

## PARKER POLICE DEPARTMENT POLICY AND PROCEDURE MANUAL

3.27	EFFECTIVE: May 6, 2016	James Tsurapas, Chief of Police
	REVISED: May 6, 2016	
SUBJECT: RECORDING POLICE ACTIVITY		
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### 3.27.1 PURPOSE

This policy provides commissioned officers with guidance for dealing with situations in which they are being recorded, to include photographing, videotaping, audiotaping, or both, by members of the public or the media.

### 3.27.2 POLICY

Members of the public, including media representatives, have an unambiguous First Amendment right to record commissioned officers in public places, as long as their actions do not interfere with the commissioned officer's duties or the safety of officers or others. Commissioned officers should assume that they are being recorded at all times when on duty in a public space, in accordance with C.R.S. § 16-3-311.

### 3.27.3 DEFINITIONS

*Recording* - Capturing of images, audio, or both, by means of a camera, cell phone, audio recorder, or other device.

*Media* - The storage source for visual or audio recordings, whether by film, analog, or digital means.

### 3.27.4 PROCEDURES

- A. Persons who are lawfully in public spaces or locations where they have a legal right to be present, such as their home, place of business, or the common areas of public and private facilities and buildings, have a First Amendment right to record things in plain sight or hearing, to include police activity. Commissioned officers may not threaten, intimidate, or otherwise discourage or interfere with the recording of police activities. However, the right to record is not absolute and is subject to legitimate and reasonable legal restrictions, as follows:
1. A reasonable distance (10-15 feet) must be maintained from the commissioned officer(s) engaged in enforcement or related police duties.
  2. Persons engaged in recording activities may not obstruct police actions. For example, persons may not interfere through direct physical intervention, harassing or intimidating a witness, as defined C.R.S. § 18-8-704, or by persistently engaging a commissioned officer with questions or interruptions. The fact that recording and/or overt verbal criticism, insults, or name-calling may be annoying, does not of itself justify a commissioned officer taking corrective or enforcement action or ordering that recording be stopped, as this may be an infringement on a person's constitutional right to protected speech.

3. Recording must be conducted in a manner that does not unreasonably impede the movement of emergency equipment and members or the flow of vehicular or pedestrian traffic.
4. The safety of commissioned officers, victims, witnesses, and third parties cannot be jeopardized by the recording party.

**B. Arrest**

1. Persons who violate the foregoing restrictions should be informed that they are engaged in prohibited activity and given information on acceptable alternatives, where appropriate, prior to making an arrest. Prior to making an arrest, the warning and information on acceptable alternatives described herein must be given when the recording person is persistently engaging a commissioned officer with questions or interruptions, and the recording person must be given a fair opportunity to cease the persistent questions or interruptions.
2. Arrest of a person who is recording commissioned officers in public shall be related to an objective, articulable violation of the law unrelated to the act of recording. The act of recording does not, in itself, provide grounds for detention or arrest.
3. Arrest of a person(s) does not provide an exception to the warrant requirement justifying search of the person's recording equipment or media. While equipment may be seized incident to an arrest, downloading, viewing, or otherwise accessing files requires a search warrant. Files and media shall not be altered or erased under any circumstances.

**C. Seizure of Recording Devices and Media**

1. Absent arrest of the recording person, recording equipment may not be seized, or absent exigent circumstances as set forth in subsection C.7 below.
2. Commissioned officers may not order a person to show recordings that have been made of enforcement actions or other police operations.
3. If there is probable cause to believe that evidence of a serious crime has been recorded, a commissioned officer shall first;
  - a. advise the person of his/her name, his/her badge number, and that they are a member of this Department; and
  - b. identify the legal reason for which the information is requested; and
  - c. if practical under the circumstances, inquire whether the person will voluntarily provide the commissioned officer with a copy of the specific recording that is relevant to the investigation either by voluntarily providing the device to the commissioned officer; or immediately electronically transferring the information to the commissioned officer; or Department so that the person may retain possession of their device, the recording, and any personal non-evidentiary private information contained on the device.

4. If the person consents voluntarily to the transfer of the device to law enforcement, commissioned officers shall limit their search of the device to a search for the recording that is relevant evidence to the investigation, and the device shall be returned to the person upon request and as quickly as feasible.
5. If the person consents to an electronic transfer of the recording, the electronic transfer shall take place as soon as feasible and without unnecessary delay.
6. In circumstances when the immediate electronic transfer is not practicable or if the person does not consent to the electronic transfer of the evidentiary information or to the seizure of the device, the commissioned officer may arrange for the transfer or delivery of the information or device with the person to the commissioned officer or to this Department by any alternative means consistent with the policies and procedures of this Department.
7. Notwithstanding the provisions outlined in this policy, commissioned officers have the authority to temporarily seize and maintain control over a device that was used to record an incident involving a peace officer for no longer than seventy-two (72) hours to obtain a search warrant when exigent circumstances exist such that the commissioned officer believes it is necessary to save a life or when the commissioned officer has a reasonable, articulable, good-faith belief that seizure of the device is necessary to prevent the destruction of the evidentiary recording while a warrant is obtained. An officer seizing a device pursuant to this subsection shall document the probable cause for the exigency within twenty-four (24) hours of the seizure.
8. Recording equipment may be seized incident to arrest.
9. Whenever a recording device or media is seized without a warrant or obtained by voluntary consent, the seized item shall be held by this Department no longer than reasonably necessary for the commissioned officers, acting with due diligence, to obtain a warrant. The device must be returned at the earliest feasible time and its owner/operator given instruction on how it can be retrieved. In all cases property receipts shall be provided to the owner.

**D. Supervisory Responsibilities**

A supervisor shall be notified of any incident in which a person recording police activity is going to be, or will most likely be, arrested or when recording equipment may be seized without a warrant or lawful consent.