

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

..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 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

1 WHEREAS, at times officer in-car video or body cams have not been turned on, have
2 malfunctioned, or provided an incomplete record of what happened, making videos
3 collected by the public of great value; and

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

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

10 THEREFORE,

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

12 Section 1. Subchapter VI of Chapter 3.28 of the Seattle Municipal Code is renumbered
13 Subchapter V as follows:

14 **Subchapter ((VI)) V Reserve Police Officers**

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

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

18 **3.28.600 Purpose**

19 This Subchapter VI codifies the right of members of the public to hold police accountable
20 through observation and express themselves without fear of retaliation, within the bounds
21 permitted by law. Officers should assume that a member of the general public is observing, and
22 possibly recording, their activities at all times, and respect the public's constitutional right to do
23 so.

1 **3.28.610 Witnessing stops, detentions, arrests, and other police actions**

2 A person not involved in an incident may remain in the vicinity of any stop, detention, arrest, or
3 any other police activity occurring in a public place, observe or record activity, and express
4 oneself, including making comments critical of an officer's actions, so long as the person's
5 conduct and presence are lawful, and the person's conduct and presence do not obstruct, hinder,
6 delay, or compromise the outcome of legitimate police actions or rescue efforts, threaten the
7 safety of the officers or members of the public, or attempt to incite others to violence. An
8 example of obstruction includes, but is not limited to, a member of the public entering any
9 established marked and protected crime scene or a restricted area that is unavailable to the
10 general public unless permitted to do so by an officer or investigator who is authorized to
11 determine who may enter the secure scene.

12 **3.28.620 Officer actions against third-party observers**

13 A. No employee of the Seattle Police Department nor an agent thereof shall prevent a
14 person from engaging in an activity or activities described in Section 3.28.610, or detain, arrest,
15 or use physical force against a person on the basis of the person engaging in an activity or
16 activities described in Section 3.28.610, if the person is doing so in compliance with the
17 requirements of Section 3.28.610.

18 B. No employee of the Seattle Police Department nor an agent thereof shall use physical
19 force for the purpose of punishing or retaliating against a person lawfully engaging in an activity
20 or activities described in Section 3.28.610.

21 C. When an officer is using less-lethal tools in the presence of persons observing or
22 recording police activity, the officer shall adhere to Seattle Police Department less-lethal tool
23 policies that seek to minimize harm to non-targeted bystanders.

1 **3.28.630 Public observer preservation of evidence**

2 A. When a person has made a recording in the vicinity of any stop, detention, arrest or
3 any other police activity occurring in a public place and an officer thinks that the recording may
4 be of value to an investigation, the officer shall contact the person to obtain the media using the
5 process identified in subsection 3.28.630.B. The officer shall not otherwise seize the recorded
6 media or compel or coerce the person into giving the officer the recording or recording device.

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

9 1. If the person surrenders the media, the officer shall give the person a case
10 number and the requesting officer's name.

11 2. If the person does not voluntarily surrender the media and if the officer does
12 not have authority to seize the media, the officer should advise the person that a court order will
13 be sought for the media and that it should not be tampered with, altered, or destroyed because it
14 may be evidence of a crime.

15 **3.28.640 Civil action**

16 A person may bring a civil action in a court of competent jurisdiction against the City for an
17 alleged violation of subsection 3.28.610. The person, if successful, shall be entitled to actual
18 damages, punitive damages of up to \$5,000, and reasonable costs and fees associated with the
19 filing of the civil action. The burden shall be on the plaintiff to establish a prima facie case of the
20 existence of and extent of the damages by a preponderance of the evidence. If the finder of fact
21 finds that an action brought by a person is frivolous and without merit, the court may award the
22 City its reasonable costs and attorneys' fees.

1 Section 3. By no later than May 2017 or the soonest date thereafter if necessary in order
2 to comply with the terms of the Consent Decree in *United States v. City of Seattle*, No. C12-
3 1282JLR (W.D. Wash. 2012), the Seattle Police Department shall have a blast ball policy that
4 references and addresses the safety of persons engaged in activities protected by this ordinance.
5 That blast ball policy shall be developed in a manner that complies with the requirements of the
6 Consent Decree.

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

12

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; provided that, prior to
4 that effective date, any provision of this ordinance that is determined by the U.S. District Court
5 for the Western District of Washington or its agent to require approval by the Court shall not be
6 effective until such approval is obtained.

7 Passed by the City Council the ____ day of _____, 2016,
8 and signed by me in open session in authentication of its passage this ____ day of
9 _____, 2016.

10
11 _____
12 President _____ of the City Council

13
14 Approved by me this ____ day of _____, 2016.
15
16 _____
17 Edward B. Murray, Mayor

18
19 Filed by me this ____ day of _____, 2016.
20
21 _____
22 Monica Martinez Simmons, City Clerk

23 (Seal)