RESOLUTION NO. 23-016

"A RESOLUTION ADOPTING A POLICY REGARDING PUBLIC ACCESS TO VIDEO AND AUDIO RECORDINGS ON MUNICIPAL PROPERTY"

WHEREAS, the Mayor & City Council, upon recommendation of the City Administrator, has determined that it is necessary and appropriate that the City adopt a policy, in keeping with principles of the First Amendment of the Constitution of the United States, to address public access to and video and audio recording on municipality property.

NOW, THEREFORE, BE IT RESOLVED that the Mayor & City Council hereby approves and adopts the attached Policy Regarding Public Access to and Video and Audio Recording on Municipality Property.

This Resolution shall become effective immediately upon its adoption.

ADOPTED ON THIS 14th DAY OF NOVEMBER, 2023.

CITY OF MULLINS, SOUTH CAROLINA

Robert Woodbury, Mayor

Attest:

Felicia Sawyer-Norton, Clerk

This Policy is designed to address the possibility of First Amendment audits. In brief, First Amendment audits are situations in which private citizens video record municipal facilities or employees to determine whether the municipality is complying with the First Amendment. The courts have generally recognized that video recording is a form of speech that is protected by the First Amendment. Therefore, private citizens have the constitutional right to record public employees in public places. That right is not unlimited and may be regulated in nonpublic forums and limited public forums. The City of Mullins will regulate conduct to ensure the orderly operation of municipal functions and to protect the rights of employees and private visitors. The policy below is intended to identify and apply rules within nonpublic and limited public forums under the control of the municipality.

Policy Regarding Public Access to and Video and Audio Recording on Municipality Property

PURPOSE

The Council of the City of Mullins is committed to protecting the rights of citizens under the First Amendment of the United States Constitution, while implementing policies and procedures that protect the health, safety, welfare, and personal privacy of the City's employees and the general public who do business with or use the services of the City. This policy is intended to delineate those portions of City property (as defined herein) that are accessible to and observable by the general public from those portions that are accessible on a limited basis, establish rules of conduct that are applicable to all City property, and specify procedures for employees who encounter those who wish to access City property for observational purposes.

DEFINITIONS

"Limited Access Area" means: any designated area on City property that is not generally open to, or occupied by the public; is open to or occupied by the public on only a limited, as-needed, or by-invitation basis; or is in an area generally open to or occupied by the public in close proximity to where private third parties conduct business with City employees. Limited Access Areas may be designated by doors, physical barriers, building design features, signage, reception desks or stations, stanchions, ropes, fencing, bollards, or other visible indications. The lack of visible indications shall not prevent the City from considering or treating an area as a Limited Access Area. The City shall retain the right to verbally instruct third parties that an area is a Limited Access Area. Without limiting the generality of the foregoing, Limited Access Areas include but are not limited to the following:

a) Employee offices.

b) Employee workspaces including copy rooms, mailrooms, and break areas.

c) Employee parking lots, storage areas, access points, or other outside areas marked for use by Municipality employees or vehicles only.

d) Areas in close proximity to places, stations, desks, counters, or teller windows at which private third parties conduct business with City employees.

e) Hallways, staircases, restrooms, elevators, and other areas by purpose or function restricted to limited or transitory occupancy or providing access solely to other Limited Access Areas.

f) Maintenance, storage, and warehousing facilities.

g) Public works and public safety buildings, except for any designated waiting or reception areas therein.

h) Water, sewer, and other public utility facilities.

"Municipality Official" means, for purposes of this policy:

a) Any Municipality law enforcement officer.

b) Any person providing security services in any City property pursuant to contract with the City or with any person, firm, or corporation managing a City property on the Municipality's behalf.

c) With respect to any building, facility, area, or space assigned to a City department, division, or agency, the director or manager of such department, division, or agency, or any person that such official specifically designates in writing.

d) The City Administrator, Safety and Risk Manager, or any person that such officials specifically designate in writing.

"City property" means any real property owned by the Municipality, or any property in which the City has a property interest or property management responsibility.

"Public Area" means any area on City property that is generally open to general public access and occupancy that is not otherwise designated as a Limited Access Area.

"Rules of Conduct" means the specific guidelines set forth in this policy.

RULES OF CONDUCT ON MUNICIPALITY PROPERTY

To maintain an environment that promotes orderly administrative and business operations, and to take reasonable and prudent actions to protect the health, welfare, safety, and personal privacy of all persons on City property, the Rules of Conduct in this section apply and are to be enforced at all City property, except where specific rules of conduct or prohibitions have been adopted or designated on City property.

Rules of Conduct Applicable to All Municipality Property.
The following Rules of Conduct shall apply at all City property, including both Public Areas and Limited Access Areas:

a) No person shall enter, attempt to enter, or remain in any areas of City property for

any purpose other than to conduct legitimate business with City offices or tenants located on City property, to enjoy publicly accessible amenities in Public Areas, to lawfully assemble for social or public interaction in Public Areas specifically designated or such assembly, or to exercise other constitutionally protected rights. The appropriate Municipality Officials may adopt specific policies with respect to City property under their custody and control to manage conditions for use of such City property including, and without limitation to establishing hours and terms of use, reservation protocols, use and user priority, and fees for use.

b) No person shall engage in any activity on City property that would constitute a violation of federal, state, or local law or regulation.

c) No person shall engage in activity that disrupts, or interferes with, the normal operation or administration of City business on City property, lawful use by City employees and authorized users on City property, or City-permitted activities.

d) No person shall stalk, harass, threaten, intimidate, or otherwise compromise the wellbeing and safety of City employees or private third parties lawfully using City property. Photography, audio recording, or video recording does not, in and of itself, violate this Rule of Conduct. Likewise, conduct that would otherwise violate this Rule of Conduct shall not be permitted merely because the conduct involves photography, audio recording, or video recording.

e) No person shall interfere or obstruct the free passage of City employees or authorized third parties in or on City property, including, and without limitation to: standing in, blocking access to, or occupying areas for purposes of photography, audio recording, or video recording.

f) No person shall photograph, audio record, or video record in such a manner that would allow capture of, access to, or disclosure of private, personal, confidential, sensitive, or privileged information of private third parties. The City may enforce this Rule of Conduct by imposing minimum standing or separation distances from areas, stations, desks, counters, or teller windows at which private third parties conduct business with Municipality employees.

Limited Access Areas

The following Rules of Conduct shall apply at all Limited Access Areas:

a) Limited Access Areas shall be accessible only to the following:
   (i) employees, elected officials, and appointed officials of the City; and

   (ii) private parties but only on a limited, as-needed, or by-invitation basis, to include those private parties accessing a Limited Access Area for the express purpose of conducting business with City employees.

b) Photography, audio recording, and video recording is prohibited in Limited Access Areas, except as follows:

   (i) Any Municipality Official may authorize a third party to record

audio, video recording, or photography in Limited Access Areas, for good cause shown, with the consent of all parties to be recorded or photographed, provided that any Municipality Official may impose appropriate and reasonable conditions on the recording or photography to prevent the unauthorized disclosure of confidential information; and

(ii) Municipality officials may record audio, video record, or photograph any third party, contracted person, or City employee for any reason and no reason whatsoever on City property.

(iii) Audio and video recording and photography may be permitted in Limited Access Areas when specifically authorized by applicable law or agreements.

c) No person shall photograph, audio record, or video record any private third party lawfully entering into, using, or occupying a Limited Access Area without the express consent of such third party.

EXCLUSION

If a person violates these Rules of Conduct while in or upon City property, any Municipality Official may eject and direct such person to leave City property for a period of up to 24 hours. It shall not be necessary for such Municipality Official to allege any crime or other violation of applicable law other than these Rules of Conduct in order to support such notice of exclusion; *provided* that violation of such notice of exclusion may be deemed a trespass under applicable law. The notice of exclusion shall be in writing, given to the person excluded and signed by the Municipality Official. It shall specify the dates and places of exclusion and shall contain a warning of consequences for failure to comply with the notice of exclusion.

SECURITY PROCEDURES

a) Any person may photograph, film, or record audio of any Public Area. Any such activity should be reported to a Municipality Official, preferably a law enforcement officer if possible.

b) City employees should refrain from engaging with photographers and videographers wherever possible. City employees should monitor photographers or videographers on City property but should refrain from engaging them unless they violate any Rule of Conduct. In the event that engagement is necessary, every effort should be made to respond calmly without escalating the encounter.

c) A City employee who does not wish to be photographed or recorded may retire to a Limited Access Area.

d) City employees are not required to respond to questions or demands from any photographer or videographer and should refrain from doing so if possible

e) City employees may invite a private third-party conducting business with the City and who does not wish to be photographed or filmed to retire to a more private Limited Access Area in order to complete any business or transaction.

f) City law enforcement officers may approach photographers and videographers upon a complaint from a member of the public or City employee(s) that the activity is suspicious or based upon their own observation that the activity is suspicious or inconsistent with this Policy. This Policy neither limits nor expands the authority of City law enforcement officers to initiate and pursue investigations, to perform pat downs or frisks based upon reasonable suspicion, or to conduct searches based upon probable cause in accordance with legal authority. Photography, audio recording, or video recording does not, in and of itself, rise to the level of reasonable suspicion or probable cause.