



City of Eustis

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DATE: January 18, 2023
TO: All City Staff and Officials
FROM: Tom Carrino, City Manager, and the City Attorney's Office
RE: First Amendment Auditors

Recently, one of our departments became the subject of a “First Amendment Audit.” This phenomenon has been happening more frequently around the country and in our neighboring cities. The purpose of these audits is to test governmental respect for individuals’ First Amendment rights. A citizen conducting a First Amendment Audit will typically approach a public employee without identifying himself or herself and create a video of the resulting interaction.

Employee safety is always our top priority. We are currently working with our attorney and department heads on taking the necessary steps to ensure we clearly designate non-public areas and those where a reasonable expectation of privacy exists, as well as, establishing protocols and determining all options related to these interactions. The purpose of this memorandum is to provide general information on First Amendment Audits and guidance on how to handle interactions with these citizens.

I. What is a First Amendment Audit?

It typically involves an individual photographing or filming his or her surroundings from a public space. It is often categorized by its practitioners as activism and citizen journalism designed to test whether local government officials will uphold the Auditor’s constitutional rights; including the right to photograph and video record in a public space.

II. First Amendment Auditors

Who can you expect will be an Auditor? Anyone. They come in all shapes and sizes, ages, genders, races, religions, and ethnic backgrounds. They may be a member of your community but may be from another state. They may be dressed like they just came from the gym or are ready to go to work in an office. Some Auditors come alone; others come with their own camera person.

What is the Auditor’s role? Auditors consider themselves activists and citizen journalists. At the core, they believe that their conduct promotes transparency and open government. The audit is intended to test if the Auditor’s First Amendment right to record in public is going to be recognized and preserved. They seek to record their interactions with public employees and officials – typically done in public areas at Town Hall, City Hall, the County Office Building, the Police Department, or Sheriff ’s Office. They frequently want immediate, unfettered access to record

public employees, officials, buildings, and workspaces. Many want to make some type of public records request or file some type of complaint.

Who do Auditors target? Law Enforcement – both at the police station and while they are on patrol • Public Employees – particularly “front facing” staff • Public Officials • Anyone else who might react negatively to their presence and possibly call the police.

Where do Auditors typically video record? Public sidewalks and parking lots • Exteriors of public buildings / parking lots • Areas of public buildings that the public is given access to • Scenes of traffic stops • Crime scenes • Just about anywhere else – post office, shopping centers, and office buildings

How do Auditors behave? Many are generally respectful but may also be standoffish. Many Auditors are non-confrontational and would prefer to avoid confrontation – their goal is simply to find out if rights will be protected. Some Auditors prefer to remain silent and just go about filming unless confronted. Other Auditors are pleasant and will calmly discuss who they are and what they are doing, provided they do not feel threatened.

However, some Auditors refuse to self-identify or explain their activities in an apparent effort to make staff uneasy and uncomfortable. Some will ask lots of questions but refuse to answer any. Some appear to be attempting to provoke an encounter or fight. The ones that have a significant presence on YouTube, tend to be argumentative, confrontational, disrespectful, rude, and otherwise unprofessional. Based on the videos, some seem to be pandering to their audience during the encounter.

Why Is the Audit Recorded? The objective reason is to see if the right to record will be honored and protected. If the Auditor’s right to record is violated, the encounter will almost certainly be posted on YouTube and/or other social media forums. The better the recording the more clicks it receives and the more money it generates (which is why some Auditors seemingly push the envelope of common courtesy during audits). Depending on the circumstances, and the extent to which the Auditor’s rights are violated, a lawsuit for monetary damages may be filed.

III. Forums – Public and Non-Public

Perhaps the most important concept for employees to understand is that location matters. The location of the activity largely determines the scope of the individual’s First Amendment rights and, in turn, how the employee should respond. Generally speaking, there are two types of locations: (1) public areas, and (2) non-public areas.

A. Public Forums

What is generally considered a public area? A public area is government property on which speech, expression, assembly, or debate has traditionally been permitted. Some examples include public streets, parks, and sidewalks. Public areas also include places the government has designated as accessible for public speech or expression, such as a municipal Auditorium, a library meeting room, or the comments section of a public entity's Facebook page.

What are an individual's First Amendment Rights in public areas? Individuals have broad rights in public areas. They are free to peacefully speak or express themselves. The government and its employees generally cannot interfere. Governmental entities and their employees can impose reasonable restrictions on the time, place, and manner of the conduct. These types of

restrictions are concerned not with what the individual is communicating, but rather with when, where, and how it is being communicated.

Does the First Amendment Right extend to video recording? Yes. The First Amendment gives individuals the right to film matters of public interest, including filming government employees performing their duties in a public area. Public entities and employees generally cannot interfere with a citizen who is filming governmental operations in a public area. The Auditor does not need your consent to record you.

If an individual attempts a First Amendment Audit in a public area, what should an employee do? The employee should not attempt to prevent the individual from peacefully filming or expressing an idea in a public area. Only if the individual becomes threatening, abusive, disruptive to business operations, or creates a safety or security risk should the employee intervene. In that case, the employee should remain calm and, if possible, ask the individual firmly and politely to stop the behavior. If that does not work or is not practical under the circumstances, the employee should contact law enforcement. The employee should not at any point argue with the individual or attempt to confiscate the video recording device. Additionally, the employee should never initiate any physical contact unless necessary to prevent imminent physical harm to the employee or another person.

What if the employee asks the individual what s/he is doing or what his/her name is, and the individual refuses to answer? The best course is generally to allow the individual to continue peacefully filming and notify a supervisor. The employee should not intervene as described above unless the individual becomes threatening, abusive, disruptive to business operations, or is creating a safety or security risk.

B. Non-Public Forums

What is a non-public area? A non-public area is property that is owned by the government but is neither traditionally used as a place for public expression nor designated for such use. Examples include "employees only" areas of governmental offices, government equipment storage facilities, and other areas where the government has a strong interest in limiting or restricting public activity. Parking lots, waiting rooms, and front desk areas often (but not always) will be considered non-public areas as well.

What are an individual's rights in a non-public area? The individual's rights are more limited in these areas. Governmental restrictions are permissible if they are reasonable and not based on the individual's viewpoint.

What should an employee do if an individual attempts a First Amendment Audit in a clearly non-public area, such as an office marked "employees only?" The employee should first ask the individual to stop or leave. If that does not work or is not practical under the circumstances, the employee should alert a supervisor and contact law enforcement and wait for law enforcement to respond. The employee should not attempt to confiscate the video recording device and should never initiate physical contact unless necessary to prevent imminent physical harm.

What if the First Amendment Audit is occurring in an area the employee is not sure is public or non-public? If the individual is acting peacefully and is not creating a disturbance to business operations, it is best to notify a supervisor and allow the individual to continue and wait until the supervisor or someone from upper management is available to respond. If the individual becomes

a significant disruption or creates a safety concern, the employee may ask the individual to stop or leave and, if necessary, may contact law enforcement.

What if an individual is filming a non-public area from a public area? If an individual is filming a non-public area (like a school classroom or governmental office) from a nearby public area outside the building, employees should immediately contact a supervisor or as appropriate, law enforcement. Employees should refrain from approaching or engaging the individual unless necessary to prevent imminent physical harm.

IV. Quick Points on How to Respond to an Auditor

- Stay calm – do not overreact.
- Secure private information.
- Be patient and polite – do not be rude or dismissive.
- Simply go about your regular duties – do not do anything to try and intimidate the Auditor.
- Let the Auditor go about his or her business – do not detain the Auditor in any way.
- Let the Auditor peacefully record so long as he or she is not committing a crime or disrupting the workplace or use of the property.
- Do not attempt to take the Auditor's recording device or otherwise initiate physical contact with the Auditor.
- If you have the opportunity, contact your immediate supervisor simply to let him or her know that an Auditor is on the premises.

What to do if the Auditor Acts Inappropriately

- If you have not already done so, contact your immediate supervisor and apprise him or her of the situation as soon as possible.
- If the Auditor disrupts ordinary business operations, ask the Auditor to leave. If the Auditor does not leave, call law enforcement.
- If the Auditor attempts to access a non-public part of the building, firmly and politely ask him or her to stop. If the Auditor does not stop, contact law enforcement.
- If the Auditor becomes threatening, abusive or creates a safety or security risk, retreat to a secure area and contact law enforcement.

For the most part, Auditors view their acts as a public service and are not a threat. However, in some instances, an Auditor's behavior will seem unusual and a call law to law enforcement might be warranted. **If the Auditor is brandishing a weapon or threatening violence, retreat to a secure location and call 911.**

The City of Eustis is reviewing this issue thoroughly and taking the necessary steps to provide its employee with a safe working environment and to respect the rights of its citizens afforded by the law. We will continue to update our departments and staff as we move forward. If you have questions or concerns in the meantime, please contact your supervisor or contact me. Thank you for your continued service and dedication to our City.