
	GAITHERSBURG POLICE DEPARTMENT		
	Audio/Video Recording of Officers		
	GENERAL ORDER	1203.1	
Effective Date	06/14/2012	1201.1, 1202.1	
Authorized by:	Mark P. Sroka CHIEF OF POLICE	SIGNATURE	DATE

I. PURPOSE

The purpose of this order is to establish policies and procedures for all Agency personnel relative to the public’s rights in audio/video recordings of police officers. Police officers and police departments continue to face embarrassment and lawsuits when officers illegally interfere with persons who photograph or audio/video record police officers in the performance of their duties.

II. POLICY

It is the policy of the Gaithersburg Police Department to ensure the protection and preservation of every person’s Constitutional rights.

In furtherance of this policy, no member of the Gaithersburg Police Department may prevent or prohibit any person’s ability to observe, photograph, and/or make a video recording (with or without a simultaneous audio recording) of police activity that occurs in the public domain, so long as the person’s location, actions, and/or behavior do not create a legitimate, articulable threat to officer safety, or an unlawful hindrance to successful resolution of the police activity.

III. DEFINITIONS

A. Hindering

The common law criminal misdemeanor of obstructing and hindering a police officer in the performance of his/her police duties. The elements of this offense are:

1. The police officer is engaged in the performance of an official police action or duty;
2. The accused bystander commits an act, or perhaps an omission, which obstructs or hinders the police officer in the performance or completion of that official police action or duty;
3. The accused bystander knew, or should have known, of the officer’s identity as a sworn law enforcement officer (i.e., the officer was in uniform, was wearing some outermost garment on which the word **“POLICE”** was printed, etc.);

4. The accused bystander knew, or should have known, that the officer was engaged in an official police action or duty; and
5. The accused bystander intended to obstruct or hinder the police officer by the act or omission described in item 2.

B. Photographing

The act of capturing and storing a still image, whether in an electronic/digital format, or on any type of light-sensitive film (e.g., traditional 35mm film).

C. Video Recording

The act of capturing a series of images that, when replayed in succession, reproduce a sequence of activities in motion. Video recordings may be stored on a length of light-sensitive film, a videotape cassette, or in a digital format (e.g., a removable memory card), and may or may not contain a simultaneous audio recording.

D. Recording Device

A device on which sound and pictures are recorded such as a camera or smart phone.

IV. PROCEDURE

- A. Individuals have a First Amendment right to record police officers in the public discharge of their duties. The right to record is not limited to streets and sidewalks it includes areas where individuals have a legal right to be present, including an individual's home or business, or other private property where the person has a right to be present.
- B. Members of the press and members of the general public enjoy the same rights in any area accessible to the general public. No individual is required to have or to display 'press credentials' in order to exercise his/her right to observe, photograph, or record police activity taking place in an area accessible to, or within view of, the general public.
- C. Officers must not search or seize a camera or recording device without a warrant except under very limited circumstances as described herein.
- D. Officers are prohibited from threatening, intimidating or otherwise discouraging any individual from recording police activities.

- E.** Officers must not intentionally block or obstruct cameras or recording devices in any manner.
- F.** Officers are prohibited from deleting recordings or photographs, and from damaging or destroying recording devices/cameras under any circumstances.
- G.** A person may record public police activity unless the person engages in actions that jeopardize the safety of the officer, the suspect, or others in the vicinity, violate the law, or incite others to violate the law. Examples of such actions include:
1. Repeatedly instructing a witness being questioned by a police officer not to respond to the officer's questions;
 2. Persistently engaging or attempting to engage an officer in conversation while the officer is in the midst of their duties;
 3. Hindering a lawful arrest;
 4. Inciting bystanders to hinder or obstruct an officer in the performance of their duties.
- H.** An individual's recording of police activity from a safe distance without any attendant action intended to obstruct the activity or threaten the safety of others does not amount to interference.
- I.** A person's expression of criticism of the police (or the police activity being observed) does not amount to interference.
1. The First Amendment protects a significant amount of verbal criticism and challenge directed at police officers.
 2. Even foul expressions of disapproval towards police officers are protected under the First Amendment.
- *The U.S. Supreme Court has held that 'a properly trained officer may reasonably be expected to exercise a higher degree of restraint' than the average citizen when it comes to reacting to insults or 'fighting words.'*
 - *Courts have given First Amendment protection to persons who made obscene gestures and yelled profanities at police officers, and they have prohibited the police from interfering with such speech.*
- J.** The warrantless seizure of material protected by the First Amendment

(photos, videos, etc.) will be strictly scrutinized by a court. In ordinary circumstances, the seizure of cameras or recording devices without a warrant will not be reasonable. Cameras or recording devices will not be seized without a warrant unless:

1. Officers have probable cause to believe that critical evidence of a crime is contained on/in the camera or recording device; and
2. Officers first have explained the circumstances and have unsuccessfully attempted to get the consent of the person in possession of the recording device; and
3. The seizure of the camera/recording device is for no longer than reasonably necessary for the officer, acting with diligence, to obtain a warrant to seize the evidence; and
4. Supervisory approval has been granted for the seizure.

K. If a camera/recording device is seized without a warrant pursuant to item 10, above, officers are prohibited from seizing or viewing the evidence contained in the device until a warrant is obtained for that seizure.