

## **Chapter 217. Assemblies, Public**

### **Article I. First Amendment Assembly Planning**

#### **§ 217-1. Definitions.**

As used in this article, the following terms shall have the meanings indicated:

#### **FIRST AMENDMENT ASSEMBLY**

A demonstration, rally, parade, march, picket line, address, speech, sermon, or other similar gathering conducted for the purpose of persons expressing any First Amendment protected views, such as views on any political, social, or religious subjects.

#### **§ 217-2. Purpose.**

- (1) The purpose of this policy is to protect and uphold the rights of individuals and groups to exercise free speech, assembly, association and to petition their government for redress of grievances, as they are essential to a free and informed democracy and representative government.
- (2) It is the declared public policy of the City of Greenfield 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 City of Greenfield, 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.
- (3) The purpose of the notice and plan acceptance process is to provide City departments the ability to provide appropriate support for participants and non-participants.

#### **§ 217-3. Assemblies Without Required Notice or Acceptance.**

A person or group who wishes to conduct a First Amendment assembly on a City sidewalk, the City Common, or in a City park is not required to give notice or apply for acceptance of an assembly plan before conducting the assembly where:

- (1) The assembly is for the purpose of an immediate and spontaneous expression of views in response to a public event; or
- (2) The person or group reasonably anticipates that the assembly will not interfere with pedestrian or vehicular traffic on sidewalks, crosswalks, or streets.

#### **§ 217-4. Notice and Plan Acceptance Process for Assemblies Requiring Notice and Assembly Plans.**

##### **A. Authority to accept.**

- (1) A person or group who wishes to conduct a non-spontaneous First Amendment assembly on a City sidewalk, street, the City Common, or a City park which does not fall under the categories outlined in Section 217-3, shall give notice and apply for acceptance of an assembly plan before conducting the assembly.
- (2) 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.
- (3) The Board of License Commissioners shall review and accept plans for First Amendment assemblies that do not fall under the categories outlined in 217-3, subject to the appeal process set forth in Subsection D below.
- (4) The Board of License Commissioners may seek acceptance from other City departments before issuing a decision in order to implement reasonable time, place and manner restrictions.
- (5) The Board of License Commissioners may establish reasonable time, place, and manner restrictions for First Amendment assemblies and apply them to proposed assemblies through the acceptance of a plan. If the Board of License Commissioners establishes such restrictions, they shall make the city council aware of such restrictions immediately upon enactment.
- (6) No City department shall enforce any fees on persons or groups that conduct First Amendment assemblies.

#### **B. Action on Application.**

- (1) The Board of License Commissioners shall take action upon receipt of a notice of and an application for acceptance of a plan for a First Amendment assembly at its next regular meeting and in any event prior to the date of the proposed assembly.
- (2) If the Board of License Commissioners does not meet before the proposed assembly, the Board of License Commissioners chair or mayor shall review the plan for acceptance prior to the proposed assembly date.
- (3) The Board of License Commissioners or the Board of License Commissioners Chair or Mayor in situations falling under Section 217-4B(2) may consider 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.

#### **C. Response.**

The Board of License Commissioners shall inform the person or group giving notice of an

assembly, in writing, of the reasons for any decision to:

- (1) Deny an application; or
- (2) Amend an assembly plan based on reasonable time, place, or manner restrictions; or
- (3) Approve an assembly plan subject to reasonable time, place, or manner restrictions in spite of the applicant's objections.

**D. Appeals.**

(1) Where a proposed assembly plan is denied, amended prior to the planned assembly date, or subjected to time, place, or manner restrictions, to which the applicant objects, 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 Board of License Commissioners.

(2) The Mayor shall make a decision on the appeal within two days after receiving written notice of the appeal, if such time exists between receipt of the appeal and the planned event. In the event the planned event will take place within two days of the Mayor's receipt of the appeal, the Mayor must make their decision prior to the date and time the assembly is planned to commence and explain in writing the reasons for the decision.

**§ 217-5. Exceptions.**

A. Funeral processions pursuant to MGL c. 85, § 14A, shall be exempt from the provisions of this article.

B. It shall be unlawful for any person to engage in picketing or other protest activities within 300 feet of or around/about any location at which a funeral is held, within one hour prior to the commencement of any funeral, and until one hour following the cessation of any funeral.

C. In order to protect and preserve the sanctity of the home and assure that members of the community enjoy in their homes and dwellings a feeling of well-being, tranquility, and privacy, no assemblies shall be permitted that are targeted at an individual's residence.

**§ 217-6. Conflicts arising from assemblies without prior plan acceptance occurring at same time and space.**

If notice and application for acceptance of an assembly plan is not provided to the Board of License Commissioners before such assembly and more than one assembly occurs at the same time and space, then neither assembly has a superior right to the space regardless of whether or not either assembly's plan was reviewed and approved.

**ARTICLE II. Crowd Control**

**§ 217-7. Purpose.**

The purpose of this article is to protect first amendment assembly participants, bystanders, and the environment from the indiscriminate, dangerous and potentially fatal impacts of tear gas, crowd control chemical agents, kinetic impact projectiles, and dogs, especially during first amendment assemblies.

This article is intended to operate consistently with, and to supplement, the requirements of M.G.L. c. 6E, § 14, which governs the use of tear gas, chemical weapons, rubber pellets, and dogs against a crowd throughout the Commonwealth, including the de-escalation, proportionality, and reporting requirements set forth therein.

This article distinguishes between the Targeted Deployment of a Crowd Control Chemical Agent or Kinetic Impact Projectile against a specific individual or individuals and the Indiscriminate Deployment of such an agent or projectile against a crowd, in recognition that these two forms of use present materially different risks to persons exercising their First Amendment rights and to bystanders, regardless of the chemical composition or type of agent or projectile used.

#### § 217-8. Definitions.

**Crowd control chemical agent:** A chemical compound, other than tear gas or pepper spray as defined in this section, in any form that is meant to cause a burning irritation or sensation to the eyes, mouth, throat, lungs, or skin, including, but not limited to, Tear Gas, Pepper Spray, mace, inert smoke, pepper pellets, and pepper balls. These chemical compounds may include, but are not limited to, chloroacetophenone (CN), chloropicrin (PS), bromobenzylcyanide (CA), dibenzoxazepine (CR), and combinations thereof.

**Kinetic impact projectile:** An item or instrument fired from a gun or launcher intended to disorient and/or incapacitate and inflict pain without penetrating the skin, including, but not limited to, rubber bullets, sponge grenades, stun grenades, concussion grenades, flash grenades or flash-bangs, beanbag rounds, super-sock rounds, wax bullets, and plastic bullets.

**Other law enforcement officers:** Except to the extent prohibited by law, any law enforcement officers who are not Greenfield Police Officers but who are engaged in law enforcement activities within the City of Greenfield, including but not limited to the Franklin County Regional Special Response Team and parties providing assistance through the Western Massachusetts Law Enforcement Mutual Aid Agreement.

**Pepper spray:** A Crowd Control Chemical Agent consisting of Oleoresin capsicum spray, OC spray, capsaicin spray, capsicum spray, or any other similar lachrymatory agent, in spray or aerosol form, containing oils derived from cayenne pepper irritating to the eyes and respiratory passages and used as a disabling weapon intended to irritate the eyes, to cause a burning sensation, pain, or temporary blindness, or to cause inflammation of the nose, throat and skin.

Tear Gas and Pepper Spray are both lachrymatory agents and share a common mechanism of action; this article defines them as separate terms in order to identify the specific compounds each provision addresses, and does not distinguish between them for purposes of the protections afforded under § 217-9.

**Tear gas:** A chemical crowd control or riot control agent whose defining chemical component is 2-chlorobenzalmalononitrile, orthochlorobenzalmalononitrile, o-Chlorobenzylidene malononitrile, and shall not include pepper spray.

**Targeted Deployment:** The application of a Chemical Crowd Control Agent or Kinetic Impact Projectile that is directed at, and reasonably confined to, a specific, identified individual or individuals, using a delivery method, distance, and quantity such that the agent or projectile is not reasonably expected to affect any person other than the targeted individual or individuals.

**Indiscriminate Deployment:** The application of a Chemical Crowd Control Agent or Kinetic Impact Projectile that is not a Targeted Deployment, including but not limited to deployment by grenade, canister, aerosol cloud, or other method into a crowd, group, or area, or the firing of a Kinetic Impact Projectile into a crowd, group, or area, where the agent or projectile is reasonably expected to affect one or more persons other than a specifically identified individual or individuals.

**§ 217-9. Restriction on the use of tear gas, crowd control chemical agents, kinetic impact projectiles, pepper spray, and dogs.**

- a. The use of tear gas by the Greenfield Police Department or any other law enforcement officers shall be prohibited.
- b. Subject to the provisions of paragraph (c) below, the use of crowd control chemical agents, kinetic impact projectiles, and dogs by Greenfield police officers and other law enforcement officers shall be limited to being weapons of last resort, to be used only if all other reasonable methods of de-escalation have been unsuccessful.
- c. Exceptions and exemptions. Kinetic impact projectiles, crowd control chemical agents, and/or dogs may only be deployed against a crowd if:
  1. The measures used are necessary to prevent imminent harm, and the foreseeable harm inflicted by the kinetic impact projectiles, crowd control chemical agents, and dogs is proportionate to the threat of imminent harm to the participants assembled and/or bystanders; **and**
  2. An on-scene supervisor or a shift commander specifically authorizes such use in response to specific ongoing acts of violence or endangering behavior that the on-scene supervisor has personally witnessed and has determined cannot be controlled or quelled through any other methods and has determined that no other reasonable methods of de-escalation will be successful in preventing or controlling such acts; and



3. The on-scene supervisor witness who authorizes such use, or an officer of equal or higher rank, has given at least two separate warnings over a loudspeaker system, including, but not limited to, a vehicle public address system or an amplified bullhorn,

- a) directing the persons involved in the gathering to disperse, after ensuring that people have a reasonable and sufficient way to disperse after a warning is issued,

- b) notifying all who could be affected that a failure to disperse will result in the use of a specific kinetic impact projectile, crowd control chemical agent, or dog against the crowd which must be identified in such warning, and

- c) notifying all who could be affected that the specific kinetic impact projectile ~~or~~ chemical crowd control agent, **or dog** will be deployed within a clearly defined period of time.

Such warnings, when possible, must be at least two minutes apart and there must be no less than two minutes after the second warning has been fully read, if possible, before any use of the specifically announced kinetic impact projectile chemical crowd control agent, and/or dog against the crowd.

d. The use of pepper spray by the Greenfield Police Department or any other law enforcement officers shall not be permitted unless:

- i. An emergency exists that requires the immediate use of pepper spray to prevent serious bodily injury or death; or

- ii. An officer:

1. Personally witnesses on-going and illegal acts of violence, property destruction, imminent threats of violence, or imminent threats of property destruction involving a weapon,

2. Is unable to arrest or detain an individual using a lower level of force, and

3. Provides a clear verbal warning of the imminent deployment of pepper spray prior to its use and affords a reasonable opportunity for the individual(s) to cease and/or comply.

d. Indiscriminate Deployment of Pepper Spray governed by paragraph B. Notwithstanding paragraph C, any Indiscriminate Deployment of Pepper Spray in connection with a First Amendment Assembly shall be governed exclusively by paragraph B of this section, and shall not be authorized under the standard set forth in paragraph C regardless of the chemical composition of the agent used.

- e. Targeted Deployment of Kinetic Impact Projectiles. The Targeted Deployment of a Kinetic Impact Projectile by the Greenfield Police Department or Other Law Enforcement Officers in connection with a First Amendment Assembly shall not be permitted unless: (1) An emergency exists that requires the immediate use of the Kinetic Impact Projectile to prevent serious bodily injury or death; or (2) An officer (a) personally witnesses ongoing and illegal acts of violence or property destruction involving a weapon, or imminent threats of the same, (b) is unable to arrest or detain the individual or individuals using a lower level of force, and (c) provides a clear verbal warning of the imminent use of the Kinetic Impact Projectile prior to its use and affords a reasonable opportunity for the individual or individuals to cease and/or comply.
- f. Indiscriminate Deployment of Kinetic Impact Projectiles governed by paragraph B. Notwithstanding paragraph E, any Indiscriminate Deployment of a Kinetic Impact Projectile in connection with a First Amendment Assembly shall be governed exclusively by paragraph B of this section, and shall not be authorized under the standard set forth in paragraph E.
- g. Circumstances outside First Amendment Assemblies. Nothing in this section shall be construed to restrict the use of Tear Gas, other Chemical Crowd Control Agents, Kinetic Impact Projectiles, or dogs by the Greenfield Police Department or Other Law Enforcement Officers in circumstances not arising in connection with a First Amendment Assembly, including but not limited to hostage situations, barricaded subject incidents, or other critical incidents not involving a First Amendment Assembly. Any such use remains governed by M.G.L. c. 6E, § 14 and applicable Department policy.

#### § 217-10. Enforcement.

- a. The Greenfield Police Department shall take appropriate steps to implement this article forthwith, including, but not limited to,
  - a. by posting a copy of this article in a prominent and visible location in all police stations within the City of Greenfield,
  - b. by notifying all other law enforcement agencies that may operate within the City of Greenfield about this article and supplying a copy of the article to each of said agencies
  - c. implementing changes, if necessary, to the Memorandum Of Agreement with the Franklin County Special Response Team to comply with this article and
  - d. by incorporating the limitations on the use of tear gas, pepper spray, crowd control chemical agents, kinetic impact projectiles, and dogs set forth in section 217-9 of this article into officer training regarding the use of less lethal and non-lethal force in policing.
- b. Alleged violations of this article and misconduct, including excessive use of force, may be reported to the Police Officer Standards and Training (POST) commission.<sup>1</sup> Disciplinary records of police officers are publicly available through the POST

<sup>1</sup> POST Commission Police Misconduct Complaint Form <https://policecomplaints.mass.gov/complaint>

commission.<sup>2</sup> Incident reports and body worn camera footage may be subject to a public records request.

- c. The City of Greenfield will address alleged violations of this article in accordance with its usual practices, applicable law, and contractual obligations.
- d. Nothing in this article shall be construed to limit any individual's rights under state or federal law.

#### **§ 217-11. Severability.**

If any portion or provision of this article is declared invalid or unenforceable by a court of competent jurisdiction or by the office of the attorney general, the remaining provisions shall continue in full force and effect.

#### **§ 217-12. Effective date.**

This article, being necessary for the immediate preservation of the public peace, health and safety, and security of the public, shall be effective immediately.

### **Article III. Parades & Other Non-First Amendment Assemblies**

#### **§ 217-13. Purpose and intent.**

The purpose of this article is to cover all sections not covered by Article I, Public Demonstrations, of this Chapter 217. The intent of this article is to cover non-First Amendment assemblies and to allow the Board of License Commissioners the discretion to issue permits in such cases. A parade shall consist of a non-First Amendment procession, assembly, or other organized formation.

#### **§ 217-14. Permit required.**

Except in the case of first amendment assemblies as discussed above, no person shall take part in any parade of persons or vehicles, other than a funeral procession or a picket line, in or upon any street, way, highway, road, or parkway or other public property under the control of the City unless the Board of License Commissioners has granted a permit for such parade.

#### **§ 217-15. Criteria for acceptance; fee.**

The Board of License Commissioners may issue such permits in all cases except where the time, place, and manner are not in conformity with the rules set forth below and except where the permit would be in conflict as to time or place with a permit previously issued. No fee shall be charged for any such permit.

#### **§ 217-16. Time of filing; information required.**

The written request for the permit shall be filed with the Board of License Commissioners at

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<sup>2</sup> POST Commission Officer Disciplinary Records

<https://mapostcommission.gov/discipline-status-records/disciplinary-records/>



least seven days prior to each occurrence, and said Commission may waive this seven-day requirement.

The request shall include the following:

- A. The date and starting time;
- B. The name, address and telephone number of the applicant and the name of the organization involved;
- C. The formation or assembly area and the time therefor;
- D. The route of the parade or motorcade and what portions, if any, of the streets traversed may be occupied by such parade or motorcade; and
- E. The approximate number of persons and vehicles in the parade or motorcade, if applicable.

**§ 217-17. Authority to modify place, time and route.**

The Board of License Commissioners shall have the authority to modify the place, time and route of a parade to facilitate crowd control in the interest of relieving congestion and promoting public safety.

**§ 217-18. Violations and penalties.**

Violation of the above article (§217-13 through 217-17, inclusive) shall result in a criminal penalty not to exceed \$100 for each offense, which shall inure to the benefit of the City, all pursuant to MGL c. 40, § 21.