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Effective Date: February 2018	Revision Date: February 2018
Amends/Supersedes:	Approved by: Chief Kevin Higdon
Meets Accreditation Standard:	17.12

1300.60 Video Recording Devices

RECORDING POLICE ACTIVITY

POLICY

It is the policy of the Shively Police Department to foster a positive image to the community that it serves. As technology becomes more prevalent and readily available, many citizens may choose to audio and/or video record law enforcement activities (e.g. traffic stops, arrests, crime scenes, etc.). Recording may be done on cameras (e.g. still and video), cell phones (including smartphones), personal digital assistants (PDAs), tablets, audio recorders or any other device capable of such recording. This activity is legal with certain limitations. Members shall not prohibit the public from audio and/or video recording law enforcement activities as long as these legal requirements are met. This policy ensures the protection of the First, Fourth and Fourteenth Amendment rights of individuals to document activities and the conduct of members of the Shively Police Department through audio and/or video recordings.

DEFINITIONS

Legal Presence/Lawful Presence: Any area where an individual has the legal right to be (e.g. private property owned or occupied with permission of the property owner, public buildings such as stores, malls, etc. and public areas such as parks, sidewalks, streets, etc.).

Recording Device: Any device capable of audio and/or video recording to include, but not be limited to, cameras (e.g. still and video), cell phones, PDAs, tablets, audio recorders or any other device capable of such recording. This includes memory cards/chips capable of storing the recorded media.

Enforcement Action: Includes, but is not limited to, arrest, detention, the seizure of the recording equipment, the deletion of the audio and/or video recording, damaging the equipment or threatening, intimidating, discouraging or coercive conduct aimed at ending the recording or blocking, or otherwise obstructing, the ability to record without a proper law enforcement objective, such as a crime scene where it is necessary to block the view for the integrity of the investigation.

Designated First Amendment/Safety Zone: A geographic area designated for demonstrations/protests, balancing the right to protest with the right of citizens not involved in the demonstration/protest to safely travel through the area. Such areas are sometimes designated for the purpose of controlling the safety of all persons during large-scale demonstrations/protests.

LAWFUL RECORDING

Members shall not prohibit the recording of a law enforcement activity or take enforcement action under circumstances where the person making the recording has the legal right to be present in the area where he/she is standing. Public locations include, but are not limited to, the following:

- Parks
- Sidewalks
- Streets
- Locations of public lawful demonstration/protest areas
- An individual's home or business
- Common areas of public and private facilities/buildings
- Any other public or private facility/building at which the individual has a legal right to be present

Recording law enforcement activities from an area where the subject is lawfully present does not constitute an offense.

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Members shall not:

- Demand the individual's identification and/or have him/her state a reason why he/she is taking photographs or recording.
- Take enforcement action by using intimidation or coercion to end the recording.
- Block or obstruct the individual's ability to record from an area of lawful presence.
- Discourage the individual from continuing the recording, including the use of threats, intimidation or coercion.
- Erase, delete, tamper with or otherwise corrupt a recording held by an individual.

Every individual has a First Amendment right to observe and record law enforcement members in the performance of their public duties. Recording members engaged in public duties is a form of speech through which individuals may gather and disseminate information of public concern, including the conduct of members. The First Amendment does not give any additional protection to members of the press; therefore, members of the public have the same rights to recording as a member of the press would. All individuals also have a First Amendment right to verbally challenge and criticize an officer who is making an arrest as long as the expression does not violate the law or incite others to violate the law. Such a challenge includes the right to document the member's actions through audio and/or video recording.

UNLAWFUL RECORDING

Individuals may be unlawfully recording in any of the following situations:

- When the individual, through his/her actions, puts the member's safety, the suspect's safety or the public's safety at risk. Court decisions have indicated that, without physical action or a threat toward an officer, no arrest will be justified.
- The individual enters a clearly marked crime scene without authorization.
- The individual enters an area that is closed to the public and clearly marked due to an ongoing emergency (e.g. Special Weapons and Tactics (SWAT) Team scene, fire scene, etc.) which puts the individual in danger.
- The individual enters private property which is not open to the public without the authorization of the owner/occupant of the property (e.g. trespassing). In this case, the member shall determine the wishes of the owner/occupant before taking significant enforcement action, such as an arrest.

When a member confronts an individual who he/she perceives as bordering on unlawfully recording, the member shall inform the individual that his/her actions are impeding or interfering with the member's duties and ask him/her to move to a less-intrusive position where he/she can continue to record but will not interfere with the law enforcement activity.

ENFORCEMENT

When a member is considering taking enforcement action, such as an arrest or the seizure of a recording device, the member shall contact his/her supervisor for direction. Members and supervisors are advised that there is a heightened reasonableness requirement when members seek to seize items protected by the First Amendment, including recordings under this policy. As a result, more facts and circumstances and a greater government interest must be present before members and supervisors should consider such a seizure. The seizure of a recording device or the recording itself constitutes a seizure under the Fourth Amendment and unless consent is granted or exigent circumstances with probable cause exist, the seizure must be supported by a warrant. Examples of exigency include, but are not limited to, the following:

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- When there is probable cause to believe that the recording contains evidence of a violent criminal act where the recording is essential to the identification and apprehension of the suspect(s) and the member has no other means of making the identification; or
- When there is probable cause to believe that a failure to immediately view or preserve the recording will lead to the destruction or loss of this type of evidence. Absent exigent circumstances (e.g. life-threatening emergency, etc.), members shall obtain a search warrant before viewing photographs, videos or listening to recordings on a recording device or memory card/chip that has been seized as evidence. If the member has reason to believe that the individual intends to publicly broadcast the recording, the seizure of the recording device and the recording, even with a warrant, may violate the Privacy Protection Act. In all cases, prior to a lawful seizure, members should attempt to seek the consensual cooperation of the individual in possession of the recording and, when possible, record the consent. The consent may be recorded on the recording device in question, documented in writing or recorded by the member on his/her Mobile Video System (MVS)/Wearable Video System (WVS). The consent must be voluntary on the part of the individual and must not be the result of duress or coercion. Prior to a consensual seizure, the member will notify his/her supervisor. The supervisor will respond to the scene when a member is considering taking enforcement action against an individual in possession of a law enforcement activity recording. The supervisor's responsibilities include, but are not limited to, the following:
 - A supervisor who reasonably believes that the individual's conduct is approaching a criminal offense will seek the voluntary cooperation of him/her to move to a location where his/her actions will not interfere but he/she will still be able to record the event.
 - The supervisor will seek the consent of the individual holding the recording device to obtain a copy of the recording or to allow the department to otherwise preserve the recording.
 - In instances where consent cannot be obtained, and a non-life-threatening emergency is occurring, the supervisor will consult the Jefferson County Attorney's Office for advice.
 - A warrant will be obtained unless consent is granted or exigent circumstances with probable cause exist.
 - If an individual in possession of a recording indicates his/her intent to publicly broadcast the recording, the supervisor, with the assistance of the Jefferson County Attorney's Office, will consider the impact of the Privacy Protection Act upon the seizure of the recording. When a seizure of the recording or recording device is authorized by law, the department will:
 - Only maintain custody of the device as long as necessary to allow the Video Forensics and Analysis Squad (VFAS) to seize the necessary recording from the device in order to support the admissibility of the recording into evidence.
 - The device will be returned to its lawful owner within 72 hours, unless otherwise ordered by the Jefferson County Attorney's Office or authorized by a court.
 - Upon the return of the device to its lawful owner, the recording itself will remain intact.

CRIMES UNRELATED TO RECORDING POLICE ACTIVITY

Nothing in this policy prevents a member from seizing a recording of evidentiary value for an investigation which was used in the crime itself (e.g. a suspect records a sexual assault, homicide, etc.).