

**METROPOLITAN POLICE DEPARTMENT
NOTICE OF FINAL RULEMAKING**

The Chief of Police, pursuant to section 106(e)(1) of the First Amendment Assemblies Act of 2004 (Act), effective April 13, 2005 (D.C. Law 15-352, D.C. Official Code § 5-331.06(e)(1)), and Mayor's Order 2006-37, dated March 17, 2006, hereby gives notice of the adoption of the following 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.

These amendments were previously published in 54 DCR 2532 on March 23, 2007, as proposed rulemaking. Comments were received from the American Civil Liberties Union (ACLU). Where appropriate, some of the ACLU comments regarding clarification were accepted and the text of the proposed rules modified accordingly. The changes to the text of the proposed rules did not amount to a substantive modification of the rules, thus there is no need for an additional period of comment.

The Chief of Police also gives notice that the final rules shall become effective upon publication in the *D.C. Register*.

Title 24 DCMR, "Public Space And Safety" is amended by amending chapter 7, "Parades and Public Events", sections 705 through 709 to read as follows:

705 FIRST AMENDMENT ASSEMBLIES: GENERAL PROVISIONS

705.1 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.

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

705.3 The Metropolitan Police Department may impose reasonable time, place and manner restrictions on First Amendment assemblies held on District streets, sidewalks, or other public ways, or in District parks. The imposition of restrictions may occur:

- (a) Through the approval of a plan, where organizers give advance notice of the intent to engage in a First Amendment assembly;

- (b) During the occurrence of a First Amendment assembly for which a plan has been approved where restrictions in addition to those set forth in the approved plan are:
 - (1) Necessary to implement the substance and intent in the approval of the plan;
 - (2) Required due to the occurrence of actions or events unrelated to the First Amendment 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
 - (3) Necessary due to a determination by the Metropolitan Police Department during the assembly that there exists an imminent likelihood of violence endangering persons or threatening to cause significant property damage; or
- (c) During a First Amendment assembly where a plan was not approved for the assembly.

705.4 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.

705.5 For purposes of this chapter, the following definitions may apply either to a First-Amendment assembly, or a non-First Amendment activity (depending upon whether the event meets the elements of a First Amendment assembly as set forth in section 705.2):

- (a) Parade. A “parade” is any formation, march, procession consisting of persons, animals, vehicles, or a combination of persons, animals, and vehicles, traveling in unison with a common purpose, upon any public street, highway, alley, sidewalk or other public way, within the territorial jurisdiction of the Metropolitan Police Department, in a manner that ordinarily would be in violation of any provision of DCMR Title 18 "Vehicles and Traffic," or any other applicable law or regulation.
- (b) Race. A “race” is defined as any formation or procession of persons traveling along the same established route, with the common purpose of competing in an athletic contest. A race has a starting line and a finish line, and is often organized for charitable purposes.
- (c) Walk-a-thon. A “walk-a-thon” is defined as any formation or procession of persons, walking along the same established route, with a common

purpose, but without the purpose of competing against one another. A walk-a-thon has a starting line and a finish line, and is generally organized for charitable purposes.

- 705.6 It is not an offense under these regulations for persons to conduct a First Amendment assembly on a District street, sidewalk, or other public way, or in a District park, without having provided notice or obtained an approved assembly plan.
- 705.7 Providing notice and seeking plan approval under these regulations is designed to avoid situations where more than one group seeks to use the same space at the same time and to provide the Metropolitan Police Department and other District agencies the ability to provide appropriate police protection, traffic control, and other support for participants and other individuals.
- 705.8 Except as provided in Section 705.9, 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, or in the case of a non-First Amendment assembly, shall apply for a permit under applicable provisions of these regulations for non-First Amendment assembly events.
- 705.9 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:
- (a) The assembly will take place on public sidewalks and crosswalks and will not prevent other pedestrians from using the sidewalks and crosswalks;
 - (b) 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
 - (c) The assembly is for the purpose of an immediate and spontaneous expression of views in response to a public event.
- 705.10 The Mayor shall not enforce any user fees on persons or groups that organize or conduct First Amendment assemblies.
- 705.11 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.

705.12 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 section 705.9 may use a stand or structure so long as it does not prevent others from using the sidewalk, roadway, or ingress/egress to existing buildings/businesses.

705.13 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 section 705.9; 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.

706 NOTICE AND PLAN APPROVAL PROCESS FOR FIRST AMENDMENT ASSEMBLIES: PROCESSING APPLICATIONS

706.1 Subject to the appeal process set forth in section 712, 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.

706.2 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.

706.3 Applications for plan approval shall be filed not less than fifteen (15) days prior to the proposed date of the event. Applicants are encouraged to submit applications for approval of an assembly plan as far in advance as is practical. 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. Early submission gives the Chief of Police or his or her designee and the applicant the maximum time to resolve any issues that may arise, and minimizes the possibility that an approved plan will already have been issued to another group for the desired time and place. It also provides the Metropolitan Police Department and other District agencies the ability to provide appropriate police protection, traffic control, and other support for participants and other individuals.

- 706.4 The Chief of Police or his or her designee 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.
- 706.5 Where a complete application for approval of a First Amendment assembly plan is filed sixty (60) days or more prior to the proposed assembly date, the application shall receive final action no later than thirty (30) days prior to the proposed assembly. This provision shall not apply where the applicant has voluntarily agreed to waive the thirty (30) day time limit.
- 706.6 Following the approval of an assembly plan under this Chapter, the Chief of Police or his or her designee 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 ten (10) days prior to the assembly date based on considerations of public safety.
- 706.7 Where modifications to the assembly location or route are requested by the applicant, the approved plan may be amended at anytime by the Chief of Police or his or her designee prior to the date of the event in accordance with the applicant's request.
- 706.8 Where applications to approve a First Amendment assembly plan are not submitted in a timely manner, the Chief of Police or his or her designee may deny an application in the interest of public safety based on the criteria set forth in section 706.9. Applications filed less than ten (10) days prior to the proposed date of the event shall receive favorable action only if there is sufficient time to review the application and to coordinate with the event organizers to resolve questions or problems concerning the application.
- 706.9 A proposed First Amendment assembly plan shall be approved if, after consideration of the application and other information that may otherwise be obtained, the Chief of Police or his or her designee concludes that:

- (a) The conduct of the event will not substantially interrupt the safe and orderly movement of other vehicular and pedestrian traffic contiguous to its route;
- (b) The conduct of the event will not divert such numbers of police officers from their normal police duties that the city would be deprived of reasonable police protection;
- (c) The concentration of persons, animals, and vehicles in the assembly and disbanding areas and along the event route will not substantially interfere with the movement of police, fire, ambulance, and other emergency vehicles on the streets;
- (d) The conduct of the event route will not substantially interfere with any of the designated Emergency Evacuation Routes outlined in the District Response Plan;
- (e) The event is scheduled to move from its assembly location to its disbanding location expeditiously and without unreasonable delays enroute;
- (f) The event will not substantially interfere with any other event for which an assembly plan has already been approved;
- (g) The applicant has not materially misrepresented any facts or information set forth in the application for the an assembly plan;
- (h) The applicant has furnished proof that, if the assembly or disbanding locations or the route of event, encroach upon, occupy, or traverse any area within the jurisdiction of the federal or non-District local governments, permits or permission have been obtained from the appropriate authorities; and
- (i) The proposed event does not create a substantial possibility of violent, disorderly conduct likely to endanger public safety or to result in significant property damage.

706.10 Any person seeking approval of a First Amendment assembly plan shall file an application with the Chief of Police on a form issued by the Chief of Police in person or by mail at the Metropolitan Police Department, Special Operations Division Headquarters, currently located at 2301 L Street, N.W., Washington, D.C. 20037. Application forms can be obtained online at mpdc.dc.gov. Application forms will also be sent by fax upon request, and may be filed by fax at 202-727-6839.

706.11 The person or group requesting approval of a First Amendment assembly plan shall make representations concerning the nature of the event, sufficient for the Chief of Police or his or her designee to classify the activity as a First Amendment assembly within the meaning of section 705.2, and, in addition, shall provide the following information:

- (a) The name, address, and telephone number of the sponsoring organization (if any) and its chief officer;
- (b) The name, address, and telephone number of the applicant and the person or persons chiefly responsible for the conduct of the event, if other than the applicant;
- (c) The purpose of the event;
- (d) The date when the event is to be conducted;
- (e) The approximate times when the event is to begin and end, and the approximate times when assembly for, and disbanding of, the event are to take place;
- (f) The specific proposed route of the event if it is a parade, march, race, or walk-a-thon;
- (g) The locations of the assembly area, any related stands or other structures, and the disbanding area for the event;
- (h) The approximate number of persons, animals, and vehicles that will constitute the event;
- (i) A description of the types of animals; the types of vehicles to be used; the number of bands and other musical units and sound trucks to be used; and the number, type, and size of banners, placards, and signs to be used; and
- (j) The number of persons who will be designated to monitor the event and the name of the person in charge.

706.12 The Chief of Police or his or her designee shall, in writing, either approve the application for the proposed First Amendment assembly plan, as submitted, if consistent with these regulations, or, if not, inform the person or group giving notice of an assembly of the reasons for any decision to:

- (a) Deny an application for approval of a First Amendment assembly plan;
- (b) Revoke an assembly plan pursuant to section 711; or

- (c) 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.

706.13 If a timely-filed application is denied or modified, the applicant shall be served with a written notice of denial or modification, stating the specific reasons therefore, at least ten (10) days prior to the proposed date of the proposed event.

706.14 Service of the notice of denial or modification shall be made personally or by certified mail. At the applicant's request, a copy of the notice shall also be sent by fax or by e-mail.

706.15 If the late filing of an application or ongoing negotiations concerning the terms of plan approval make it impractical to issue a written notice of denial or modification at least ten (10) days prior to the proposed date of the event, every effort shall be made to promptly notify the organizers of the event once a decision to deny or modify the application has been made; and a written notice of denial or modification shall be served as soon as reasonably possible.

707 NON-FIRST AMENDMENT RELATED PARADE, MARCH, RACE, WALK-A-THON OR OTHER SIMILAR ACTIVITY: PERMIT REQUIREMENT

707.1 A permit shall be issued under this section for a non-First Amendment related parade, march, race, walk-a-thon or other similar activity if, after consideration of the application and other information that may otherwise be obtained, it appears that the activity will otherwise meet the criteria for a First Amendment assembly as set forth in section 706.9.

707.2 A permit shall not be issued unless the applicant has provided for the services of the number of event monitors that the Chief of Police or his or her designee considers reasonably necessary to ensure that the event will be conducted in conformity with the event permit.

707.3 A permit shall not be issued unless the applicant complies with any special event user fee requirements pursuant to section 720.

708 APPLICATION FOR PERMIT FOR NON-FIRST AMENDMENT RELATED PARADE, MARCH, RACE, WALK-A-THON OR OTHER SIMILAR ACTIVITY: PROCESSING

708.1 Any person seeking issuance of a non-First Amendment activity permit for a non-First Amendment parade, march, race, or walk-a-thon shall file an application with the Chief of Police on a form issued by the Chief of Police in person or by mail at the Metropolitan Police Department, Special Operations Division Headquarters, currently located at 2301 L Street, N.W., Washington, D.C. 20037.

Application forms can be obtained on line at mpdc.dc.gov. Application forms will also be sent by fax upon request, and may be filed by fax at 202-727-6839.

- 708.2 Where an application for a permit is filed sixty (60) days or more prior to the date of the proposed non-First Amendment activity, the application shall receive final action no later than thirty (30) days prior to the proposed date of the event. This provision shall not apply where the applicant has voluntarily agreed to waive the thirty (30) day time limit.
- 708.3 Subject to section 708.4, an application for a non-First Amendment activity permit shall be filed not less than fifteen (15) days before the date on which the event is proposed to be conducted. Applicants are encouraged to submit applications for approval of a permit as far in advance as is practical. The purpose of the notice and permit approval process is to avoid situations where more than one group seeks to use the same space at the same time. Early submission gives the Chief of Police or his or her designee and the applicant the maximum time to resolve any issues that may arise, and minimizes the possibility that an approved permit will already have been issued to another group for the desired time and place. It also provides the Metropolitan Police Department and other District agencies the ability to provide appropriate police protection, traffic control, and other support for participants and other individuals.
- 708.4 Applications filed less than fifteen (15) days prior to the proposed date of the activity shall receive favorable action only if there is sufficient time to review the application and to coordinate with the activity organizers to resolve questions or problems concerning the application for or the conduct of the activity.
- 708.5 Where applications for a permit for a non-First Amendment activity are not submitted in a timely manner, the Chief of Police or his or her designee may deny a permit application in the interest of public safety based on the criteria set forth in section 706.9.
- 708.6 The application for a non-First Amendment activity permit shall contain all information required for approval of a First Amendment assembly as set forth in section 706.12 (a)–(j).
- 708.7 If none of the persons listed in §§ 706.12(a) and (b) of this chapter are located within the Washington Metropolitan Area, the name, address, and telephone number of a local representative shall be included.

709 APPLICATION FOR PERMIT FOR A NON-FIRST AMENDMENT RELATED PARADE, MARCH, RACE, WALK-A-THON OR OTHER SIMILAR ACTIVITY: ISSUANCE OF PERMIT

- 709.1 Final action shall be taken on an application for a non-First Amendment activity permit within a reasonably prompt period of time after receipt of the completed application.
- 709.2 Final action on an application shall consist of the following:
- (a) Issuance of a permit in accordance with the terms of the application;
 - (b) Issuance of a permit in accordance with terms other than those set forth in the application; or
 - (c) Denial of the application by the Chief of Police or his or her designee.
- 709.3 If a timely-filed application is denied or modified, the applicant shall be served with a written notice of denial or modification at least ten (10) days prior to the proposed date of the proposed activity.
- 709.4 The notice of denial or modification shall include specific reasons for the denial or modification.
- 709.5 Service of the notice of denial or modification shall be made personally or by certified mail.
- 709.6 If the late filing of an application or ongoing negotiations concerning the terms of a permit make it impractical to issue a written notice of denial or modification at least ten (10) days prior to the proposed date of the activity, every effort shall be made to promptly notify the organizers of the activity once a decision to deny or modify the application has been made; and a written notice of denial or modification shall be served as soon as reasonably possible.

710 CONTENTS OF A PERMIT FOR A NON-FIRST AMENDMENT RELATED PARADE, MARCH, RACE, WALK-A-THON OR OTHER SIMILAR ACTIVITY

- 710.1 A permit for a non-First Amendment activity such as a non-First Amendment related parade, march, race, or walk-a-thon shall contain the following information as relevant:
- (a) The date, assembly area, time for assembly, and starting time of the activity;
 - (b) The specific route plan of the activity;

- (c) The number of monitors to be furnished by the activity organizer;
- (d) The number and types of animals and vehicles, and the number of bands, other musical units, and sound trucks, if any;
- (e) The portion of the street, sidewalk, or other public way that is to be occupied by the activity participants, including the organizer; and the location of reviewing stands, if any;
- (f) The number and size of banners, placards, or other devices, consistent with the information filed on the application, and any restrictions concerning the number and size of banners, placards, or other devices;
- (g) The disbanding area and time for disbanding; and
- (h) Other information that is reasonably necessary for the conduct of the activity and the enforcement of this chapter.

711 REVOCATION OF PLAN APPROVAL FOR A FIRST AMENDMENT ASSEMBLY OR A PERMIT FOR A NON-FIRST AMENDMENT ACTIVITY

- 711.1 Plan approval for a First Amendment assembly or a permit issued for a non-First Amendment activity shall be revoked if it is determined that the assembly or activity is being conducted in violation of the standards for approval or issuance, under these regulations.
- 711.2 Notices of revocation shall be in writing, with the reasons for revocation specifically set forth.
- 711.3 A copy of the notice of revocation shall be served personally, or delivered by certified mail, return receipt requested. At the applicant's request, a copy of the notice shall also be sent by fax or by e-mail.
- 711.4 If, due to exigent circumstances, it is necessary to revoke approval of a First Amendment assembly plan or a permit for a non-First Amendment activity immediately prior to or during the assembly or activity, notice of the revocation shall be made in writing by the Metropolitan Police Department official responsible for monitoring the assembly or activity.

712 APPEALS

- 712.1 Any applicant whose proposed First Amendment assembly plan or non-First Amendment activity permit has been denied or revoked prior to the date of the planned assembly or activity, 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 or his or her designee. Any notice of denial or revocation (other than an exigent notice made under § 711.4) shall include:

- (a) A statement that the denial or revocation may be appealed to the Mayor or the Mayor's designee; and
 - (b) Specific instructions on how such an appeal can be taken.
- 712.2 An appeal to the Mayor or the Mayor's designee shall be in writing, and shall include a statement of the basis for the objection to the denial, revocation prior to the date of the planned assembly or activity, or time, place or manner restrictions deemed objectionable by the applicant, and a copy of any written decision issued by the Chief of Police or his or her designee.
- 712.3 The Mayor or the Mayor's designee shall make a decision on appeal expeditiously and prior to the date and time the assembly or activity is planned to commence, and shall explain in writing the reasons for the decision.

METROPOLITAN POLICE DEPARTMENT**NOTICE OF FINAL RULEMAKING**

The Chief of Police, pursuant to section 208(a) of the Police Investigations Concerning First Amendment Activities Act of 2004 (Act) (2006 Supp.), effective April 13, 2005 (D.C. Law 15-352, D.C. Official Code § 5-333.01 *et seq.*), hereby gives notice of the adoption of the following 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. These rules were previously published as a proposed rulemaking in the D.C. Register at 53 DCR 1571, (March 3, 2006) and again at 54 DCR 2546 (March 23, 2007). Comments were received from the American Civil Liberties Union of the National Capital Region (ACLU). Where appropriate, some of the ACLU comments were accepted and the text of the proposed rules modified accordingly. The changes to the text of the proposed rules did not amount to a substantive modification of the rules, thus there is no need for an additional period of comment.

The Chief of Police also gives notice that the final rules shall become effective upon publication in the *D.C. Register*.

Title 24 DCMR, "Public Space and Safety" is amended by adding the following new chapter 26.

CHAPTER 26 Metropolitan Police Department Investigations of Criminal Activity Conducted Under the Guise of First Amendment Activities**2600 AUTHORITY AND PURPOSE**

2600.1 The purpose of this chapter is to provide rules within the Metropolitan Police Department (MPD) pursuant to section 208(a) of the Police Investigations Concerning First Amendment Act of 2004 (Act) (2006 Supp.), effective April 13, 2005 (D.C. Law 15-352, D.C. Official Code § 5-333.01 *et seq.*) to govern 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. These rules do not apply to criminal investigations or inquiries that do not involve criminal activity conducted under the guise of First Amendment activities.

2601 STATEMENT OF POLICY

2601.1 The District of Columbia is often the site of demonstrations and MPD must be prepared to deal with those groups and individuals that come not to exercise their Constitutional rights, but rather to engage in criminal acts under the guise of First Amendment activities.

2601.2 The rules of this chapter are intended to assure that MPD officers will protect the guarantees of the Constitution while at the same time perform their duties with certainty, confidence and effectiveness. These rules are binding on all MPD members who are engaged in the investigation of criminal activity as they pertain to First Amendment activities.

2601.3 It is MPD policy that investigations involving any criminal activity conform to the guarantees of the Constitution and that care is exercised in the conduct of those investigations so as to protect constitutional rights, and that matters investigated are confined to those supported by a legitimate law enforcement purpose.

2602 GENERAL PRINCIPLES

2602.1 To prevent criminal activity conducted under the guise of First Amendment activities and criminal acts of civil disobedience threatening public safety or the security of the city, MPD must, at times, initiate investigations in advance of unlawful conduct. It is important that such investigations not be based on activities protected by the First Amendment. 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. However, when statements advocate criminal activity threatening public safety or the security of the city, or indicate an apparent intent to engage in such criminal conduct, an investigation under these rules may be warranted.

2602.2 Investigative action may be required under exigent circumstances before authorization otherwise necessary under these rules can reasonably be obtained, in order to protect life or substantial property interests; to apprehend or identify a fleeing offender; to prevent the hiding, destruction or alteration of evidence; or to avoid other serious impairment or hindrance of an investigation.

2602.3 When any investigative action, taken under exigent circumstances, would require an approval under ordinary conditions, such approval shall be obtained as soon as practicable in accordance with the provisions of these rules, and ordinarily will be accomplished within twenty-four (24) hours.

2602.4 Where a regular approval or request is required to be in writing, the approval or request following exigent circumstances shall also be in writing.

2602.5 Investigations shall be terminated when all logical leads have been exhausted and no legitimate law enforcement purpose justifies their continuance.

2602.6 Investigation of any criminal activity, committed by any person or group or member of such group, shall be initiated by, and conducted under the supervision of the Executive Director, Intelligence Fusion Division and the commanding officer, Intelligence Section. Nothing in this subsection, however, is intended to prevent any

MPD member from reporting his or her observations of suspicious conduct that involves any criminal activity by any person or group or group member, or any other criminal activity, to his or her commanding officer or to the Intelligence Fusion Division.

- 2602.7 At least once every 90 days, the commanding officer of the Intelligence Section shall inform and advise the Executive Director, Intelligence Fusion Division, concerning the status of all open investigations being conducted pursuant to these rules. This does not preclude the immediate notification to the Executive Director, Intelligence Fusion Division of any investigation of an exigent nature.

2603 LEVELS OF INVESTIGATION

- 2603.1 There are two levels of investigative activity: Preliminary Inquiry and Full Investigation.
- 2603.2 The levels are intended to provide MPD with the necessary flexibility to act in advance of the commission of any criminal activity threatening public safety or security of the city.
- 2603.3 If available information shows that the threshold standard for a preliminary inquiry or full investigation is satisfied, then the appropriate investigative activity may be initiated immediately, without progressing through more limited investigative stages.

2604 PRELIMINARY INQUIRIES

- 2604.1 Preliminary inquiries occur where MPD receives information or an allegation not warranting an investigation because there is not yet "reasonable suspicion" of any criminal activity.
- 2604.2 MPD may initiate preliminary inquiries in response to information indicating the possibility of any criminal activity threatening public safety or the security of the city.
- 2604.3 Preliminary inquiries may be opened immediately, depending on the circumstances presented.
- 2604.4 Preliminary inquiries permit MPD to respond in a measured way to ambiguous or incomplete information, with as little intrusion as the needs of the situation permit.
- 2604.5 Preliminary inquiries are used when there is no complainant involved or when an allegation or information is received from a source of unknown reliability.
- 2604.6 Preliminary inquiries are subject to the limitations on duration under Section 2604.9 and are carried out to obtain the information necessary to make an informed judgment as to whether a full investigation is warranted.
- 2604.7 Preliminary inquiries are not required when facts or circumstances reasonably indicate any criminal activity that would threaten public safety or the security of the

city. In such cases, a full investigation can be opened immediately pursuant to Section 2605.

- 2604.8 Preliminary inquiries may be authorized by the Executive Director, Intelligence Fusion Division or the appropriate supervisor of similar rank, including the Watch Commander for the Intelligence Fusion Division (who possesses the same authority as the Commander). The official authorizing the preliminary inquiry must ensure that the allegation or other information which warranted the inquiry is documented and preserved.
- 2604.9 Preliminary inquiries shall be completed within 60 days after initiation of the first investigative step. The date of the first investigative step is not necessarily the same date on which the first incoming information or allegation was received.
- 2604.10 The Executive Director, Intelligence Fusion Division, or designee of similar rank, including the Watch Commander for the Intelligence Fusion Division (who possesses the same authority as the Commander), may grant an extension of time in an inquiry for one subsequent 60-day period. All extension requests shall be in writing, and shall include a statement describing the information already collected and demonstrating why additional time is required to pursue the inquiry. The action taken on any such request for extension shall also be recorded in writing.
- 2604.11 The Chief of Police may grant an extension of time for inquiries requiring more than 120 days. All extension requests shall be in writing, and shall include a statement describing the information already collected and demonstrating why additional time is required to pursue the inquiry. 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.
- 2604.12 All lawful investigative techniques may be used in preliminary inquiries, but reasonable precautions should be taken to minimize interference with First Amendment activities without impairing the success of preliminary inquiries. 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 designee. Mail openings and wire interception and interception of oral communications, as defined in D.C. Official Code §23-541 (2001), shall not be used in a preliminary inquiry.
- 2604.13 Investigative techniques that may be used without prior authorization from a supervisor in the course of an authorized preliminary inquiry include, but are not limited to:
- (a) examination of MPD indices and files, public sources of information, including available federal, state and local government records;

- (b) interviews of complainant(s), potential subject(s), previously established informants, and other sources of information;
 - (c) interviews of persons who should readily be able to corroborate or deny the truth of the allegation, except this does not include pretext interviews or interviews of a potential subject's employer or coworkers (unless the interviewee was the complainant); and
 - (d) physical, photographic or video surveillance provided that such surveillance does not require a warrant.
- 2604.14 If there is an immediate threat of criminal activity, oral authority by the designated MPD commanding officer to use the investigative techniques described in 2604.12 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.
- 2604.15 Preliminary inquiries failing to disclose sufficient information to justify a full investigation shall be terminated.
- 2604.16 MPD shall record terminations of preliminary inquiries and destroy all information that would identify individuals associated with such inquiries.
- 2604.17 MPD shall maintain summaries of terminated preliminary inquiries, omitting information that would identify individuals. Such records shall be maintained in the Intelligence Section consistent with MPD's records retention schedule.
- 2604.18 All requirements regarding preliminary inquiries shall apply to preliminary inquiries that have been extended pursuant to section 2604.10 or 2604.11.
- 2604.19 A MPD member may initiate a preliminary inquiry relating to a First Amendment assembly, for public safety reasons, without authorization, as follows:
- (a) Members may gather public information regarding future First Amendment assemblies and review notices and approved assembly plans.
 - (b) 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.
 - (c) 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.

(d) 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.

2604.20 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.

2605 FULL INVESTIGATIONS

2605.1 A full investigation may be initiated when there is reasonable suspicion to believe that the persons, groups, or organizations to be investigated are planning or engaged in criminal activity that would threaten public safety or the security of the city. A full investigation may be conducted to prevent, solve or prosecute such criminal activity.

2605.2 Reasonable suspicion is 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. In determining whether there is reasonable suspicion of a criminal act an investigator may take into account any facts or circumstances that a prudent investigator would consider.

2605.3 The standard for opening a full investigation is satisfied where there is not yet a current substantive or preparatory criminal act, but there is reasonable suspicion to believe that the persons, groups, or organizations to be investigated are planning or engaged in criminal activity that would threaten public safety or the security of the city.

2605.4 Any lawful investigative technique may be used in a full investigation, subject to the requirements and limitations of sections 2604 and 2606, but reasonable precautions should be taken to minimize interference with First Amendment activities without impairing the success of the investigation; except that the following techniques may be used in an authorized investigation after written approval and authorization is obtained from the Chief of Police or designee:

(a) Wire Interception and Interception of Oral Communications, as defined in D.C. Official Code § 23-541;

- (b) Undercover officers and informants; and
- (c) Mail covers, mail openings, pen registers, and trap and trace devices.

- 2605.5 A full investigation must be authorized in writing by the Executive Director, Intelligence Fusion Division, or the appropriate supervisor of similar rank, including the Watch Commander for the Intelligence Fusion Division (who possesses the same authority as the Commander), upon a written recommendation setting forth the facts or circumstances that create a reasonable suspicion that a criminal act has been, is being or will be committed; and describing the relevance of the First Amendment activities to the recommended investigation.
- 2605.6 A full investigation may be initially authorized for a period of 120 days. An investigation may be continued upon renewed authorization every 120 days, up to one year. Renewal authorization shall be obtained from the Executive Director, Intelligence Fusion Division. All requests for renewal authorization and action thereon, shall be in writing, shall describe the information already collected, and shall demonstrate that an extension is reasonably necessary to pursue the investigation. The Chief of Police shall approve investigations open for more than one year in writing, and shall state the justification for the investigation.
- 2605.7 Authorizations shall be reviewed, every 2 months, by a panel consisting of the Assistant Chief, Intelligence Fusion Bureau, Executive Director, Intelligence Fusion Division, commanding officer of the Intelligence Section and the General Counsel, before the expiration of the period for which the investigation or any renewal thereof, has been authorized.
- 2605.8 An investigation that has been terminated may be reopened upon a showing of the same standard, and pursuant to the same procedures, as required for initiation of an investigation. All requirements regarding investigations shall apply to reopened investigations. Any information pertaining to people found to be not associated with the criminal activity will be destroyed.

2606 INVESTIGATIVE TECHNIQUES

- 2606.1 Nothing in these rules shall be interpreted as prohibiting any MPD member, in the course of his or her duties, from 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 the member has a legitimate law enforcement objective; provided, that any undercover activities shall be authorized as required by sections 2604 and 2605. When conducting investigations under these rules, MPD may use any lawful investigative technique. All requirements for the use of such methods under the Constitution, applicable statutes, and MPD regulations or policies must be observed.

- 2606.2 Where the conduct of an investigation presents a choice between uses of more or less intrusive methods, MPD investigators shall consider whether the information could be obtained in a timely and effective way by the less intrusive means.
- 2606.3 Undercover officers and informants shall not:
- (a) participate in unlawful acts or threats of violence; using unlawful techniques to obtain information;
 - (b) initiate, propose, approve, direct, or suggest unlawful acts or a plan to commit unlawful acts;
 - (c) be present during criminal activity or remain present during unanticipated criminal activity, unless it has been determined in advance by an Intelligence Unit official to be necessary for the investigation;
 - (d) engage in any conduct the purpose of which is to disrupt, prevent, or hinder the lawful exercise of First Amendment activities;
 - (e) attend meetings or engage in other activities for the purpose of obtaining legally privileged information, such as attorney-client communications or physician-patient communications; and
 - (f) record or maintain 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 these rules.

2607 FILES AND RECORDS

- 2607.1 The Chief of Police or designee shall evaluate information to be retained in an Intelligence Section file 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. The Chief of Police or designee shall purge records that are not accurate, reliable, relevant, and timely.
- 2607.2 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.
- 2607.3 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 designee, shall be responsible for establishing

that no information is entered in Intelligence Section files in violation of this subsection.

- 2607.4 MPD may disseminate information obtained during preliminary inquiries and investigations conducted pursuant to these rules to federal, state or local law enforcement agencies, or local criminal justice agencies when such information:
- (a) falls within the investigative or protective jurisdiction or litigation-related responsibility of the receiving agency;
 - (b) may assist in preventing any criminal act or the use of violence, or any other conduct dangerous to human life; or
 - (c) is required to be disseminated by interagency agreement, statute, or other law.
- 2607.5 All requests for dissemination of information from an Intelligence Section file shall be evaluated and approved by the Chief of Police or 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 5 years.
- 2607.6 Intelligence Section file information shall not be disseminated to any non-law enforcement agency, department, group, organization or individual, except as authorized by law.
- 2607.7 All documentation required under these rules shall be maintained by the Intelligence Section, Intelligence Fusion Division in accordance with general police department practice and applicable record retention and destruction rules, regulations and procedures.
- 2607.8 Any information pertaining to people found to be not associated with the criminal activity will be destroyed.

2608 PROTECTION OF PRIVACY AND OTHER LIMITATIONS

- 2608.1 The law enforcement activities authorized by these rules do not include maintaining files on individuals solely for the purpose of monitoring activities protected by the First Amendment or the lawful exercise of any other rights secured by the Constitution or laws of the United States. All law enforcement activities authorized by these rules must have a valid law enforcement purpose and must be carried out in conformity with all applicable statutes and MPD regulations and policies.
- 2608.2 Section 2608.1 does not limit any activities authorized by or carried out under other sections of these rules. The specification of authorized law enforcement activities under this section is not exhaustive, and does not limit other authorized law

enforcement activities of the MPD unrelated to criminal investigations or inquiries if conducted under the guise of First Amendment activities.

- 2608.3 Nothing in these rules shall limit the general reviews or audits of papers, files, contracts, or other records in the possession of the MPD or the District of Columbia, or the performance of similar services at the specific request of another government agency. Such reviews, audits, or similar services must be for the purpose of detecting or preventing violations of law that are within the investigative responsibility of MPD.
- 2608.4 Nothing in these rules is intended to limit the Metropolitan Police Department's responsibilities to investigate certain applicants and employees, or to pursue efforts to satisfy any other of its legal rights, privileges, or obligations.
- 2608.5 These rules are solely for the purpose of internal MPD, Intelligence Section guidance. These rules are not intended to, do not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal, nor do they place any limitation on otherwise lawful investigative and litigative prerogatives of MPD.

2609 TRAINING

- 2609.1 MPD shall require all members assigned to the Intelligence Section, Intelligence Fusion Division, to attend training on the Police Investigations Concerning First Amendment Act of 2004 and the rules promulgated to implement the Act.
- 2609.2 MPD shall require all members assigned to the Intelligence Section, Intelligence Fusion Division, to sign an acknowledgement that they have received, read, understood, will abide by, and will maintain a copy of this Act and the rules promulgated to implement it.

2610 MONITORING OF INVESTIGATIONS AND PRELIMINARY INQUIRIES

- 2610.1 The Executive Director, Intelligence Fusion Division, or a commanding officer of similar rank designated in the MPD regulations, including the Watch Commander for the Intelligence Fusion Division (who possesses the same authority as the Commander), shall monitor the compliance of undercover officers and informants with the requirements of these rules.
- 2610.2 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:

- (a) The number of investigations authorized;

- (b) The number of authorizations for investigation sought but denied;
- (c) The number of requests from outside agencies, as documented by forms requesting access to records of investigations conducted pursuant to this title;
- (d) The number of arrests, prosecutions, or other law enforcement actions taken as a result of such investigations; and
- (e) A description of any violations of the Police Investigations Concerning First Amendment Activities Act of 2004 or of the rules issued pursuant to that Act, and the actions taken as a result of the violations, including whether any officer was disciplined as a result of the violation.

2699 DEFINITIONS

2699.1 When used in this chapter, the following words and phrases shall have the meanings ascribed:

“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.

“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.

“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.

“Intelligence Section” means the Intelligence Section, Intelligence Fusion Division, or its successor section or unit.

“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.

“Investigation” means an examination of information that occurs when there is reasonable suspicion to believe that criminal activity or activities are being planned or conducted under the guise of First Amendment activities.

“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.

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

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

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

“MPD” means the Metropolitan Police Department.

“Preliminary Inquiry” means a basic examination of information arising from an allegation of criminal activity under the guise of First Amendment activities.

“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.