

	<b>NEW PALTZ POLICE DEPARTMENT</b> <b>Policy and Procedures</b>	
	<i>Subject</i> <b>135.0 Recording Police Activity</b>	
	<b>ISSUED: June 16, 2020</b>	<b>EFFECTIVE: June 30, 2020</b>
	<b>REVISED:</b>	<b>RESCINDED:</b>
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### Recording Police Activity

#### 135.1 PURPOSE

The purpose of this policy and procedure is to provide guidelines to the New Paltz Police Department's personnel regarding the Department's response to persons recording police activity.

#### 135.2 POLICY

It is the policy of the New Paltz Police Department ("the Department") to ensure the protection and preservation of every person's Constitutional rights. In furtherance of this policy, no member of the 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 and articulable threat to officer safety, or an unlawful hindrance to successful resolution of the police activity.

#### 135.3 DEFINITIONS

1. **Hindering** -- Obstructing and hindering a Police Officer in the performance of their police duties. The elements of this activity include:
  - a. The officer is engaged in the performance of an official police action or duty; and
  - b. The accused bystander commits an act, or perhaps an omission, which obstructs or hinders the officer in the performance or completion of that official police action or duty; and
  - c. The accused bystander knew, or should have known, of the officer's identity as a sworn law enforcement officer; and
  - d. The accused bystander knew, or should have known, that the officer was engaged in an official police action or duty; and
  - e. The officer warned the accused that the accused's actions were hindering or obstructing the Officer.
2. **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).
3. **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.
4. **Video Recording Device** -- For the purposes of this policy, a Video Recording Device includes, but is not limited to, any device capable of capturing a still or moving image(s), regardless of whether or not a simultaneous audio recording is included. Examples may include any of the following devices - any camera, whether still-photo and/or video, regardless of whether or not the device is capable of capturing

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a simultaneous audio recording, and regardless of how the device stores the images it captures, cell phone, smart phone or tablet.

### **135.4 PROCEDURES**

#### **1. General Considerations**

- a. It is increasingly common for uninvolved bystanders at the scene of police activity to photograph and/or video record the actions of police officers and their conduct. Members of the Department should simply assume that, at any time, a member of the general public is likely to be observing, and perhaps even photographing or video recording, their activities.
- b. The Department staff must understand that any bystander has a right to photograph and/or video record the enforcement actions of any Police Officer so long as the bystander's actions do not:
  - i. Place the safety of the bystander, or of any other person including the officer, in jeopardy;
  - ii. Hinder the execution or performance of an officer's official duties;
  - iii. Interfere with or violate any section of law, ordinance, code, or criminal or traffic article;
  - iv. Involve an intrusion into any crime scene, private property, or other location under lawful police control and/or not normally accessible to the general public;
  - v. Threaten, by words or actions, other persons; or
  - vi. Attempt to incite an immediate breach of the peace or incite others to commit a violation of the law.
- c. The acts of observing, photographing, and/or making a video recording of any police activity that occurs in a public setting are not, by themselves, criminal offenses. On their own, these acts do not constitute probable cause for the arrest of the observer/bystander.
- d. The acts of observing, photographing, and/or making a video recording of any police activity that occurs in a public setting are not, by themselves, grounds to review, seize, damage, erase, or otherwise inspect the contents of a person's camera, cellular phone, or other video recording device unless such content is deemed to be evidence of a crime. If the contents are deemed to be evidence, a seizure may only take place in conformance with the procedures listed below.
- e. A bystander's desire or intent to observe, photograph, or video record police activity does not entitle them to:
  - i. Trespass on private property;
  - ii. Place them in physical danger (e.g., within an area defined as an "inner perimeter");
  - iii. Enter another person's private dwelling, storehouse, etc without permission;
  - iv. Enter into or upon any established, marked crime scene; or
  - v. Enter into or upon any area not accessible to the general public.
- f. The integrity of an established crime scene or other secured/restricted area will not be

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compromised to facilitate observation, photography or video recordings of police activity by a bystander.

- g. In public areas, any form of identification referred to as "press credentials" does not extend any special privileges or access to any individual. Members of the press and members of the general public enjoy the same rights in any area accessible to the general public.
- h. No individual is required to display "press credentials" in order to exercise their right to observe, photograph, or video record police activity taking place in an area accessible to, or within view of, the general public.

2. Encounters with Citizens

- a. Upon discovery that a bystander is observing, photographing, or video recording the conduct of police activity, members will not impede or prevent the bystander's ability to continue do so based solely on the member's discovery of the observing citizen.
- b. Members will not seize or otherwise demand to take possession of any camera or video recording device the bystander may possess based solely on the member's discovery of their presence.
- c. Members will not demand to review, manipulate, or erase any images or video recording captured by the bystander based solely on the member's discovery of their presence. However, if relative to a valid investigation, members may ask to review any images or video recordings with the bystander's permission do so.
- d. Members should be mindful of the potential that the bystander may witness, or capture images or video of events considered at some later time to be material evidence.
- e. Before taking any police action which would stop a bystander from observing, photographing, or video recording the conduct of police activity, Department members must have observed the bystander committing some act that falls within one of the six numbered conditions listed in section 135.4 (b) of this policy.

3. Arrest Procedures

- a. If tactically feasible, inform the bystander that their actions may, if continued, rise to the level of a criminal offense and could subject them to arrest.
- b. If possible, the member will recommend a less-intrusive location to the bystander from which they may continue to observe, photograph, or video record the police activity.
- c. If the bystander refuses to move and it becomes necessary to effect the arrest of a person who is or has been observing, photographing, or video recording police activity, the member will ensure that the arrest is for an unlawful activity or criminal offense (e.g., disorderly conduct, interfering with an officer, assault in any degree, etc.).
- d. Whenever possible, the officer will notify their supervisor before an arrest of this nature has been made.

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e. The officer will clearly articulate the facts and circumstances that led to the arrest in all subsequent reporting and charging documents. All reports and charging documents should clearly establish that the arrest was based on probable cause to believe that the bystander committed a criminal act. The fact that the bystander had been observing, photographing, and/or video recording police activity, by itself, does not constitute probable cause and should not be the reason for the arrest.

4. Securing Items of Evidentiary Value

- a. Nothing in this policy should be construed by members of the Department as an elimination of their ability to seek out, collect, or otherwise gather evidence in the course of a criminal investigation.
- b. If an officer has probable cause to believe, or exigent circumstances indicate, that a bystander is in possession of still photographs, images, video recordings, or audio/sound recordings that are, or could reasonably be believed to be, evidence related to a crime and/or the identification of a person involved in a crime, the officer may take lawful actions to collect such evidence in conformance with the procedures outlined in this policy.
- c. Department members seeking to obtain material contained on a camera or recording device that is the private property of a bystander understand that the camera, cellular phone or other video recording device, and the bystander who possesses it, enjoy the same Constitutional protections from unreasonable search and/or seizure as they would in any other law enforcement activity or investigation. Thus, unless the bystander voluntarily consents to: surrendering their camera or video recording device; an examination of its contents; and a seizure by a police officer of any images or videos contained within it, members must adhere to the requirements of this policy and law.
- d. Department members will notify a supervisor whenever seeking to obtain video, audio or photographic recordings from a bystander.
- e. If a bystander is believed to possess any material that is, or could reasonably be considered to be, evidence related to a crime and/or the identification of a person involved in a crime, the officer may make a request of the bystander that they voluntarily surrender their camera, video recording device, etc., into police custody. If the individual **CONSENTS** to an officer's request, the officer will complete a Department "Consent to Search" form take the following actions:
  - i. Exercise due care and caution with any of the individual's property or electronic device(s). Remove the device's battery or switch it to a "Power Off" condition. This will aid in preventing any remote access to, or deletion of, the data or other material stored within it;
  - ii. Assure that the evidence is properly logged and submitted in accordance with policy and procedure 7.1 "Evidence and Non-Agency Property Management".

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- iii. Provide the individual with the name and contact information of the member who took custody of the individual's property and the Supervisor on scene;
  - iv. Document the evidence in LERMS in accordance with policy and procedure 7.1, "Evidence and Non-Agency Property Management";
  - v. Document all facts and circumstances surrounding the incident including, but not limited to the officer's request, and the individual's response, in the member's case supplemental report; and
  - vi. Do not make any attempt to view, download, or otherwise access any material contained on the device. Protection of any potential evidence is paramount. Only members who have received the appropriate training and certifications will retrieve evidence from the device(s).
- f. If a bystander is believed to possess any material that is, or could reasonably be considered, evidence related to a crime and/or the identification of a person involved in a crime, the member may make a request of the bystander that they voluntarily surrender their camera, video recording device, etc., into police custody. If the individual **REFUSES** a member's request, the officer will take the following actions:
- i. In the absence of exigent circumstances, develop the necessary probable cause to support an application for a Search and Seizure Warrant. Coordinate with their immediate supervisor and other personnel, as necessary, for guidance and technical expertise in the wording and preparation of an application for a Search Warrant and any supporting affidavits;
  - ii. If there is probable cause to believe that evidence exists on an individual's device, AND there are facts that support a reasonable belief that the evidence is in immediate jeopardy of being tampered with, altered, deleted, or destroyed, the member will:
    1. Immediately notify the on-duty supervisor and when available a member of the detective division;
    2. Contact the Ulster County District Attorney's Office advising them of the nature of the investigation and evidence believed to be contained in the device.
  - iii. The member may **TEMPORARILY** seize the device for safekeeping/preservation of the evidence. Such temporary seizure shall only continue for the time necessary for the seizing member to make the appropriate application for a Search and Seizure Warrant is made;
  - iv. Apply for, execute, and return a Search and Seizure Warrant(s).
  - v. Exercise due care and caution with any of the individual's property or electronic device(s). Remove the device's battery or switch it to a "Power Off" condition. This will aid in preventing any remote access to, or deletion of, the data or other material stored

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within it;

- vi. Assure that the evidence is properly logged and submitted in LERMS in accordance with policy and procedure 7.1, “Evidence and Non-Agency Property Management”;
  - vii. Provide the individual with the name and contact information of the member who took custody of the individual's property and the Supervisor on scene;
  - viii. Document the evidence in in LERMS in accordance with policy and procedure 7.1, “Evidence and Non-Agency Property Management”;
  - ix. Document all facts and circumstances surrounding the incident including, but not limited to the officer’s request, and the individual's response, in the case supplemental report and/or charging documents;
  - x. Do not make any attempt to view, download, or otherwise access any material contained on the device. Protection of any potential evidence is paramount. Only members who have received the appropriate training and certifications will retrieve evidence from the device(s).
- g. Items seized in conformance with this policy and procedure will only be held as long as reasonably necessary to assure the evidentiary value of the contents.

**5. Supervisor Responsibilities**

- a. If possible, respond to any scene where the Supervisor knows or is advised that officers are dealing with a bystander who is observing, photographing, and/or video recording their conduct and the actions of the bystander are approaching the level of a criminal offense or the officer advises that they may need to secure video, photographic or audio evidence from the bystander.
- b. Ensure adequate police attention remains focused on whatever situation originally required a police response. Department personnel should bear in mind that, on rare occasions, they might encounter a person or group of persons who deliberately create hazardous conditions with the intent of provoking an inappropriate police response. Supervisors shall not allow subordinates under their supervision to become distracted from their professional duties if it is suspected that this type of deliberate provocation is occurring.
- c. Ensure that any camera or video recording device that has been used to photograph and/or video record police activity comes into the custody of the Department through the voluntary consent of the individual in possession of the item or through execution of a Search and Seizure Warrant or through some valid exception to the warrant requirements.
- d. Review all reports and any other documents related to the incident to assure that actions taken by Department members is in conformance with this policy and state/federal laws.