

OFFICE OF THE CITY MANAGER



241 W. South Street
Kalamazoo, MI 49007-4796
Phone: (269) 337-8047
Fax: (269) 337-8182
www.kalamazoocity.org

August 28, 2020

Dear Mayor Anderson, Vice Mayor Griffin and City Commissioners:

The City of Kalamazoo embraces the diversity of our community and constantly strives to create a welcoming and inclusive environment for all our residents. As City Manager, I am committed to ensuring Kalamazoo is a welcoming community that celebrates the diversity of our residents.

I strongly denounce the Proud Boys and other hate groups. Their hateful rhetoric and actions have no place in our community. The City of Kalamazoo strongly urges hate groups to keep their hatred and intolerance far away from Kalamazoo and our neighboring communities.

A thorough review of our response to the march and protests show several areas for improvement and the following preliminary sub-committee report is an important first step that will help us proactively plan our response to future public protests, demonstrations and rallies.

Our goal is to learn from this incident and create a better Kalamazoo for residents, families and visitors.

As you'll see from this preliminary report, we will be implementing protocols and practices regarding safety, community relationships and communications, equity and accountability. The committee has also identified the need to work with the community and key stakeholders to develop clear strategies, practices and regulations for First Amendment assemblies. We're also setting clear expectations for defining and measuring success to ensure transparency and accountability.

As we begin to develop a plan for implementation, we will be reaching out to key stakeholders – including community organizations and partners, neighborhood associations and the faith community. We welcome feedback and input from all members of our community as we move this preliminary plan into implementation.

The City of Kalamazoo is committed to transparency and accountability because it leads to continuous improvement, allowing us to learn from our experiences to provide a more welcoming and inclusive environment for all Kalamazoo residents and visitors. We will be providing regular updates to ensure we remain transparent, accountable and keep the public, community partners and the media updated and informed.

I would like to thank Vice Mayor Griffin and Commissioners Cunningham and Praedel for their valuable contributions and insights into preparing this report.

Sincerely,

James K. Ritsema, City Manager
City of Kalamazoo



Inter-Office MEMO

City of Kalamazoo

TO: Mayor Anderson, Vice Mayor Griffin, and City Commissioners

FROM: James K. Ritsema, City Manager

DATE: August 28, 2020

SUBJECT: Preliminary Sub-Committee Report

BACKGROUND

At the August 17, 2020 Business Meeting, Commissioner Hess, seconded by Commissioner Knott, moved to appoint Vice Mayor Griffin, Commissioner Cunningham, and Commissioner Praedel to work with the City Manager to develop a definition of success for the City's response to public protests, demonstrations, and rallies that can be used to guide the planning and execution of that response; and that a report be provided to the City Commission by August 28th.

In addition to the three Commissioners, the Sub-Committee also includes City Manager Ritsema, City Attorney Robinson, Deputy City Manager Chamberlain, Deputy City Manager Lam, Director Bonner, Chief Thomas, Assistant Chief Coakley, and Assistant Chief Boysen. The group first met on August 20 and had subsequent meetings on August 24th, 26th, and 28th. In addition, Sub-Committee members informally engaged with Kalamazoo Department of Public Safety (KDPS) officers and community members to begin to identify key issues and possible solutions/improvements.

The initial outcomes for the Sub-Committee were as follows:

- Shared understanding of current laws and policies that guide the City's response to the community's right to assembly;
- Shared understanding of the sub-committee's scope of work and key deliverables for interim measures; and
- Clear expectations set for the role of staff and Commissioners to deliver a report by August 28 deadline.

Current Laws and Policies

The Sub-Committee reviewed KDPS Policy 430 (First Amendment Assemblies) as well as additional guidance provided by City Attorney Robinson regarding the First Amendment.

Scope of Work

Through extensive discussion, the group arrived at a preliminary scope of work that included five main areas:

- Guiding Principles / Definition of Success
- First Amendment Assembly Communication Strategy
- Protocol for Operations Planning
- Policy / Training
- Accountability

Defining Success – Guiding Principles

KDPS Policy 430 (First Amendment Assemblies) indicates that, “KDPS respects the rights of people to peaceably assemble. It is the policy of (KDPS) 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.”

When asked to define success, Sub-Committee members identified the following elements:

Safety

- Ensure the community is safe during events and can go home safe.
- Proactively prevent violent confrontations and escalation.
- Avoid disproportionate use of force and limit the use of chemical agents to only when necessary.

Community Relationships

- All people are treated with respect and dignity.
- Better success in communication before, during, and after events, between KDPS, City Administration, City Commission, event organizers, and the public.
- KDPS’ presence is there to protect the right to peacefully protest.
- There are clear, shared expectations for media, observers and medics during First Amendment Assemblies.

Equitable Approach

- Policy, protocol, rules are content neutral and applied equitably to everyone.
- Ensure there is an equitable approach to enforcement.

Accountability

- Laws are upheld.
- Establish measures and practices to ensure clear, objective accountability to policies, protocol.

Additionally, a Sub-Committee member contacted the Michigan Municipal League Research Lab to inquire about best practices and was guided to the National League of Cities Incidence Response Toolkit: https://www.nlc.org/sites/default/files/2019-06/REAL_IncidenceResponseToolkit_Final.pdf. The toolkit identifies five values to lead with during crisis: empathy, transparency, authenticity, partnership/collaboration, consistency. These values emerged in the Sub-Committee's discussions, as well as in conversations that Sub-Committee members have with community members and City staff, and need to be more fully explored.

First Amendment Assembly Communication Strategy

Much of the Sub-Committee's discussion focused on identifying communication challenges and the need for a clear First Amendment Assembly Communication Strategy. It was suggested that the strategy should incorporate a variety of audiences, including Commissioners, community leaders, event organizers, media, and the public. Additionally, the strategy should include the specific details to be communicated pre, during, and post events with clarification on what information needs to be shared with who (audience), when (detailed timelines, frequency), and how (methods of communication). Although the Sub-Committee identified a significant number of details that could be included in the Communication Strategy, the group acknowledged that the strategy needs to be developed with input from the various audiences involved in protests, demonstrations, and rallies. It was also emphasized that communication needs to be two-way and allow for real time feedback to flow between City Administration, City Commissioners, and event organizers.

Protocol for Operations Planning

KDPS Policy 430 lays out the process by which the department develops incident specific operational plans. It was acknowledged by the group that the department should remain responsible for creating and implementing operational plans for events; however, the Sub-Committee is exploring areas of the policy that need to be revised, clarified, or have sections added. Members of the Sub-Committee strongly recommended that KDPS and City Administration consult with event organizers, and impacted community members on event details and plans. Protocol should include how communication should continue before, during and after the event, with specific timelines and clear expectations.

Community members involved in recent events have expressed challenges with hearing and understanding directions given during events. Sub-Committee members suggest that the City explore better options to communicate with the public; tools could include improved speakers, other visual options, and the addition of simplified language to accompany legal announcements. It was also recommended that staff consult with other jurisdictions on best practices and experiences related to specific groups that are from outside of the area.

Policy / Training

Although KDPS Policy 430 does include some references to the media, it was suggested that the policy could be strengthened and clarified with regards to media and legal observers. KDPS also indicated the department will incorporate more training for officers regarding members of the press and legal observers during First Amendment assemblies. City Attorney Robinson is currently researching emerging practices, including recommendations for legal observers, and expects to present his initial findings by September 4th. City Attorney Robinson will also contact local attorneys to see if they would be willing to co-create and produce a training for media and legal observers based on legal parameters and interpretations.

Accountability

Accountability continued to emerge as a strong theme throughout each of the Sub-Committee discussions. The group acknowledges that, in a strong City Manager form of government, the City Commission holds the City Manager accountable, and the City Manager holds the entire city organization accountable, including the Public Safety Chief and KDPS. The group identified a goal of creating a structure of accountability that is objective and measurable. The recommendations to develop a First Amendment Assembly Communication Strategy and Protocol was explicitly made to establish clear expectations to support the goal of accountability. Independent investigations are recognized as an accountability tool, but several questions emerged that are detailed under the accountability portion of the Areas Requiring Additional Discussion & Exploration section of this report.

CONCLUSION / NEXT STEPS

The Sub-Committee identified preliminary recommendations for consideration by the full City Commission. Following the distribution of this report and initial gathering of input, City Manager Ritsema will present a timeline for implementing recommendations at the September 8th Business Meeting and provide periodic updates, at least monthly, via the KDPS Transparency Page (<https://www.kalamazoo.org/kdpstransparency>) and future business meetings.

Preliminary Recommendations

- Develop a clear First Amendment Assembly Communication Strategy and Protocol with community/stakeholder input.
 - KDPS and City Administration consult with event organizers and impacted community members on event details and plans before, during and after events.
 - KDPS and City Administration consult with other jurisdictions on best practices,

experiences related to protests, demonstrations, and rallies; consult with municipalities that have had prior interactions with groups that come from outside Kalamazoo.

- Explore options to communicate with the public; tools could include improved loudspeakers, other visual options, and the addition of simplified language to accompany legal announcements.
- Following City Attorney Robinson’s research and consultation, develop and implement training for media, legal observers, and City staff to guide future First Amendment Assemblies.
- Changes from this effort regarding First Amendment Assemblies will need to be communicated and clarified with government partners and surrounding jurisdictions / Michigan State Police that provide mutual aid. The Sub-Committee determined that these changes can be communicated via the monthly Chiefs’ meeting, the City Manager’s periodic meetings with area administrators, and at pre-event briefings with officers and command staff.

Areas Requiring Additional Discussion & Exploration

The Sub-Committee also identified the following areas that will require additional research and discussion prior to formulating potential recommendations. The group will continue to meet to discuss these items and others that emerge prior to the September 8th Business Meeting and will seek approval to continue the work to be informed by input from the full Commission.

Regulations, permitting, registration: What regulations are allowed under the First Amendment and should the City consider adding any additional permitting or conditions to guide future events, including events which are planned in advance, and events which occur without prior official notification?

Community input: Which aspects of this effort are the most critical for community input? Who should be engaged, ideas for productive engagement, and to what end?

National League of Cities values to lead with during crisis: In what ways has the City demonstrated elements of empathy, transparency, authenticity, partnership /collaboration and consistency in response to past protest crisis situations? In our future planning and examination of performance, what could the City do differently to embody each of these five elements?

Accountability framework:

Expectations for success

- Further defining and measuring

Independent investigations

- What triggers independent investigations?
- How do scopes get developed? Who is involved in planning, overseeing, and communicating results?

After Action Reviews

- Review of actions against Communication Strategy, Protocol, Operations Plan
- Who is involved in planning, overseeing, and communicating results?
- What are the potential consequences and who is involved in determining responses?

Tactics of KDPS and event participants: Sub-Committee members have made recommendations for managing First Amendment Assemblies such as when crowd dispersal tactics are employed, when police zones should be established, and when arrests should be made. These suggestions will require further discussion to understand policy and legal implications.

KDPS Policy 430: The First Amendment Assembly Communication Strategy and Protocol should be aligned with administrative policy. As the Sub-Committee works through the areas requiring additional research and discussion, Policy 430 will need to be revised to reflect the decisions of the Administration made as a result of the Sub-Committee’s work, City Commission feedback, and input from community members and stakeholders.

ATTACHMENTS

Kalamazoo Department of Public Safety Policy 430: First Amendment Assemblies

First Amendment Assemblies

430.1 PURPOSE AND SCOPE

This policy provides guidance for responding to public assemblies or demonstrations.

430.2 POLICY

The Kalamazoo Department of Public Safety 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.

430.3 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. These rights may be limited by laws or ordinances regulating such matters as the obstruction of individual or vehicle access or egress (MCL 750.352); trespass upon the property of another (MCL 750.552); trespass upon key facilities (MCL 750.552c); trespass upon health facilities for prohibited purposes (MCL 333.20198); noise; unlawful picketing (MCL 423.17a); mass picketing or picketing of a private residence (MCL 423.9f); distribution of handbills; leafleting; or conduct directed toward disruption of elections (Const 1963, art 2, § 4; MCL 168.931 et seq.). However, public safety 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 public safety 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.

Public Safety 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 a public safety 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.

430.3.1 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.

430.4 UNPLANNED EVENTS

When responding to an unplanned or spontaneous public gathering, the first responding public safety 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).
- 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 Dispatch, 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.

430.5 PLANNED EVENT PREPARATION

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

Kalamazoo Department of Public Safety

Policy Manual

First Amendment Assemblies

430.5.1 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 the race, ethnicity, national origin or religion of the participants (or any other characteristic that is unrelated to criminal conduct or the identification of a criminal subject).

430.5.2 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.
- (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.

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- (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.

430.5.3 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).

430.6 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.

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.

430.7 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 Device 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

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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 Weapon (CEW)s should be considered only when the participants' conduct reasonably appears to present the potential to harm public safety officers, themselves or others, or will result in substantial property loss or damage (see the Control Devices and the Conducted Energy Device policies).

Force or control devices, including oleoresin capsaicin (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.

430.8 ARRESTS

The Kalamazoo Department of Public Safety 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.

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 public safety 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 (see the Appearance Ticket Policy).

430.9 MEDIA RELATIONS

The designated 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).

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430.10 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.

430.11 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, Dispatch records/tapes.
- (g) Media accounts (print and broadcast media).

430.11.1 AFTER-ACTION REPORTING

The Operations Division Commander or designee when appropriate, should 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.

430.12 TRAINING

Department members shall 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.