the arrestee will continue to have an arrest record for the charge at issue, unless the arrestee successfully moves in the Superior Court of the District of Columbia to seal his or her arrest record.

(e) The notice required by subsection (c) of this section shall be offered in the Spanish language to those persons who require or desire notice in this manner, and shall be offered in other languages as is reasonable to ensure meaningful access to the notice for persons who are limited English proficient.

(f) An arrestee provided the written notice required by subsection (c) of this section who wishes to resolve the criminal charge using the post-and-forfeit procedure shall, after reading the notice, sign the bottom of the notice, thereby acknowledging the information provided in the notice and agreeing to accept the offer to resolve the charge using the post-and-forfeit procedure. After the arrestee signs the notice, the arrestee shall be provided with a copy of the signed notice.

(g) Within 90 days of the Superior Court of the District of Columbia issuing an updated bond and collateral list, the Chief of Police shall issue a list of all misdemeanor charges that MPD members are authorized to resolve using the post-and-forfeit procedure, and the collateral amount associated with each charge. The Chief shall make the list available to the public, including placing the list on the MPD website.

(h) The Mayor shall submit an annual public report to the Council identifying the total amount of money collected the previous year pursuant to the post-and-forfeit procedure and the number of criminal charges, by specific charge, resolved the previous year using the post-and-forfeit procedure. The data shall be reported separately for instances in which the post-and-forfeit procedure is independently used by the MPD (without the approval, on a case-by-case basis, of either the Office of the Attorney General or the Superior Court of the District of Columbia), and for all other instances in which the post-and-forfeit procedure is used. The report also shall identify the fund or funds in which the post-and-forfeit moneys were placed.

Subtitle B.

Sec. 321. Police identifying information.

Every member of the Metropolitan Police Department (“MPD”), while in uniform, shall wear or display the nameplate and badge issued by the MPD, or the equivalent identification issued by the MPD, and shall not alter or cover the identifying information or otherwise prevent or hinder a member of the public from reading the information.

Subtitle C.

Sec. 331. Section 8(a) of the Office of Citizen Complaint Review Establishment Act of 1998, effective March 26, 1999 (D.C. Law 12-208; D.C. Official Code § 5-1107(a)), is amended as follows:

(a) Paragraph (4) is amended by striking the word “or” at the end.

(b) Paragraph (5) is amended by striking the period at the end and inserting the phrase “; or” in its place.

(c) A new paragraph (6) is added to read as follows:

“(6) Failure to wear or display required identification or to identify oneself by name and badge number when requested to do so by a member of the public.”.

Amend
§ 5-1107

TITLE IV. FISCAL IMPACT STATEMENT; EFFECTIVE DATE.

Sec. 401. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 402. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia