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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)'s 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, ~~at times~~ officer in-car video or body ~~cams have~~cameras are not ~~been~~always present and turned on, ~~have malfunctioned, or provided an incomplete~~ at each public interaction

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

7 WHEREAS, the ~~need for and~~ value of ~~public~~-video and audio ~~recording~~recordings by the public
8 is keenly evident from the ~~recent~~ recordings in 2016 of the deaths of Philando Castile in
9 Minnesota;; Alton Sterling in Baton Rouge, Louisiana;; and law enforcement officers in
10 Dallas and Baton Rouge; and

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

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

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

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

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

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

22 **3.28.600 Purpose**

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1 This Subchapter VI codifies the right of members of the public to hold police accountable
2 through observation and express themselves without fear of retaliation, within the bounds
3 permitted by law. Officers should assume that ~~a member of~~ the general public is observing, and
4 possibly recording, their activities at all times, and respect the public's constitutional ~~right to do~~
5 ~~so~~ rights in that regard.

6 ~~3.28.610 Witnessing stops, detentions, arrests, and other~~ Public observation, recording, or
7 expression in the vicinity of police actions

8 ~~A.~~ A. A person not involved in an incident may remain in the vicinity of any stop, detention,
9 ~~or arrest, or any other police activity~~ occurring in a public place, and observe or record activity,
10 and express ~~oneself~~ themselves, including making comments critical of an officer's actions, so
11 long as the person's conduct and presence ~~is~~ are otherwise lawful, ~~and the.~~ The person's conduct
12 ~~does and presence must~~ not: ~~obstruct,~~ hinder, delay, or compromise ~~the outcome of~~ legitimate
13 police actions or rescue efforts; ~~;~~ threaten the safety of the officers or members of the public; ~~;~~ or
14 attempt to incite others to violence. These conditions on the conduct do not prohibit conduct that
15 creates a slight inconvenience for an officer, such as minor delay caused by escorting the person
16 to a nearby location. An example of obstruction includes, but is not limited to, a member of the
17 public entering any established marked and protected crime scene or a restricted area that is
18 unavailable to the general public unless permitted to do so by an officer or investigator who is
19 authorized to determine who may enter the secure scene.

20 ~~3.28.620 Public observer preservation of evidence~~

21 ~~A.~~ A. ~~Officers should contact a member of the public at the scene to obtain recorded~~
22 ~~evidence when the officer believes the person has media of evidentiary value using the process~~

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1 ~~identified in subsection 3.28.620.B. The officer shall not otherwise seize the recorded media or~~
2 ~~compel or coerce the person into giving the officer the recording or recording device.~~

3 ~~B. When recorded media is sought from a member of the public, the officer shall first~~
4 ~~request voluntary surrender of the media and document the request and the person's response.~~

5 ~~1. If the person surrenders the media, the officer shall give the person a case~~
6 ~~number and the requesting officer's name.~~

7 ~~2. If the person does not voluntarily surrender the media and the officer believes that it may be of value to~~
8 ~~an investigation, the officer shall advise the person that a court order may be sought for the media and~~
9 ~~that it may not be tampered with, altered, or destroyed because it may be evidence of a crime.~~

10 ~~**3.28.630 Officer enforcement actions against third-party observers**~~

11 ~~_____A_____ B. No employee of the Seattle Police Department nor an agent thereof shall~~
12 ~~interfere with, detain, arrest, use physical force against, punish, or retaliate against a person on~~
13 ~~the basis of the person prevent a person from engaging in an activity action or activities described~~
14 ~~inactions protected by this Section 3.28.610 if the person is doing so in compliance with the~~
15 ~~requirements of Section 3.28.610.~~

16 ~~B. If a person is engaging in an activity or activities described in Section 3.28.610 and is~~
17 ~~not doing so in compliance with the requirements of Section 3.28.610, the officer shall consider~~
18 ~~risks to the person when determining whether to deploy any less-lethal tools.~~

19 ~~1. If the person is elderly, apparently pre-adolescent, visibly pregnant, or visibly~~
20 ~~frail, the officer may only use less-lethal force when there is an exigency or an immediate threat~~
21 ~~to officers or other persons.~~

22 ~~2. When using oleoresin capsiem spray, an officer shall direct the spray at the~~
23 ~~specific subject who is posing a threat and shall attempt to minimize exposure to non-targeted~~
24 ~~parties.~~

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1 ~~3. Beanbag rounds may only be used on an individual engaged in active~~
2 ~~aggression or to prevent imminent physical harm to the officer or another person.~~

3 ~~**3.28.640 Civil liability for destruction or unlawful seizure of recordings by a law**~~
4 ~~**enforcement officer**~~

5 ~~A. When a person has a reasonable, good faith belief that the person has been aggrieved~~
6 ~~by a violation of the provisions of this Subchapter VI by an employee of the Seattle Police~~
7 ~~Department or agent thereof, the aggrieved person may submit an affidavit to the Chief of Police~~
8 ~~setting forth the facts of the incident, the damage done to the owner's property, and an estimate~~
9 ~~of the replacement cost for any damaged or destroyed device verified by an independent credible~~
10 ~~source. If a recording was damaged or destroyed, the owner may also claim \$500 as the value of~~
11 ~~the recording itself. Upon receipt of the affidavit by the Chief, the Chief shall approve in full,~~
12 ~~approve in part, or deny the request in writing within 30 days.~~

13 ~~B. If the request is approved, the Chief shall direct payment to the claimant.~~

14 ~~C. If the request is denied and the claimant disagrees with the denial, the claimant may~~
15 ~~bring a civil action in a court of competent jurisdiction against the City for actual damages,~~
16 ~~including the replacement value of the device, the amount of \$500 for any damaged or destroyed~~
17 ~~recording, punitive damages of up to \$5,000, and reasonable costs and fees associated with the~~
18 ~~filing of the civil action. The burden shall be on the plaintiff to establish a prima facie case of the~~
19 ~~extent of the damages by a preponderance of the evidence. If the finder of fact further finds that~~
20 ~~the denial of the request by the Chief was made in bad faith, the finder of fact may order~~
21 ~~additional punitive damages of up to \$5,000. If the finder of fact finds that an action brought by a~~
22 ~~person is frivolous and without merit, the court may award the City its reasonable costs and~~
23 ~~attorneys' fees.~~

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1 ~~Section 3. The Seattle Police Department shall create and implement a policy on blast~~
2 ~~ball usage prior to May 2017.~~

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

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

8 **3.28.620 Notification to OPA**

9 If a person files a claim under Chapter 5.24 relating to any conduct set forth in Section
10 3.28.610, the Department of Finance and Administrative Services shall, within 14 days of its
11 receipt of the claim, provide an electronic copy of the claim to the Director of the Office of
12 Professional Accountability, or its successor entity, and to the Chief of Police.

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

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

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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 _____, ~~2016~~2017,
5 and signed by me in open session in authentication of its passage this ____ day of
6 _____, ~~2016~~2017.

7 _____
8 _____
9 President _____ of the City Council

10 _____
11 Approved by me this ____ day of _____, ~~2016~~2017.

12 _____
13 _____
14 Edward B. Murray, Mayor

15 _____
16 Filed by me this ____ day of _____, ~~2016~~2017.

17 _____
18 _____
19 Monica Martinez Simmons, City Clerk

20 _____
21 (Seal)