

**SAN DIEGO POLICE DEPARTMENT
PROCEDURE**

DATE: MARCH 7, 2017

NUMBER: 4.16 - LEGAL

SUBJECT: PROCEDURES FOR HANDLING INCIDENTS
INVOLVING EXPRESSIVE ACTIVITY AND FIRST
AMENDMENT RIGHTS

RELATED POLICY: N/A

ORIGINATING DIVISION: OPERATIONAL SUPPORT

NEW PROCEDURE:

PROCEDURAL CHANGE:

SUPERSEDES: DP 4.16 - 10/09/2012

I. PURPOSE

This Department procedure establishes guidelines for officers responding to calls for service related to the exercise of First Amendment rights. Collectively, the many forms of expression are referred to as “expressive activity.”

II. SCOPE

This procedure applies to all sworn members of the Department.

III. BACKGROUND

A. The First Amendment of the United States Constitution guarantees the freedom of speech and the freedom of assembly. While the United States Constitution provides minimum protections that no state can infringe upon, a state may offer more protections than the United States Constitution.

California is one of the states whose constitution expands traditional First Amendment rights. As a result of this expansion of rights, the California Supreme Court (and later the United States Supreme Court) has ruled that the modern day shopping mall has assumed the function of the town square where people used to meet and discuss the issues of the day. These gatherings

D. Court Orders

1. Disputes between property owners and those engaging in expressive activity are civil in nature. Therefore, relief sought by any party against the other must come from a civil court in the form of a restraining order or injunction.
2. When presented with a court order by either party, officers should handle them as they would any other court order. The officer should verify the validity of the order and whether or not it has been properly served. Officers can verify the order by calling the Sheriff's warrant division. Refer to Department Procedure 4.05, Protective Orders, for details.
3. In the event that a party named in the court order is present, in violation of the order, the officer should review the requirements of the order with the person and offer an opportunity to comply with the order.
4. If the person refuses to comply with the order, he/she is in violation of Penal Code section 166(4) which is a misdemeanor. Officers may then proceed in accordance with the procedures for making a misdemeanor arrest.