

POLICY
415

EFFECTIVE
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Eugene Police Department



Recording Police Activities by the Community

415.1 PURPOSE AND SCOPE

The Eugene Police Department preserves and protects the rights guaranteed to its community members by the Federal and State Constitutions. Eugene's community members have a First Amendment right to video and audio record members of the Eugene Police Department while they are conducting their official duties, so long as the recording does not create a legitimate and articulable concern for officer safety, or a hindrance to successful and timely resolution of the police matter being handled. This policy provides guidance to department members on how to preserve the rights of community members who are recording police, and in instances where the recording member of the community violates any of the reasonable restrictions placed upon their ability to record police activities, the policy informs officers and supervisors how to successfully deal with an arrest and/or seizure of a recording device.

The overarching purpose of this policy is to provide for the unfettered exercise of rights guaranteed to Eugene's community, while ensuring the safety of the recording party, victims, witnesses, suspects and the officers.

415.2 POLICY

Members of the public, including media representatives, have an unambiguous First Amendment right to record officers in public places, as long as their actions do not interfere with the officer's duties or the safety of officers or others. Officers should assume that they are being recorded at all times when on duty.

415.3 DEFINITIONS

Recording: Capturing of images, audio, or both, by means of a video camera, cell phone, audio recorder, or other image capturing device.

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

415.4 RECORDING POLICE BY COMMUNITY MEMBERS

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, city streets and sidewalks—have the ability to record things in plain sight or hearing, to include police activity. Members of the Eugene Police Department may not threaten, intimidate, or otherwise discourage or interfere with the recording of police activities. However, the ability to record is subject to legitimate and reasonable legal restrictions, as follows:

- a. Officers may offer a reasonable distance that must be maintained from the scene(s) where enforcement or related police duties are being recorded. This distance is assigned by the officer on scene and will consider the totality of the circumstances regarding the particular police activity.
- b. Persons engaged in recording activities may not obstruct police actions. The fact that recording and or overt verbal criticism, insults, or name-calling may be annoying, it does not of itself justify an officer taking corrective or enforcement action or ordering that recording be stopped. Examples of actions that obstruct police activities include, but are not limited to:
 1. Interference through direct physical intervention or breaching the reasonable distance established by the officer, thereby dividing his or her attention to the matter at hand.
 2. Persistent uses of recording equipment which interfere with officer interviews with witnesses.
 3. Repeated attempts to engage an officer with questions or interruptions which divide the attention of the officer.
 4. Impeding the movement of emergency equipment, personnel or flow of civilian traffic or pedestrians.
 5. Any action by the recording party that jeopardizes the safety of an officer, victim, witness, suspect, or third party.
- c. Should an officer discover that a person has recorded, or been recording them surreptitiously, the officer should advise the person of the law. Enforcement action should not be taken based solely on the fact that the person recorded the officer without the officer's knowledge.
- d. Recording parties are not entitled to enter certain locations they are prohibited from entering simply to record police activities. Examples of locations recording parties are prohibited from entering or remaining upon include, but are not limited to:
 1. Any private property upon which the recording party would be trespassing;
 2. Entry into an established crime scene;
 3. Entry into an area or building not accessible to the general public.

415.5 ARREST BASED UPON RESTRICTIONS

415.5.1 ARREST

Arrest of any person who is engaged in recording police activity for violating the reasonable restrictions placed upon their Constitutional rights will be based upon an objective, reasonable and articulable violation of the law (Interfering with Police, Trespassing, etc.) If it is reasonable and appropriate, any person who is violating the foregoing restrictions should be informed they are engaging in a prohibited activity and given an opportunity to locate an acceptable and legal alternative prior to being arrested. Nothing in this policy suggests an officer *must* warn a person participating in a prohibited activity.

415.5.2 SEIZURE OF RECORDING DEVICES

Officers may not order or coerce a recording party to show them recordings that have been made of official department action. Officers should consider that unless there is probable cause to believe evidence of a serious crime is contained in a recording, seizure may not be necessary.

Officers may seize recording devices and media;

- a. If the person recording possesses the recording device when the person is arrested and charged with a crime. Officers should protect evidence from remote access to ensure legal viewing at a later time.
- b. The person recording consents to the seizure.
- c. Exigent circumstances exist to seize the recording device or media. Exigent circumstances requires probable cause for the officer to objectively believe that immediate seizure is necessary to prevent the destruction or tampering of evidence contained on the recording device or media.

If there is probable cause to believe there is evidence of a serious crime contained in a recording device or media, the officer should do the following:

- d. Immediately request a supervisor to the scene.
- e. Ask the recording party in possession of the recording device if he or she will consent to voluntarily and temporarily relinquish the recording device or media so that it may be viewed and copied.
- f. If the recording party refuses, and it is objectively likely that the recording device contains evidence of a crime and that the recording could be destroyed, tampered with, or altered before a search warrant affidavit can be obtained the officer may seize the recording device so that a warrant may be obtained authorizing the officer to view and duplicate the suspected recording.
- g. There is no exception to the warrant requirement following an arrest where a recording device is seized **except** in *exigent situations where it is objectively reasonable to believe that immediate viewing of recordings is necessary to prevent death or serious bodily harm of another before a warrant can be authorized*. Only then can the recording device or media be confiscated and viewed without a warrant.
- h. Whenever a recording device or media is seized without a warrant or obtained by consent, the seized item shall be held in police custody no longer than reasonably necessary for the police, acting with due diligence, to obtain a warrant. The device must be returned at the earliest possible time and its owner/operator given instruction on how it can be retrieved. In all cases property receipts shall be provided to the owner.

415.5.3 SUPERVISOR RESPONSIBILITIES

A supervisor will be summoned and respond to any scene where a recording device will be seized. The supervisor will examine the scene and facts of the case and determine whether or not the seizure is appropriate.

PETE KERNS
Chief of Police