

LOCAL LAW NO. 1 OF 2023

WHEREAS, by letter dated October 21, 2022, the City Clerk has requested a new local law regarding the recording of audio and video inside of City Hall.

WHEREAS, there has been an uptick in intrusive video and audio recording within the internal agencies of City Hall, which has caused an interruption in the daily business of the aforesaid agencies, the breach of security and privacy of the people conducting confidential and sensitive business in these agencies, and the possible breach of confidentiality; and

WHEREAS, the justification for said conduct is the First Amendment of the United States Constitution; and

WHEREAS, like all First Amendment protections, this right is subject to reasonable time, manner, and place restrictions; and

WHEREAS, the First Amendment right to record generally encompasses both video and audio recording and supports the right of citizens to film public officials in public places. However, the First Amendment right does not permit video and audio recording in restricted and prohibited areas, in general *nonpublic fora*; and

WHEREAS, traditionally public spaces within City Hall where meetings are held are considered "public forums." Video and audio recording while a public meeting is being held may be necessary and is permitted. However, in the "nonpublic forum" such as within employee workspaces, limited public spaces of City Hall, and in the Rotunda during business hours, audio or video recording shall be restricted and in some instances prohibited as unconsented video and audio recording will cause interruption of employees conducting City business, and if the videos are circulated on the internet as is generally the purpose of the recordings, the internet views may cause harm and unwarranted attention and or danger to the City's employees; and

WHEREAS, constituents conducting their personal business in City Hall do not consent to being recorded and this may be considered a breach of their privacy and security; and

WHEREAS, the Government, like any private landowner, may preserve the property under its control for the use to which it is lawfully dedicated. Likewise, a government workplace, like any place of employment, exists to accomplish the business of the employer. It follows that the Government has the right to exercise control over access to the government workplace in order to avoid interruptions to the performance of the duties of its employees; and

WHEREAS, indeed, there is a First Amendment right to record matters of public interest, however if that recording interferes with the conduct of daily business, the interruption of employees performing their job functions, and where expressed permission wasn't granted then the First Amendment Right does not apply. The governing body of City Hall reserves its right to protect City Hall for the use to which it is lawfully dedicated. The purpose of City Hall is to conduct legitimate public business. Therefore, this local law will restrict recording within City Hall

without the consent of those being recorded except for public meetings and events.

NOW, THEREFORE,

The City of Mount Vernon, in City Council convened, does hereby ordain and enact:

Section 1.

I. Violations and penalties.

(1) It shall be unlawful for any person to violate any of the terms, provisions, or directions of this Section. Each day of any such violation shall constitute a separate and distinct offense.

(2) Violations of any provision of this Section shall be subject to the following penalties: First violation - \$250.00 fine per violation and Second violation and all subsequent violations - \$500.00 fine per violation.

(3) Violations may be taken before the Mount Vernon City Court, and if the violation is proven a fine shall be assessed against the violator in accordance with the fines set forth in this Section.

(4) Any person who knowingly violates any provision of this Section may also be punished in the same manner as a misdemeanor as provided by general law.

II. Designations

(1) The City Council Chambers and conference rooms in City Hall and THE City Hall Rotunda shall be classified as nonpublic forums unless or until a public meeting is convened in such areas pursuant to public notice.

(2) All City employee work areas within City Hall shall be considered as nonpublic forums.

(3) All other areas of the City Hall shall be designated as limited public forums and only persons who are present to engage in legitimate public business with City officers or employees shall be authorized.

III. Conflict with State Law.

Nothing in this Section is intended to conflict with the provisions of the New York Constitution or any New York Statute. In the event of a direct and express conflict between this Section and either the New York Constitution or the New York Statutes, then the provisions of the New York Constitution or New York Statutes, as applicable, shall control.

IV. Control of Access to City-owned, Controlled and Leased Property.

(1) Consistent with decisions of the U.S. Supreme Court, public access to areas within enclosed

facilities owned, controlled, and leased by the City of Mount Vernon may be restricted depending upon whether such areas are classified as “designated public forum”, “limited designated public forum”, or “nonpublic forum”. How areas within enclosed facilities owned, controlled, and leased by the City of Mount Vernon are classified is based upon their intended use. For example, there are certain areas which are intended primarily for the use of City employees in the conduct of their business; there are certain areas which, while primarily intended for the use of City employees in the conduct of their business, may from time to time be utilized for the convening of public meetings; there are certain limited areas which may be open to the public while engaging in legitimate business with City officers or employees; and there may be certain areas which are primarily intended for the convening of public meetings.

(2) The City Clerk is hereby authorized to manage public access to enclosed City-owned, controlled, and leased property. In the performance of such responsibilities, the City Clerk shall have the authority to identify which areas are to be considered designated public forum, limited designated public forum, or nonpublic forum.

(3) Upon the classification of areas within enclosed City-owned, controlled, and leased property, the City Clerk is hereby authorized, subject to the availability of appropriated funds, to employ whatever means he or she deems necessary and appropriate to separate designated public forums from nonpublic forums, including, but not limited to the use of physical barriers and signage. The City Clerk shall also have the authority to develop and implement procedures to regulate and control public access within City-owned, controlled, and leased property to provide for the security and privacy of public visitors; to provide for the security and privacy of City employees and officers; and to minimize potential disruptions to the work of City government. Any person who engages in conduct that causes disruptions to the work of City government shall be deemed to no longer be present within the City-owned, controlled, or lease property on legitimate public business.

(4) The City Council Chambers and conference rooms in the City Hall and City Hall Annex are hereby declared to be nonpublic forums unless or until a public meeting is convened in such areas pursuant to public notice. All City employee work areas within City Hall and the City Hall Annex which are designated by appropriate signage as work areas shall be considered as nonpublic forums. Members of the public are prohibited from entering City employee work areas without being escorted by a City employee. All other areas of the City Hall and City Hall Annex are hereby designated as limited public forums and only persons who are present to engage in legitimate public business with City officers or employees shall be authorized. It shall be a violation of this Ordinance to be within a nonpublic forum or a limited public forum without authorization. Unauthorized persons found by the City Clerk or the Clerk’s designee to be within a nonpublic forum or a limit public forum and who refuse to leave the premises upon request, shall be considered a trespasser. Law Enforcement, at its option, at the request of the City may issue a trespass warning notice for this conduct.

(5) Except within the City Council Chambers, conference rooms, and other locations in which a public meeting is being conducted pursuant to a public notice, it shall be unlawful and a violation of this Ordinance, to record video and/or sound within City-owned, controlled, and leased property, without the consent of all persons whose voice or image is being recorded. This

prohibition shall not apply to any law enforcement activities. In addition to being a violation of this Ordinance, if anyone who is observed to be recording video and/or sound within City-owned controlled, or leased property, without the consent of all persons whose voice or image is being recorded, and such person refuses to cease activity after being advised that such activity is prohibited under this Ordinance, such refusal shall be considered to be a disruption to the work of City government. Therefore, such persons shall be deemed to no longer be present within the City-owned, controlled, or leased property on legitimate public business. The City Clerk and the Clerk's designees are hereby authorized on behalf of the City of Mount Vernon, New York to request any person who refuses to cease the unconsented video and/or sound recording to immediately leave the premises. Any person who refuses to cease the unconsented to video and/or sound recording and refuses to immediately leave the premises following the request of the City Clerk or the Clerk's designee, shall be considered as a trespasser.

Law Enforcement, at its option, at the request of the City may issue a trespass warning notice for this conduct.

(6) The City Clerk and the clerk's designees may have cause to remove any person they determine:

- a. Acts in any manner which violates or is reasonably suspected to violate any federal, state or local law, ordinance, rule or regulation; or
- b. Acts in any manner which violates any City rules or policy, including but not limited to the Facility Rules; or any directive on any sign or notice at the public property.

(7) The City Clerk and the Clerk's designees are hereby authorized on behalf of the City of Mount Vernon, New York to warn persons of this prohibited activity and request such activity to cease. Law Enforcement, at its option, at the request of the City may issue a trespass warning notice for these violations of conduct.

(8) The City Clerk and his designees are hereby authorized on behalf of the City of Mount Vernon, New York to warn persons who have entered into or remain in areas where they are not authorized to be, and to request such persons to depart. The City Clerk, and the Clerk's designees, are hereby authorized to call upon Law Enforcement to treat as trespassers any persons who refuse to depart after such a request has been made. Law Enforcement, at its option, at the request of the City may issue a trespass warning notice for these violations of conduct.

V. Facility Rules.

The following conduct is prohibited within the interior spaces of all City-owned controlled, and leased buildings of the City of Mount Vernon:

- (1) Engaging in any conduct prohibited by federal, State of New York, or City of Mount Vernon law.
- (2) Possessing any weapons, except as specifically permitted by law.

- (3) Smoking, chewing tobacco, use of e-cigarettes or vaping devices, or carrying any lighted or smoldering pipe, cigar, or cigarette.
- (4) Disruptive, harassing or unsafe behavior, including conduct which interferes with City employees or City officials in the performance of their duties, or interferes with the proper use of the City facility by others.
- (5) Abusive or harassing behavior, including use or display of obscene language, gestures, or graphics.
- (6) Blocking entrances, exits, fire exits, access areas, or otherwise interfering with the provision of services or the use of City property.
- (7) Entering or remaining in nonpublic areas without authorization. Areas inside City buildings, including offices, hallways, stairways, and elevators are open to the public only to the extent necessary to attend to City business, or attending a City-authorized function, event, or activity to which the person is an invitee, or attending a duly noticed public meeting. Otherwise, such areas are deemed nonpublic areas.
- (8) Any act which could result in substantial risk of harm to persons or property.
- (9) Disrupting City business, events, or other City sponsored or authorized activities.
- (10) Leaving unattended packages, backpacks, luggage, or other personal items. Any such items are subject to immediate confiscation.
- (11) Laying down or sleeping in chairs, benches, or otherwise.
- (12) Possession of illegal drugs.
- (13) Posting or affixing to City property without permission from the City Clerk, or his/her designee, any signs, leaflets, posters, flyers, pamphlets, brochures, and written, pictorial or graphic material of any kind.
- (14) Tampering with or unauthorized use of building or facility systems or devices, including electrical, plumbing, locks, doors or cameras.
- (15) Audio and/or video recording anywhere inside of City buildings except during duly noticed public meetings, or as otherwise approved by the City Clerk, or his/her designee. Except as otherwise approved by the City Clerk, or his/her designee, audio and/or video recording may only be conducted within the City Council Chamber, and any room, or office within which said activity has been authorized by law. Any person found to be conducting audio and/or video recording except as authorized by herein, must cease doing so immediately if any visitor, City employee or City official expresses his/her desire not to be recorded. This rule does not apply to audio and/or video recording performed by authorized law enforcement personnel engaged in the performance of their official duties. Audio and/or video recording of public meetings must be undertaken in a

quiet and orderly manner so as not to interfere with the conduct of the meeting, block the view of any person attending the public meeting, or block any aisle, row, ingress or egress.

(16) Remaining in a City building after posted hours of operation or after the conclusion of an authorized “after hours” public meeting or event.

(17) Failure to cease conduct specifically prohibited in items 1 through 16 above immediately after a request by City staff to do so.

(18) A copy of the foregoing Facility Rules shall be posted in close proximity to all public entrances of City-owned, controlled, and leased buildings of the City of Mount Vernon.

Section 2. This local law shall take effect upon filing in the office of the Clerk of the City of Mount Vernon, New York and the Secretary of State of New York.