

SPECIAL ORDER
15-08

Date of issue:
12/07/15

Effective date:
10/28/15

Revised:

FIRST AMENDMENT RIGHTS

I. PURPOSE

The County of Maui has recently concluded litigation concerning members of the public who exercise their First Amendment rights on property that is open to the public. In the subject litigation, a private party held a permit to use public property for the County Fair. Members of the public chose to hand out religious pamphlets on the sidewalk outside of the Fair entrance. A Fair official felt that the permit allowed it to control the sidewalk area outside of the actual Fair, and wanted the people passing out pamphlets to be moved. An Officer asked the people passing out pamphlets to move to an area further away from the Fair's entrance.

In the situation described above, the Court found that the sidewalk area where the pamphleteers were standing was a traditional public forum where First Amendment rights can be exercised. The Court then stated that "a traditional public forum remains a traditional forum even if an entity holds a permit including that area, provided that the area otherwise remains open to the general public." Since the area remained open to the public, the pamphleteers were allowed to be there.

Thus, unless there are safety or criminal complaints, members of the public on sidewalks or other areas that remain open to the general public should be allowed to exercise their First Amendment rights. Complaints from a permit holder about any individual exercising their First Amendment rights on a public area would not provide grounds for an arrest in the absence of a criminal complaint. If the location of a person exercising their First Amendment rights causes a safety concern, that person may be asked to move to a safer location. However, an arrest should not be effected unless a criminal complaint is made.

II. POLICY

First Amendment: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

All Maui Police Department Officers, as they relate to the First Amendment, shall ensure that members of the public retain their First Amendment rights on property that is otherwise open to the public, even if a third party holds a permit or license for that property, subject to reasonable time, place, and manner restrictions, in the absence of a safety or criminal complaint.

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III. PROCEDURES

- A. Effective October 28, 2015, and once annually thereafter for an additional two years, the Maui Police Department shall include this First Amendment topic in all training sessions of prospective and/or current Officers, to include, but not limited to: Recruit Training Program, Annual Recall Training, Roll-call/In-service training.
 - B. This Special Order shall also be included in the Annual Mandated General Orders Policy Review for both sworn and civilian employees.
- IV. Any questions regarding this Special Order can be addressed to Lieutenant Gregg Okamoto of the Plans, Training, Research & Development Section at ext. 6370 or email at gokamoto@mpd.net.
- V. Element commanders shall familiarize their personnel with the contents of this directive.



TIVOLI S. FAAUMU
Chief of Police

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