

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL 118761

..title

AN ORDINANCE relating to a public safety bill of rights for the Seattle public; renumbering Subchapter VI as Subchapter V and creating a new Subchapter VI in Chapter 3.28 of the Seattle Municipal Code.

..body

WHEREAS, the Seattle Police Department (SPD) policy since 2008, which recognizes the right of members of the public to observe and record police performing their duties in a public place, can be enhanced, strengthened, and made permanent through codification in the Seattle Municipal Code; and

WHEREAS, the rights of public observers, which courts have recognized as flowing from the First Amendment, and various state constitutional rights that favor government transparency and protect the public’s right to hold government officials accountable, transcend police policy; and

WHEREAS, the U.S. Supreme Court in *Houston v. Hill*, 482 U.S. 451, 461 (1987) recognized that “the First Amendment protects a significant amount of verbal criticism and challenge directed at police officers”; and

WHEREAS, the need for stronger protections for public observers was evident in the 2011 arrest of a person in Seattle for exercising their right to observe the police in *State v. E.J.J.*, 183 Wn.2d 497, 354 P.3d 815 (2015) and in past incidents identified by SPD’s Office of Professional Accountability Auditor of obstruction charges against observers and those filing complaints with SPD’s Office of Professional Accountability; and

WHEREAS, officer in-car video or body cameras are not always present and turned on at each public interaction for various reasons, including officer discretion not to record in certain

1 sensitive situations and Department policy based on City law not to record in most
2 instances where individuals are exercising rights of free speech, assembly and worship,
3 and the recordings by members of the public provide a unique perspective that captures
4 additional details of an event, making recordings by the public potentially of great value;
5 and

6 WHEREAS, the value of video and audio recordings by the public is keenly evident from the
7 recordings in 2016 of the deaths of Philando Castile in Minnesota; Alton Sterling in
8 Baton Rouge, Louisiana; and law enforcement officers in Dallas and Baton Rouge; and

9 WHEREAS, other states such as California, Colorado, and Oregon have passed legislation
10 protecting the right of members of the public to observe and record police activity; NOW,

11 THEREFORE,

12 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

13 Section 1. Subchapter VI of Chapter 3.28 of the Seattle Municipal Code, which includes
14 Sections 3.28.500, 3.28.510, 3.28.520, 3.28.530, and 3.28.540, is renumbered Subchapter V as
15 follows:

16 **Subchapter (~~VI~~) V Reserve Police Officers**

17 Section 2. A new Subchapter VI is added to Chapter 3.28 of the Seattle Municipal Code
18 as follows:

19 **Subchapter VI Public Observers' Bill of Rights**

20 **3.28.600 Purpose**

21 This Subchapter VI codifies the right of members of the public to hold police accountable
22 through observation and express themselves without fear of retaliation, within the bounds

1 permitted by law. Officers should assume that the general public is observing and possibly
2 recording their activities at all times, and respect the public's constitutional rights in that regard.

3 **3.28.610 Public observation, recording, or expression in the vicinity of police actions**

4 A. A person not involved in an incident may remain in the vicinity of any stop, detention,
5 or arrest occurring in a public place, and observe or record activity and express themselves,
6 including making comments critical of an officer's actions, so long as the person's conduct and
7 presence are otherwise lawful. The person's conduct and presence must not: hinder, delay, or
8 compromise legitimate police actions or rescue efforts; threaten the safety of the officers or
9 members of the public; or attempt to incite others to violence. These conditions on the conduct
10 do not prohibit conduct that creates a slight inconvenience for an officer, such as minor delay
11 caused by escorting the person to a nearby location. person's

12 B. No employee of the Seattle Police Department nor an agent thereof shall prevent a
13 person from engaging in an action or actions protected by this Section 3.28.610.

14 C. No employee of the Seattle Police Department nor an agent thereof shall use physical
15 force for the purpose of punishing or retaliating against a person engaging in an action or actions
16 protected by this Section 3.28.610.

17 D. When an officer is using less-lethal tools in the presence of persons observing or
18 recording police activity, the officer shall seek to minimize harm to non-targeted persons.

19 **3.28.620 Notification to OPA**

20 If a person files a claim under Chapter 5.24 relating to any conduct set forth in Section
21 3.28.610, the Department of Finance and Administrative Services shall, within 14 days of its
22 receipt of the claim, provide an electronic copy of the claim to the Director of the Office of
23 Professional Accountability, or its successor entity, and to the Chief of Police.

1 Section 3. Nothing in this ordinance is intended to create a basis for any private cause
2 of action beyond legal remedies already available.

3 Section 4. The provisions of this ordinance are declared to be separate and severable.
4 The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this
5 ordinance, or the invalidity of its application to any person or circumstance, does not affect the
6 validity of the remainder of this ordinance, or the validity of its application to other persons or
7 circumstances.

1 Section 5. This ordinance shall take effect and be in force 30 days after its approval by
2 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it
3 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

4 Passed by the City Council the ____ day of _____, 2017,
5 and signed by me in open session in authentication of its passage this ____ day of
6 _____, 2017.

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9 _____

9 President _____ of the City Council

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11 Approved by me this ____ day of _____, 2017.

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13 _____

14 Edward B. Murray, Mayor

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16 Filed by me this ____ day of _____, 2017.

17
18 _____

19 Monica Martinez Simmons, City Clerk

20
21 (Seal)