
	MESQUITE POLICE DEPARTMENT
	242.00 SEARCHES WITHOUT A WARRANT
	Effective Date: March, 2013
	Approved: _____  Chief of Police

I. Policy Statement

The U.S. Constitution guarantees people to be free from unreasonable searches, and except under specific circumstances, requires a valid warrant to conduct a search. The policy of the Mesquite Police Department is to conduct searches only as allowed by law to ensure the rights of all persons are protected.

II. Definitions

- A. Search incident to arrest: A direct and purposeful search of an arrested person using hands and/or metal detector.
- B. Plain view: A search which allows a law enforcement officer to seize evidence or contraband when an officer views it from a lawful vantage point.
- C. Consent: A search based on the voluntary consent of an individual whose person or property is being searched.
- D. Exigent Circumstances: Emergency or unforeseen circumstances which require an officer to act immediately.

III. Procedure

- A. Searches incident to arrest
 - 1. Arresting officers shall conduct a search of all arrested persons to the extent necessary to protect the officer, the arrestee and any other person.
 - 2. Officers may conduct a full search of the arrested person regardless of the reason for the arrest.
 - 3. Officers may also search the area within the immediate control of the arrestee for weapons and evidence which may be destroyed.
- B. Plain View Searches
 - 1. An object or odor is considered in plain view if an officer has the right to occupy the place from where the observation is made.
 - 2. Officers may seize items of evidence without a warrant that are observed "in plain view" under the following circumstances:
 - a. The officer must be in a position which he/she has a legal right to be.
 - b. The officer must actually observe the item of evidence.
 - c. It must be immediately apparent to the officer that the item observed is evidence or contraband and subject to seizure.
 - d. A warrant may be required for areas outside the span of control.
 - 3. If an officer makes a lawful arrest from a vehicle and an unsecured arrestee is within arms reach of the passenger compartment, the passenger compartment can be searched incident to arrest. (Arizona v Gant 2009)
 - 4. If an officer makes an arrest and has probable cause to believe that evidence of a crime could be found in a vehicle's passenger compartment, it can be searched incident to that lawful arrest. (Arizona v Gant 2009)
 - 5. If an officer has probable cause to believe that evidence of a particular crime is located in a vehicle, the officer can search the vehicle without a warrant, based upon the motor vehicle exception to the search warrant. (Carroll v U.S. 1925)
- C. Consent Searches
 - 1. Consent to search is only valid if it is given knowingly and voluntarily by a person who has authority to consent to a search.

2. Officers shall not use coercion or deceit to obtain consent to search.
 3. Officers conducting a consent search shall limit the search to areas within the scope of the consent and immediately terminate the search if consent is revoked.
 4. When possible, officers should obtain written consent via consent to search form and/or audio/video recorded consent from the person.
- D. Exigent Circumstances
1. In an emergency, an officer may enter a premise or vehicle without a search warrant if the officer has reasonable suspicion to believe immediate entry must be made to aid a person in immediate danger of death or bodily injury, or to prevent the imminent destruction of evidence or property.
 2. Prior to involuntary or forced entry, the officer should reasonably attempt to obtain voluntary admittance to the premises or vehicle. Following entry, the officer may search the location only to the extent necessary to carry out the purposes of the entry and the protection of the officers.
- E. Felonies or Hot Pursuit
1. Officers may enter a building, car or other structure with the intent to search while in hot pursuit or in reference to a felony, in accordance with the current Texas Code of Criminal Procedure.
- F. Vehicle Inventory
1. A vehicle that has been lawfully taken into custody by a law enforcement officer (ex: impoundment), may be inventoried. Inventories will be conducted in accordance with current department policy.

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