

Sec. 21-10. Use of television surveillance equipment in investigation and detection of crime.

(a) *Statement of purpose.* The city manager has been authorized to acquire for use by personnel of the city police department, certain electronic equipment consisting of closed circuit television apparatus and appurtenances (collectively referred to in this section as surveillance equipment) to be used in the course of investigation and detection of crime, such as burglary or similar type crime, through means of surveillance by the use of such equipment. This section is passed to ensure that the equipment will be used only for its intended purposes.

(b) *Uses, prohibitions and procedures:*

(1) The surveillance equipment shall be used only in the surveillance of business or professional facilities and shall not, under any circumstances, be used on public streets or for the surveillance at any place of domestic relations, nor shall the surveillance equipment be used for any purpose in any residential location, including apartments, motels, hotels, single-family residences or multifamily residences. The surveillance equipment shall not be used for surveillance of classrooms, meeting rooms or hallways of public facilities, such as schools or colleges, but the same may be used for the surveillance of storage areas, maintenance areas and similar areas which might reasonably be subject to burglary.

(2) The surveillance equipment shall not be placed in any location without the prior written consent of the owner or person in charge, if other than the owner.

(3) Key employees of a facility where the surveillance equipment is placed will be informed of the police operations unless reasonable grounds indicate an employee may be a suspect. Other employees will be notified on a need-to-know basis as determined by the city police department.

(4) The surveillance equipment will be used during nonbusiness hours only, unless an installation is made in a warehouse or storage-type facility where normal routine business is not carried on during the day or during normal business hours.

(5) The surveillance equipment will be placed in accordance with criteria developed under the computer burglary prediction program and police information regarding possible burglaries. The decision as to whether the equipment will be placed in a particular establishment will be made by the city and not simply on the basis of a request by the owner or manager of the facility.

(6) The surveillance equipment will be used only for the purpose of its intended design.

(7) The surveillance equipment will not be loaned to or permitted to be used by other law enforcement agencies unless it is used in accordance with city ordinances and policies and under the supervision of a member of the police department. Under no other circumstances may the surveillance equipment be used or permitted to be used by any person or agency.

(8) The city manager shall make quarterly reports to the city commission regarding the use of the equipment to ensure compliance with the provisions of this section.

(c) *Penalties for violation.* It shall be unlawful to use or permit the use of the surveillance equipment in any manner not permitted by this section. Any person convicted of violating the provisions of this section shall be punished as provided in section 1-9. (Code 1960, § 18-36.1)

Gainesville Police Department

Inter-Office Communication
Chief Norman B. Botsford

To: Barbara Lipscomb
Interim City Manager

Date: July 1, 2005

From: Norman B. Botsford
Chief of Police

Subject: Closed Circuit Video Cameras in Public Places, City Ordinance 21-10

In recent months there have been several incidences of crime in many of our city parks and other public places such as the downtown plaza. Most of these crimes involve narcotics transactions and usage or prostitution related offenses. However, these parks and other public areas are common sites for personal robberies, crimes of violence, and sometimes open lewd behavior. We would like to have the ability to monitor criminal activity on public property but at this time our hands are tied.

Currently, according to City Ordinance 21-10, police use of public video surveillance is prohibited. Ironically, however, cameras are installed at some large intersections in our city to monitor the running of red lights. It's also employed in our new parking garage on SW 3rd. Street. A significant criminal mischief occurring in the new parking garage was ultimately solved due to the cameras. In summary, video surveillance in public places is currently being used in the City of Gainesville, though not at the request or initiation of the Police Department.

Video surveillance in public places is a tool commonly used around the nation by law enforcement agencies. Two notable cities in our area which use closed circuit video surveillance in public places are Tampa and Jacksonville. Tampa employs these cameras in high crime areas like Ybor City. When a personal robbery or crime of violence occurs, these agencies stand a better chance of solving the crime and preventing future crime. Locally, Alachua County, the State of Florida, and the University of Florida all use video surveillance in public places.

Additionally, there is much in case law regarding this topic. The Supreme Court in *United States vs. Knotts* 368 U.S. 276, 281-82 (1983): says 'A person traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another. When [an individual] traveled over the public streets he voluntarily conveyed to anyone who wanted to look the fact that he was traveling over particular roads in a particular direction, and the fact of his final destination when he exited from public roads onto private property.'

Also, regarding *United States vs. Sherman*, 990 F. 2d 1265 (9th Cir. 1993), the Court of Appeals for the Ninth Circuit held that individuals videotaped in public view have no reasonable expectations of privacy, and could not challenge the government's use of videotape at trial as violating the Fourth Amendment. When this test is applied to video surveillance of public streets, the prevailing legal view is that it does not violate the Fourth Amendment. In summary, past Supreme Court and lower court decisions strongly suggest that within certain limitations, continuous video surveillance is a valid exercise of a state's police powers.

I believe that in order to continue using video in public areas, and in an effort to solve and prevent crime, that portion of the City Ordinance which addresses police use of video surveillance should be rescinded. It is evident that it is considered a valuable tool both legally and investigatively.

Points of Consideration for Cameras in Public Places Discussion

- The current City Ordinance, Chapter 21-10, was written approximately 40 years ago. There was most likely a specific reason why police use of closed captioned video surveillance was prohibited at that time. We do know that in 1967 the Supreme Court of the United States entered the opinion of Katz v. United States, where the court held that what a person knowingly exposes to the public, he has no expectation of privacy and the fourth amendment is not violated.
- Florida State Statute does address the use of video surveillance in private places such as residences and private business. Our agency has no intention of employing video or audio surveillance in a home or private business without the permission of the owner. If video surveillance were to be used by our agency in the future it would be solely for the prevention or detection of crime and would be regulated by Florida Law.
- The current ordinance speaks only to police use of Closed Captioned Video Surveillance, however, it is believed that the spirit of the ordinance implies that no video of any type could be used by GPD.
- Currently in the City of Gainesville, video surveillance is employed by Public Works at numerous intersections to monitor traffic. Additionally, cameras are installed in parking garages and other city compounds. The police department, the agency responsible for solving crimes that may occur at those locations, is the only city agency prohibited from the use of the cameras.
- If the State of Florida were to change the decision on the use of "Red Light" cameras, a topic that commonly comes up, the City's ordinance would prevent us from complying with the new policies.
- The police department has been requested by other city offices and the City Manager to use video surveillance in the past. Future requests would only be possible if the current ordinance is amended.
- In criminal cases where video surveillance is presented as evidence, the defendants more often submit a plea rather than taking the case further in the criminal justice system. In these cases, quick disposal of the case means a more efficient use of tax payer dollars since public attorneys and law enforcement officers would not be tied up going to depositions and court hearings.
- In summary, the Gainesville Police Department would like to better prevent and detect crime as hundreds of other police agencies do, by occasional use of video surveillance. At this time our hands are tied if a specific case came up that could easily be solved by video surveillance.

Referral – Security Cameras in Public Places

There are protections in the Florida Constitution to protect individuals from intrusive governmental behavior. Elimination of Section 21-10 of the Gainesville Code of Ordinances will not diminish these protections.

Article I, Section 23, Florida Constitution

Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

Article I, Section 12, Florida Constitution

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained. This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution.

More useful than delineating specific private places is utilization of the standard the court uses in judging the right of privacy.

Test for measurement of the Fourth Amendment right of privacy requires a determination of whether the individual had a subjective expectation of privacy and whether society recognizes that expectation.

Boyer v. State, 736 So.2d 64, 24 Fla. L. Weekly D1307, Fla.App. 4 Dist., June 02, 1999

In order to establish a right of privacy, the individual must establish that "a reasonable expectation of privacy ... exist[s]." *Winfield v. Division of Pari-Mutuel Wagering*, 477 So.2d 544, 547 (Fla.1985).

In the Florida Supreme Court's well-developed privacy jurisprudence, the fundamental basis of the right of privacy is a legitimate expectation of privacy. Not every fact in every circumstance is private, and not every act of government violates the right to be let alone. The concept by which

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the court separates the appropriate from the inappropriate instance for invoking the privacy right is this expectation. *Stall v. State*, 570 So.2d 257, 261 (Fla.1990).

A right of privacy cannot attach when there is no expectation of privacy.

When surveillance of areas that are reasonably considered private is sought, that is not done via a decision made by the police, but rather through judicial proceedings with all the protections that process brings.

...concern, not only to the individual but to a society which chooses to dwell in reasonable security and freedom from surveillance. When the right of privacy must reasonably yield to the right of search is, as a rule, to be decided by a judicial officer.

Haire v. Florida Dept. of Agriculture, 2002 WL 1077187, Fla.Cir.Ct., May 28, 2002

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