

Memorandum

TO: ALL DEPARTMENT PERSONNEL

FROM: Anthony Mata
Chief of Police

SUBJECT: SEE BELOW

DATE: December 31, 2021

APPROVED

Memo# 2021-050

SUBJECT: MEDIA ACCESS AT DISASTERS, FIRST AMENDMENT ACTIVITIES, AND CRIME SCENES

BACKGROUND

On October 9, 2021, California Governor Newsom approved [Senate Bill 98 \(link\)](#). Effective January 1, 2022, this bill will create Penal Code section 409.7—Media Access at First Amendment Activities. This new law requires law enforcement officers to allow duly authorized representatives of the media access to the closed immediate area surrounding any emergency field command post or any other command post, behind police lines, or rolling closures at First Amendment activity, including but not limited to a demonstration, march, protest, rally, or assembly that is protected pursuant to the First Amendment of the United States Constitution or Article I of the California Constitution. Penal Code Section 409.7(a)(1) states that a duly authorized representative of any news service, online news service, newspaper, or radio or television station or network may enter the aforementioned closed areas.

Penal Code Section 409.7(a)(2) states that a peace officer shall not intentionally assault, interfere with, or obstruct the duly authorized representative of any news service, online news service, newspaper, or radio or television station or network who is gathering, receiving, or processing information for communication to the public.

Penal Code Section 409.7(a)(3) states that a duly authorized representative of any news service, online news service, newspaper, or radio or television station or network that is in a closed area described in this section shall not be cited for failure to disperse, a violation of a curfew, or a violation of paragraph (1) of subdivision (a) of Penal Code Section 148, for gathering receiving, or processing information. If the duly authorized representative is detained by a peace officer, that representative shall be permitted to contact a supervisory officer immediately for the purpose of challenging the detention, unless circumstances make it impossible to do so.

Subdivision (b) states that Section 409.7 does not prevent a law enforcement officer from enforcing other activity that is unlawful.

Subdivision (c) of Section 409.7 states that this section does not impose, and shall not be used as the basis for, criminal liability.

The purpose of this Memorandum is to align Department policy and procedure with new and amended laws regarding the identification and authorization of duly authorized representatives of the media, and public and media access to areas closed as a result of disasters, a riot or other civil disturbance, and crime scenes.

The term “demonstration” is being replaced in Duty Manual chapter L 2300 with the phrase “First Amendment activities.” A demonstration is one type of an activity protected by the First Amendment to the United States Constitution and Article I of the California Constitution. Other activities include protests, rallies, assemblies, and marches. The purpose of this chapter is to cover all forms of speech, assembly, and petition activities protected by the First Amendment to the United States Constitution and Article I of the California Constitution.

ANALYSIS

The Duty Manual has been revised to reflect changes described below. Additions are shown in *italics and underlined*. Deletions are shown in ~~strike-through~~ form.

C 1905 AUDIO, VIDEO, AND PHOTOGRAPHIC RECORDINGS:

Revised 12-31-21

Department members will not interfere with members of the public and the media who take audio, video, and photographic recordings in areas to which they normally have access.

This section also applies to disasters, First Amendment activities, and crime scenes. Refer to Duty Manual chapter L 2300 – FIRST AMENDMENT ACTIVITIES AND CIVIL DISTURBANCES for additional information.

L 2300 FIRST AMENDMENT ACTIVITIES DEMONSTRATIONS AND CIVIL DISTURBANCES:

Revised 12-31-21

It is neither the intention nor the desire of the Department to suppress or restrain lawful activity. The Department will expend whatever resources are necessary to protect the rights of any person or group to conduct a peaceful and lawful *First Amendment activity* ~~demonstration~~ at any *legal* location within the City. However, unlawful *civil disturbances* ~~activity, whatever its guise,~~ requires prompt and effective action by the Department. The Department will take appropriate legal steps to discourage unlawful conduct whenever it occurs. *First Amendment activity includes speech, assembly, and petition activity that is protected by the First Amendment of the United States Constitution and Article I of the California Constitution.*

L 2300.5 **FIRST AMENDMENT ACTIVITY (EXAMPLES OF):**

Added 12-31-21

The First Amendment of the U.S. Constitution protects freedom of religion, speech and the press and protects the rights of the people to peaceful assembly and to petition the government for redress of grievances. Article I of the California Constitution has similar protections. Activity protected by the U.S. and California Constitutions includes, but is not limited to protests, demonstrations, rallies, assemblies, and marches on City streets, sidewalks, plazas, parks and other similar areas open to the general public that are owned and/or controlled by the City.

L 2300.6 **COMMAND POST BORDERS AT A FIRST AMENDMENT ACTIVITY, ROLLING CLOSURE, OR POLICE LINE:**

Added 12-31-21

Any emergency field command post or any other command post established to manage a First Amendment activity, police line, or rolling closure shall set (1) an inner border surrounding the entire command post and (2) an outer border. Refer to Duty Manual section L 2306.6 – ACCESS AT FIRST AMENDMENT ACTIVITIES for further information.

Inner Border

The inner border shall fully surround the command post. Anything inside the inner border of the command post will be considered an element of the command post. Elements of the command post may include but are not limited to: Department members, first responders, other personnel, equipment, command vehicles, and other vehicles. The inner border shall be, at minimum, situated so as to prevent non police personnel from overhearing planning and deployment information, but not any larger than is reasonably necessary for duly authorized representatives of the media to gather, receive, or process information for communication to the public.

Outer Border

The outer barrier shall be closed to the public. Only sworn Department members, other first responders and personnel assigned to and assisting with the event, and persons approved by the Incident Commander on a case-by-case basis are authorized to enter and/or remain. Any unauthorized person entering the outer border may be subject to arrest for violation of 148(a)(1) PC.

L 2306 **TREATMENT OF DULY AUTHORIZED REPRESENTATIVES OF THE NEWS MEDIA:**

Revised 12-31-21

Officers assigned to the scene of a First Amendment activity demonstration will cooperate with duly authorized representatives of the media, ~~whether writer, photographer, radio or television personnel.~~ Duly authorized representatives of the News media representatives have a constitutional right to cover First Amendment activities ~~demonstrations~~; however, they must not violate the law.

~~Those with a right to cover or photograph demonstrations are obviously not limited to representatives of the major newspapers, radio, or television stations. Persons who represent some of this City's small newspapers or magazines, free lancers and other~~

~~citizens are also entitled to take notes or photographs. Although the press has no special right as a matter of law to be present if an unlawful assembly is declared, officers will attempt to discriminate between non obstructing members of the press and voluntary participants in the unlawful assembly.~~

~~Section 409.5 of the Penal Code authorizes officers to close disaster scenes such as earthquakes or fires to the public. Subsection (d), however, allows duly authorized representatives of any news service, newspaper, or radio or television station or network to enter closed areas. Areas determined to be part of a crime scene shall be closed to both the public as well as the press.~~

~~The Department issues media credentials as a convenient means for officers to identify members of the media and an easily recognized way for the media to identify themselves to officers at the scene of disasters or crime scenes. Media credentials issued by other police agencies or by the media representative's employer should be considered valid.~~

L 2306.1 **DULY AUTHORIZED REPRESENTATIVE OF THE MEDIA (DEFINITION):**

Added 12-31-21

A person in possession of current, valid credentials issued by the Department or other law enforcement agency, or other identification (e.g., business card, pay stub, identification card, professional recording equipment, etc.) establishing duly authorized representation of news media affiliation or employment, whether print, television, or Internet media.

L 2306.2 **DULY AUTHORIZED REPRESENTATIVE OF THE MEDIA (CREDENTIALS):**

Added 12-31-21

The Department issues Press Passes and Media Vehicle Identifications as a convenient means for officers to identify duly authorized representatives of the media and their vehicles. These identifications also serve as a way for the media to identify themselves to officers at the scene of disasters, First Amendment activities, and crime scenes. Media credentials issued by other police agencies or by the media representative's employer should be considered valid. However, a Press Pass or Media Vehicle Identification is not a requirement of being identified as a duly authorized representative of the media.

Note: "Freelance" media personnel, including reporters, photographers, videographers, bloggers, or vloggers without valid media credentials, but possessing other identification establishing affiliation and employment with a third-party news service, should be considered duly authorized representatives of the media. A personal blogger with no credentials and no supporting third-party news service identification does not meet the criteria of duly authorized.

Officers shall use reasonableness and sound decision-making when considering a person a duly authorized representative of the media. In the event of uncertainty, officers should contact a supervisor for direction.

L 2306.3 **AUTHORITY TO CLOSE AREAS AT DISASTER SCENES:**

Added 12-31-21

Officers are authorized to close any area whenever a menace to the public health or safety is created by a calamity, including flood, storm, fire, earthquake, explosion, accident, or other disaster. Officers may also close any area surrounding any command post activated for the purpose of abating any disaster.

L 2306.4 **ACCESS TO DISASTER SCENES:**

Added 12-31-21

This section does not apply to areas which are determined to be part of a crime scene, which shall remain closed to all members of the public and media. See Duty Manual section L 4308 – PROTECT THE CRIME SCENE for additional information.

Public

Officers may prevent all members of the public, except duly authorized representatives of the media, to enter or remain within the closed area.

Duly Authorized Representatives of the Media

Duly authorized representatives of the media may enter areas closed due to a disaster per Penal Code section 409.5(d).

L 2306.5 **AUTHORITY TO CLOSE AREAS AT FIRST AMENDMENT ACTIVITIES:**

Added 12-31-21

Officers may close the immediate area surrounding any emergency field command post or any other command post, or establish a police line, or rolling closure at a demonstration, march, protest, or rally where persons are engaged in protected First Amendment activity.

L 2306.6 **ACCESS AT FIRST AMENDMENT ACTIVITIES:**

Added 12-31-21

In the event of closing the immediate area surrounding any command post, establishing a police line, or rolling closure at a demonstration, march, protest or rally where persons are engaged in protected First Amendment activity, officers shall set the inner and outer borders of the command post and the area outside the border of the command post that is closed to the general public. The area outside the inner border surrounding the entire command post shall be closed to the general public and is accessible to duly authorized representatives of the media only. The command post will contain the area in which incident command conducts event planning and deployment of personnel and will not be accessible to the media. Refer to Duty Manual section 2300.6 - COMMAND POST BORDERS AT A FIRST AMENDMENT ACTIVITY, ROLLING CLOSURE, OR POLICE LINE for further information. Duly authorized representatives of the media shall not have access to personnel briefings unless invited by the Incident Commander or their designee and escorted to and from the scene of the briefing.

Public

Officers may prevent all members of the public, except duly authorized representatives of the media, from entering or remaining in the closed area immediately surrounding the command post.

Duly Authorized Representatives of the Media

If officers close the immediate area surrounding any emergency field command post or any other command post, or establish a police line, or rolling closure at a First Amendment activity, the following requirements shall apply:

- A duly authorized representative of the media may enter and remain in the closed area up to the command post border.
- Officers shall not intentionally assault, interfere with, or obstruct the duly authorized representative of the media who is gathering, receiving, or processing information for communication to the public

Note: The Department may restrict access to a command post (i.e., the area where incident-specific information is being shared by public safety personnel, strategic decisions are being made, or deliberations are ongoing)

- A duly authorized representative of the media who is within the closed area but outside the command post border shall not be cited for failure to disperse, a violation of a curfew, or other violation of 148(a)(1) PC, for gathering, receiving, or processing information for communication to the public.
- If a duly authorized representative of the media is detained, that representative of the media shall be permitted to contact a Department supervisor immediately to challenge the detention, unless circumstances make it impossible to do so.

Note: Nothing precludes officers from enforcing other applicable laws if the duly authorized representative is engaged in activity that is unlawful. In order to detain, remove, or arrest a duly authorized representative of the media, who is in the closed area outside the border of the command post, an officer would have to determine the representative is in violation beyond being in the closed area to observe, gather, receive, and process information to communicate to the public news items concerning the First Amendment activities and the observable activities of the police.

This section does not apply to areas which are determined to be part of a crime scene, which shall remain closed to all members of the public and media for the purpose of conducting a criminal investigation and protecting and collecting evidence. See Duty Manual section L 4308 – PROTECT THE CRIME SCENE for additional information.

L 2306.7 **COMMUNICATION WITH MEDIA DURING FIRST AMENDMENT ACTIVITIES:**

Added 12-31-21

During First Amendment activities, officers should expect to encounter duly authorized representatives of the media in the immediate area surrounding any emergency field command post or any other command post, or a police line, or rolling closure. Officers shall be reminded of SJPd policies and procedures permitting the release of information to the media. Refer to Duty Manual chapter C 1900 – SUPPLYING INFORMATION DEPARTMENT OPERATIONS for further information.

L 2306.8 **AUTHORITY TO CLOSE AREAS AT AN UNLAWFUL CIVIL DISTURBANCE:**

Added 12-31-21

It is the intention of the Department to create an environment in which all First Amendment activities remain peaceful, safe, and lawful. In the event a First Amendment activity evolves into an unlawful civil disturbance, such as a riot, rout, or looting, the mission of the Department may transition to the planning and tactical deployment of resources for safety and enforcement. However, duly authorized representatives of the media may still have access to the immediate area surrounding any emergency field command post or any other command post, police line, or rolling closure.

L 2306.9 **REMOVAL OF DULY AUTHORIZED REPRESENTATIVES OF THE MEDIA:**

Added 12-31-21

In the event a duly authorized representative of the media interferes with any police operation by delaying or obstructing officers from performing their duties or creates an environment where any person other than themselves is placed at risk of injury or death, beyond the immunity granted by the law, that media representative may be warned about their possible removal from the immediate area surrounding any emergency field command post or any other command post, police line, or rolling closure. The Incident Commander shall be advised when any removal warning is given.

If, after being warned of possible removal, the representative continues to interfere with any police operation by delaying or obstructing officers from performing their duties, or maintains an environment where any person other than themselves is placed at risk of injury or death, that representative may be removed from the immediate area surrounding any emergency field command post or any other command post, police line, or rolling closure for the remainder of the event, up to and including arresting the representative for violation of 148(a)(1) PC.

If any duly authorized representative of the media is removed from the immediate area surrounding any emergency field command post or any other command post, police line, or rolling closure, the Incident Commander shall be notified and all details regarding the removal shall be documented in a General Offense Report.

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December 31, 2021

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ORDER

Effective immediately, all Department personnel shall adhere to the above Duty Manual sections.

A handwritten signature in black ink, appearing to read 'A. Mata', is positioned above the printed name and title.

Anthony Mata
Chief of Police

AM:SD:DK