

## First Amendment Audits

### Introduction

A First Amendment audit is when people known as “auditors” visit public places such as a police department or other government office to test whether personnel will respect the constitutional right of individuals to record videos and take photographs in a public space. With some limitations, this right exists as long as the person is legally allowed to be present during the recording and does not violate laws.

### Public and Private Spaces

Understand what constitutes a “public” and “private” space and clearly mark all private spaces.

- **Public spaces** may be exterior, such as sidewalks, or interior areas that the public can generally access, such as lobbies.
- **Private spaces** are areas restricted for employees only or where the public is not permitted unescorted.

### Protect Private Space

Take steps as needed to protect private areas from public view—it is legal for people to record from public areas into visible, non-public areas.

### Public Employees

Have a policy that addresses First Amendment audits. Be sure all employees receive training on the policy, understand public versus private space, individual rights, and how to engage with auditors.

If a person is legally present and recording a public official or employee engaged in their duties, employees may not:

- confiscate the recording equipment or interfere with the act of recording;
- detain, remove, or arrest the person for simply recording; for making other people in the area uncomfortable; or for provocative behavior, disrespect, or foul language.

Employees should remain calm and respectful when interacting with an auditor; identify themselves and explain any concerns; and focus on the person’s conduct, not on their act of recording.

### Limitations on the Right to Record in Public Spaces

Individuals may not

- record from a position or distance that would create a danger to themselves or others;
- interfere with police actions or duties; or
- enter a marked crime scene, police perimeter, or established police line.

If an individual's activity falls outside the above limitations, officers should provide explicit and lawful orders for the individual to follow. Any detention or arrest must be based on probable cause of a crime being committed. Explain the basis for an arrest in as much detail as possible in the report and secure body-worn or in-car camera footage as evidence. To build public trust, foster a culture of openness and transparency.

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