

MINNEAPOLIS POLICE DEPARTMENT

SPECIAL ORDER



BY ORDER OF THE CHIEF OF POLICE

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TO: Distribution "A"			RETENTION DATE: Until Rescinded
SUBJECT: <b>Manual Revision – <u>9-202 Public Recording of Police Activities</u></b>			APPROVED BY: <i>Chief Harteau</i>

MP-8806

**Introduction:** This policy is being added to clearly describe the constitutional right of citizens to record police activity, and to guide employee interactions with citizens in those situations. This policy also addresses evidence of a crime recorded on a citizen's device. This revision complies with a mandate from the Department of Justice.

Effective with the issuance of this Special Order, Section 9-202 of the MPD Policy and Procedure Manual shall be added as follows:

**9-202 PUBLIC RECORDING OF POLICE ACTIVITIES (05/05/16)**

**I. PURPOSE**

The purpose of this policy is to acknowledge and protect the constitutional and legal rights of citizens to photograph and make audio and video recordings of Minneapolis Police Department personnel. This policy provides employees with guidance in dealing with situations in which they are being recorded.

**II. POLICY**

**A.** The Minneapolis Police Department recognizes that members of the general public have an unambiguous First Amendment right to record police officers while they are conducting official business or while acting in an official capacity in any public space, unless such recordings interfere with police activity. Officers should assume that a member of the public is likely to be observing and possibly recording their activities at all times.

**B.** Officers shall be aware that recording of people, places, buildings, structures and events is a common and normally lawful activity. If a person is taking photographs or recording from a place where he or she has a right to be, this activity by itself does not constitute suspicious activity.

- C. In areas open to the public, members of the general public have the same right to photograph and record as a member of the media. No person is required to have or display “press” credentials in order to exercise the right to record events, including police activity.
- D. Officers **shall not** tell people that recording police activity is not allowed, requires a permit, or requires an officer’s consent.
- E. The warrantless seizure of material protected by the First Amendment (photos, videos, etc.) will be strictly scrutinized in court, and has a higher standard for reasonableness under the Fourth Amendment.
- F. Employees **shall not** erase or delete, or request any person to erase or delete any files, media or recorded images or sounds from any camera or other recording device that is in possession of any person, or that has been seized or voluntarily turned over. Such action may constitute a violation of the First, Fourth and Fourteenth Amendments.

### III. DEFINITIONS

**Police Duties:** Police duties discharged in a public setting may include a range of activities, including detentions, searches, arrests or uses of force.

**Public Space/Setting:** Public settings include but are not limited to: parks, sidewalks, streets and locations of public protests. The right to record also extends to an individual’s home or business, common areas of public and private buildings, and any other public or private facility at which an individual has a right to be.

### IV. PROCEDURES/ REGULATIONS

#### A. Responding to Public Recording of Police Activities

1. When an employee observes a citizen taking photographs or audio or video recording in a setting at which that person has a legal right to be present, the employee **shall not**:
  - a. Order that person to cease recording;
  - b. Demand that person’s identification;
  - c. Demand that the citizen provide a reason for recording;
  - d. Detain that person for recording or investigation of a recording;
  - e. Intentionally block or obstruct recording devices;
  - f. In any way threaten, intimidate or otherwise discourage an individual from recording.
2. The right to record does not grant a citizen the right to interfere with police activity. A person commits an offense if the person with criminal negligence interrupts, disrupts, impedes or otherwise interferes with a peace officer while the officer is performing a duty or exercising authority imposed or granted by law.

- a. A person's recording of officers' activity from a safe distance, without any action to obstruct the activity or threaten the safety of an officer, does not constitute interference.
- b. If a person is recording activity from a position that impedes or threatens the safety of officers or their ability to perform their duties, an officer may direct the person to move to a position that will not interfere. Officers shall not order the person to stop recording.
- c. If a person is recording activity from a position that impedes or threatens the safety of members of the public, the officer shall direct the person to move to a safe position that will not interfere. Officers shall not order the person to stop recording.
- d. Citizens have the right to express criticism of the police activity being observed. As long as that expression does not jeopardize the safety of any officer, suspect or bystander, and does not violate the law or incite others to violate the law, the expression does not constitute interference.
- e. Arrest
  - i. Any arrest of a person who is recording officers in a public place shall be related to an objective, articulable violation of the law unrelated to the act of recording. The act of recording does not provide grounds for detention or arrest.
  - ii. If safe to do so, officers shall call a supervisor to the scene **before** any restrictive police actions are taken, and the supervisor must approve any related arrest.
  - iii. If an arrest is made prior to supervisor arrival due to exigent circumstances, the arrestee shall not be transported to a holding or detention facility until the supervisor is present and has approved the arrest.
  - iv. An arrest of a person does not provide an exception to the warrant requirement justifying a search of the individual's recording equipment or media. While equipment may be secured incident to an arrest, downloading, viewing or otherwise accessing files or media requires a search warrant.

## **B. Handling of Evidence on a Recording Device**

- 1. Citizens have a high expectation of privacy for the contents of cellular phones and other recording devices. Absent arrest of the recording party, recording equipment shall not be confiscated.
  - a. Officers shall not order an individual to show recordings that have been made of police activity.
  - b. A supervisor must be notified before an officer takes any action involving a person's recording device, including a request for voluntary consent to search or seizure of the device.

2. If an officer reasonably believes that evidence of a serious crime has been recorded by a member of the public, the officer shall immediately request a supervisor respond to the scene.
  - a. With approval of the supervisor, the officer may ask the person in possession of the recording if he or she will consent to voluntarily allow the officer to take possession of the recording device or media and process it as evidence.
    - i. The officer shall not, implicitly or explicitly, coerce consent to take possession of any recording device or information it may contain.
  - b. If the individual refuses to voluntarily provide the recording or device and the officer reasonably believes that the recording will be destroyed, lost, tampered with or otherwise rendered useless as evidence before a warrant can be obtained, the officer shall notify a supervisor.
    - i. The supervisor will assess the situation and determine whether exigent circumstances exist to permit the seizure of the device without a warrant.
      - aa. Any such seizure must be a temporary restraint intended only to preserve evidence, for no longer than reasonably necessary for the officer, acting with diligence, to obtain a warrant to seize the evidence.
      - ab. A warrant must be obtained in order to examine or copy the recording and the chain of custody must be clearly documented.
      - ac. The recording or device shall be processed as evidence (see P/P 10-400) and a DIMS download station shall **not** be used for retrieval (see P/P 4-217).
  - c. In exigent circumstances when an officer reasonably believes that an immediate search of the recording is necessary to prevent death or injury, the officer shall notify a supervisor.
    - i. The supervisor will assess the situation and determine whether exigent circumstances exist to permit the seizure and search of the device without a warrant. The supervisor shall notify the Watch Commander if a search is approved.
    - ii. Photographs, videos or recordings that have been seized as evidence and are not directly related to the exigent circumstances will not be viewed until a search warrant has been obtained.
  - d. Any recording devices or media taken into custody shall be returned as soon as practical.
  - e. Employees who view or listen to a recording from a citizen, or conduct a forensic examination of the recording or device, shall undertake reasonable efforts to ensure only materials that constitute potential evidence are accessed. Employees will refrain from examining any materials not relevant to the investigation.