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## Commission of Public Works

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### First Amendment Auditor Policy

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### **POLICY REGARDING PUBLIC ACCESS TO AND VIDEO AND AUDIO RECORDING ON NEW ELLENTON CPW PROPERTY**

(Note: 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 government agency 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 areas/employees in public places. That right is not unlimited and may be regulated in nonpublic forums and limited public forums. Government agencies may also regulate conduct to ensure the orderly operation of agency functions and to protect the rights of their 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 agency. The policy below also contains generally applicable rules of conduct for all government agencies.)

### **PURPOSE**

The Commissioners of the New Ellenton Commission of Public Works (NECPW) in New Ellenton, SC 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 agencies employees and the general public who do business with or use services of the NECPW. This policy is intended to distinguish those portions of the NECPW property as defined 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 NECPW property; and specify procedures for NECPW employees who encounter those who wish to access NECPW property for observational purposes.

### **DEFINITIONS**

“Limited Access Area” means any designated area on NECPW 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 closely adjacent to areas in which

private third parties conduct business the NECPW. Limited Access Areas may be designated by doors, physical barriers, building design features, signage, reception desks/stations, ropes, fencing, bollards or other visible indications. The lack of visible indications shall not prevent the NECPW from considering or treating an area as a Limited Access Area. The NECPW shall retain the right to verbally instruct third parties that an area is a Limited Access Area. Without limiting the generality of the forgoing, Limited Access Areas but are not limited to the following:

1. Employee offices
2. Employee workspaces including copy rooms, mailrooms and break areas
3. Employee parking lots, storage areas, access points or other outside areas marked for use by NECPW employees or vehicles only.
4. Areas closely adjacent to places, stations, desks, counters or teller windows at which private third parties conduct business with the NECPW.
5. 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.
6. Maintenance, storage and warehousing facilities.
7. Public Works and public safety buildings, except for any designated waiting or reception areas within.
8. Water, sewer and other public utility facilities.

“Agency Official” means, for the purposes of this policy:

1. Any person providing security services in any NECPW property pursuant to contract with the agency or with any person, firm or corporation managing a NECPW property on the agency’s behalf.
2. With respect to any building, facility, area or space assigned to the NECPW, division or agency, the Director/Manager or Supervisor of such department, division or agency, or any person that such official specifically designates in writing.
3. The NECPW Commissioners, NECPW Director, NECPW Operations and Maintenance Supervisor, NECPW Office Manager or any person that such officials specially designate in writing.

“Agency Property” means any real property owned or leased by NECPW or in which the NECPW has a property interest or property management responsibility.

“Public Area” means any area on the Agency 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 AGENCY PROPERTY**

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

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

1. No person shall enter, attempt to enter or remain in any areas of the Agency Property for any purpose other than to conduct legitimate business with the Agency with tenants located at Agency Property, to enjoy publicly accessible amenities in Public Areas, to lawfully assemble for social or public interaction in Public Areas specifically designed for such assembly, or to exercise other constitutionally protected rights. The appropriate NECPW Officials may adopt specific policies with respect to Agency Property under their custody and control to manage conditions for use of such reservation protocols, use and user priority and fees for use.
2. No person shall engage in any activity on Agency Property that would constitute a violation of federal, state, or local law or regulation.
3. No person shall engage in any activity that disrupts or interferes with the normal operation or administration of NECPW business at Agency Property, lawful use by NECPW employees and authorized users at Agency Property or Agency-permitted activities.
4. No person shall stalk, harass, intimidate or otherwise compromise the wellbeing and safety of NECPW employees or private third parties lawfully using NECPW Property. Photography, audio recording or video recording does not, in and of itself, violate this Rule of Conduct. Likewise, conduct that would otherwise violate these Rules of Conduct shall not be permitted merely because the conduct involves photography, audio recording or video recording.
5. No person shall interfere or obstruct the free passage of NECPW employees or authorized third parties in or on NECPW Property, including without limitation by standing in, blocking access to or occupying areas for purposes of photography, audio recording or video recording.

6. 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 third parties/customers. The NECPW may enforce this Rule of Conduct by imposing minimum standing or separation distances from areas, stations, desk, counters or teller windows at which private parties/customers conduct business with NECPW.

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

1. Limited Access Areas shall be accessible only to the following: (i) employee, elected officials and appointed officials of the NECPW; 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 the NECPW.
2. Photography, audio recording and video recording is prohibited in Limited Access Areas, except as follows: (i) any NECPW Official may authorize audio or 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 NECPW Official may impose appropriate and reasonable conditions on the recording or photography to prevent the unauthorized disclosure of confidential information; and (ii) audio and video recording and photography may be permitted in Limited Access Areas when specifically authorized by applicable law or agreements.
3. If a private third party lawfully entering into, using or occupying a Limited Access Area explicitly requests that another person cease photographing, audio recording or video recording such third party, then such person shall comply with such request.

## **EXCLUSION**

If a person violates these Rules of Conduct while in or upon NECPW property, any NECPW Official may eject and direct such person to leave the NECPW property or event location for a period of up to 24 hours. It shall not be necessary for such NECPW Official to allege any crime or other violation of applicable law other than these Rules of Conduct to support such notice of exclusion; provided, violation of a 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 NECPW 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**

1. Any person may photograph, film or record audio within a Public Area. NECPW employees who observe a person photographing, video recording or audio recording in a Public Area should report such activity to a NECPW Manager/Official.
2. Other than reporting such conduct, NECPW employees should refrain from engaging with photographers and videographers, unless they violate a Rule of Conduct. If engagement is necessary, NECPW employees should respond calmly without escalating the encounter.
3. A NECPW employee who does not wish to be photographed or recorded may retire to a Limited Access Area.
4. NECPW employees are not required to respond to questions or demands from any photographer or videographer and should refrain from doing so if possible.
5. NECPW employees may invite a private third party who is conducting business with the NECPW and who does not wish to be photographed or filmed to retire to a Limited Access Area to complete his or her business or transaction.
6. Law enforcement officers may approach photographers and videographers upon a complaint from a member of the public or NECPW employees 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 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.