

Police Review Commission (PRC)

**POLICE REVIEW COMMISSION  
REGULAR MEETING  
AGENDA**

**Wednesday, October 24, 2018  
7:00 P.M.**

South Berkeley Senior Center  
2939 Ellis Street, Berkeley

- 1. CALL TO ORDER & ROLL CALL**
- 2. APPROVAL OF AGENDA**
- 3. PUBLIC COMMENT**

*(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers. They may comment on items on the agenda or any matter within the PRC's jurisdiction at this time.)*

- 4. APPROVAL OF MINUTES**

Regular Meeting of October 10, 2018

- 5. CHAIR'S REPORT**

- 6. PRC OFFICER'S REPORT**

- a. Status of complaints; other items.
- b. Prioritizing new agenda items (**discussion & action**)

- 7. CHIEF OF POLICE'S REPORT**

Crime, budget, staffing, training updates, and other items.

- 8. SUBCOMMITTEE REPORTS (discussion & action)**

Report of activities and meeting scheduling for all Subcommittees, possible appointment of new members to all Subcommittees, and additional discussion and action as noted for specific Subcommittees:

- a. Homeless Encampment Subcommittee
- b. Prioritizing Safety for Sex Workers Subcommittee

**9. OLD BUSINESS (discussion & action)**

- a. Review and approval of 2017 PRC Annual Report.  
From: PRC Officer  
*(Commissioners – See draft distributed on Sept. 26, 2018; Public – See pp. 37 – 73 of Oct. 10, 2018 agenda packet.)*
- b. Review Lexipol Policy 424 on use of body-worn cameras, including sufficiency of provisions on use of associated iPhone and outstanding concerns from April 2017.  
From: Commissioner Prichett  
*(See also pp. 17 – 31 of Oct. 10, 2018 agenda packet.)*
- c. Lexipol Policies for review and approval:  
From: Lexipol Subcommittee

Lexipol #	G.O.	Title
312	I-15 (part), J-18 (part)	Temporary Custody of Juveniles
313	none	Adult Abuse
314	H-07	Discriminatory Harassment
315	C-08	Child Abuse

*(See materials in "Lexipol" packet of Oct. 10, 2018)*

- d. Examination of issues surrounding the BPD Response to Protests on August 5, 2018, including:
  - i) Pre-emptive confiscation of sound truck near Ohlone Park, and other "de-escalation" strategies used.  
From: Commissioner Prichett
  - ii) Helping BPD better understand the changing role of Black Bloc to Antifa in making protests safer, for purposes of BPD's handling of future protests to ensure all participants are safe.  
From: Commissioner Sherman  
*(See materials on pp. 75 – 110 of Oct. 10, 2018 agenda packet.)*
- e. Amendment to Standing Rules to require that a commissioner must be present to be eligible to run for Chairperson or Vice-chairperson.  
From: Commissioner Allamby
- f. Whether any BPD policies or laws govern the BPD's audio recording of their interactions with civilians without their knowledge.  
From: Commissioner Prichett
- g. Issues surrounding Commissioners' communications using personal devices and accounts being subject to Public Records Act requests, including whether Commissioners may be assigned City email addresses for Commission business.

From: Commissioner Ramsey  
(See pp. 33 – 37 of Oct. 10, 2018 agenda packet.)

- h. Review requirements surrounding the preparation of After-Action Reports and whether release (or withholding) of such reports or parts thereof are compliant with the Public Records Act.

From: Commissioner Prichett

- i. Responsiveness of BPD management to PRC requests.

From: Commissioner Prichett

- j. The need for PRC to do outreach and what outreach efforts the PRC might undertake.

From: Commissioner Matthews

#### **10. NEW BUSINESS (discussion & action)**

- a. October 2, 2018 referral from City Council regarding extending the time limit for investigations and notification of discipline from the current limit to one calendar year.

#### **11. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS**

Attached

#### **12. PUBLIC COMMENT**

*(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on items on the agenda at this time.)*

#### **13. ADJOURNMENT**

**Communications Disclaimer**

Communications to the Police Review Commission, like all communications to Berkeley boards, commissions or committees, are public record and will become part of the City's electronic records, which are accessible through the City's website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the PRC Secretary. If you do not want your contact information included in the public record, do not include that information in your communication. Please contact the PRC Secretary for further information.



**Communication Access Information (A.R.1.12)**

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

**SB 343 Disclaimer**

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at the Police Review Commission, located at 1947 Center Street, 1st floor, during regular business hours.

Contact the Police Review Commission at (510) 981-4950 or [prc@cityofberkeley.info](mailto:prc@cityofberkeley.info).

**PRC REGULAR MEETING ATTACHMENTS**  
**October 24, 2018**

**MINUTES**

October 10, 2018 Regular Meeting *Draft* Minutes Page 10

October 17, 2018 Special Meeting *Draft* Minutes Page 13

**AGENDA-RELATED**

**Item 9.b.** – Memo to the Police Review Commissioners from the PRC Officer, dated 10-18-18: Analysis of Berkeley Police Department Lexipol Policy 424, Body Worn Cameras, and Comparison to PRC and BPD Proposed Policies of April 2017. Page 15

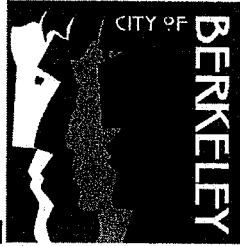
**Item 9.b.** – Email from Jim Chanin, dated 10-14-18 re: Clarification of Oakland PD body-worn camera policy. Page 57

**Item 9.b.** – Oakland Departmental General Order I-15.1 re Portable Video Management System. Page 59

**Item 9.b.** – Oakland Departmental General Order I-19 re Duty Use of Cellular Telephones and Personal Electronic Devices. Page 75

**Item 10.a.** – Consent Calendar dated 10-2-18, from Councilmember Kriss Worthington: Refer the Police Review Commission to extend time period to impose discipline on Berkeley Police Department officers pursuant to Police Review Commission findings. Page 79





DRAFT

**POLICE REVIEW COMMISSION**  
**REGULAR MEETING**  
**MINUTES**  
*(unapproved)*

**Wednesday, October 10, 2018**  
**7:00 P.M.**

South Berkeley Senior Center  
2939 Ellis Street, Berkeley

**1. CALL TO ORDER & ROLL CALL BY CHAIR MATTHEWS AT 7:06 P.M.**

Present: Commissioner Sahana Matthews (Chair),  
Commissioner George Perezvelez (Vice Chair) (arrived 7:25 p.m.)  
Commissioner Gwen Allamby  
Commissioner Andrea Prichett  
Commissioner Ismail Ramsey  
Commissioner Terry Roberts  
Commissioner Ari Yampolsky

Absent: Commissioners Kitty Calavita, Michael Sherman.

PRC Staff: Katherine J. Lee, PRC Officer

BPD Staff: Lt. Angela Hawk, Sgt. Cesar Melero

**2. APPROVAL OF AGENDA**

**With the following changes – the postponement of Items #10.d. and 9.c., and the combining of Items # 9.a. and 10.c. to be considered at the time certain of 8:00 p.m. – the agenda was approved by general consent.**

**3. PUBLIC COMMENT**

There was 1 speaker.

**4. APPROVAL OF MINUTES**

**The Regular Meeting Minutes of September 26, 2018, were approved by general consent.**

## 5. CHAIR'S REPORT

Chair looks forward to a productive meeting.

## 6. PRC OFFICER'S REPORT

- a. Status of complaints: no new complaints filed since late June. Reminder of October 17 special PRC meeting for presentation of de-escalation training.
- b. Report on NACOLE (Nat'l Assoc. for Civilian Oversight of Law Enforcement) Conference. Comm. Allamby, PRC Officer Lee, and Comm. Perezvelez reported on their impressions of the conference, held Sept. 30 – Oct. 4 in St. Petersburg, Fla. Comm. Ramsey reported on his impressions of the IACP (Int'l Assoc. of Chiefs of Police) conference Oct. 6 – 9 in Orlando, Fla.
- c. Prioritizing new agenda items (**discussion & action**)  
Not discussed.

## 7. CHIEF OF POLICE'S REPORT

Lt. Hawk reported on behalf of Chief Greenwood:

- Body-worn camera training to begin week of Oct. 22. A few officers have been doing a trial run.
- Staffing currently at 157 officers, which does not count those in academy and out on leave or injury.
- Lt. Hawk is currently in management school; her class has agencies from all over CA. A big topic is staffing.
- Recruitment team of 2 full- and 2-part-time staffers has begun it work though not yet fully up and running.

## 8. SUBCOMMITTEE REPORTS (discussion & action)

Report of activities and meeting scheduling for all Subcommittees, possible appointment of new members to all Subcommittees, and additional discussion and action as noted for specific Subcommittees:

- a. Homeless Encampment Subcommittee – still awaiting Council action on revised policies and answer to which policies are being enforced in the meantime.
- b. Prioritizing Safety for Sex Workers Subcommittee  
**Chair Matthews appointed public member Julie Leftwich and herself to this subcommittee (joining Commissioner Ramsey).**

## 9. OLD BUSINESS (discussion & action)

- a. Review policy on use of body-worn cameras, including sufficiency of provisions on use of associated iPhone.  
*Combined with New Business Item #10.b., Presentation by and discussion with attorney Jim Chanin on body-worn camera policies*



**Motion to constitute a subcommittee to review the four areas of disagreement with the BPD on the BWC policy, and the iPhone issue. Friendly amendment: and any other new provisions that have been added. Moved/Seconded (Ramsey/Prichett)**  
**Motion withdrawn by Ramsey.**

**Motion to ask the PRC Officer to prepare an analysis comparing the BWC policy that the PRC developed in 2016 with the current proposed Lexipol policy, calling out the main policy choices and areas of disagreement; and agendaizing the analysis for a full Commission meeting for its consideration.**

Moved/Seconded (Yampolsky/Perezvelez) **Motion Carried**  
 Ayes: Allamby, Matthews, Perezvelez, Ramsey, Roberts, and Yampolsky.  
 Noes: Prichett Abstain: None Absent: Calavita, Sherman

b. Lexipol Policies for review and approval:

Lexipol #	G.O.	Title
100	A-1	Law Enforcement Authority
103	P-18	Policy Manual
200	D-2, D-6, R-4, U-3	Organizational Structure and Responsibility
201	S-4	Special Orders
202	D-9	Emergency Management Plan
203	T-7	Training Policy
204	E-12	Electronic Mail
302	H-6, T&IB 247	Handcuffing
308	Council Res. 51,408-N.S.	Canines
310	D-5	Domestic Violence
311	S-6	Search and Seizure

**Motion to prohibit the use of spit hoods.**  
 Moved (Prichett) Motion failed for lack of a second.

**Motion to hold off on approval of Lexipol Policy #302 until the Police Department makes a presentation on the issue of the spit hoods.**  
 Moved/Seconded (Ramsey/Yampolsky)

**Friendly amendment: and have a health care or medical care provider make a presentation as well.**  
 Moved by Yampolsky; accepted by Ramsey

**Motion, as amended, Carried**  
 Ayes: Allamby, Matthews, Prichett, Roberts, and Yampolsky.

Noes: None Abstain: Perezvelez, Ramsey Absent: Calavita, Sherman

**Motion to send Lexipol Policy #308 back to the Lexipol Subcommittee for further consideration.**

Moved/Seconded (Ramsey/Perezvelez) **Motion Carried**

Ayes: Allamby, Matthews, Perezvelez, Prichett, Ramsey, Roberts, and Yampolsky.

Noes: None Abstain: None Absent: Calavita, Sherman

**Motion to pass the above group of Lexipol Policies with the exception of #302 and #308 [#s 100, 103, 200, 201, 202, 203, 204, 310, and 311]**

Moved/Seconded (Perezvelez/Allamby) **Motion Carried**

Ayes: Allamby, Matthews, Perezvelez, Prichett, Ramsey, Roberts, and Yampolsky.

Noes: None Abstain: None Absent: Calavita, Sherman

- c. Examination of issues surrounding the BPD Response to Protests on August 5, 2018, including pre-emptive confiscation of sound truck near Ohlone Park, and other "de-escalation" strategies used.  
*(Item postponed to the next meeting.)*
- d. Amendment to Standing Rules to require that a commissioner must be present to be eligible to run for Chairperson or Vice-chairperson  
*(Item postponed to the next meeting.)*
- e. Whether any BPD policies or laws govern the BPD's audio recording of their interactions with civilians without their knowledge.  
*(Item postponed to the next meeting.)*
- f. Issues surrounding Commissioners' communications using personal devices and accounts being subject to Public Records Act requests, including whether Commissioners may be assigned City email addresses for Commission business.  
*(Item postponed to the next meeting.)*
- g. Review requirements surrounding the preparation of After-Action Reports and whether release (or withholding) of such reports or parts thereof are compliant with the Public Records Act.  
*(Item postponed to the next meeting.)*
- h. Responsiveness of BPD management to PRC requests.  
*(Item postponed to the next meeting.)*
- i. The need for PRC to do outreach and what outreach efforts the PRC might undertake.  
*(Item postponed to the next meeting.)*

**10. NEW BUSINESS (discussion & action)**

a. Review and approval of 2017 PRC Annual Report.  
*(Item postponed to the next meeting.)*

b. Lexipol Policies for review and approval:

Lexipol #	G.O.	Title
312	I-15 (part), J-18 (part)	Temporary Custody of Juveniles
313	none	Adult Abuse
314	H-07	Discriminatory Harassment
315	C-08	Child Abuse

*(Item postponed to the next meeting.)*

c. Presentation by and discussion with attorney Jim Chanin on body-worn camera policies

*(Considered with Item #9.a. above.)*

d. Additional issue related to BPD response to protests on August 5, 2018: Helping BPD better understand the changing role of Black Bloc to Antifa in making protests safer, for purposes of BPD's handling of future protests to ensure all participants are safe.

*(Item postponed to the next meeting.)*

**11. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS**

Attached

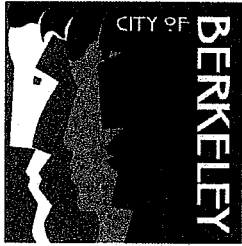
**12. PUBLIC COMMENT**

There was 1 speaker.

**13. ADJOURNMENT**

**By general consent, the meeting was adjourned at 9:59 p.m.**





DRAFT

**POLICE REVIEW COMMISSION  
SPECIAL MEETING  
MINUTES  
(approved)**

**Wednesday, October 17, 2018  
7:00 P.M.**

South Berkeley Senior Center  
2939 Ellis Street, Berkeley

**1. CALL TO ORDER & ROLL CALL BY CHAIR MATTHEWS AT 7:05 P.M.**

- Present: Commissioner Sahana Matthews (Chair),  
Commissioner Gwen Allamby  
Commissioner Kitty Calavita  
Commissioner George Perezvelez (arrived 7:35 p.m.)  
Commissioner Andrea Prichett  
Commissioner Ismail Ramsey
- Absent: Commissioners Terry Roberts, Michael Sherman, Ari Yampolsky
- PRC Staff: Katherine J. Lee, PRC Officer
- BPD Staff: Sgt. Spencer Fomby, Sgt. Rashawn Cummings, Sgt. Cesar Melero,  
Sgt. Sean Ross (BPA; arrived 7:50 p.m.)

**2. PUBLIC COMMENT**

There were no speakers.

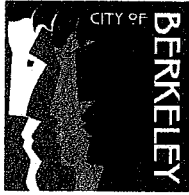
**3. BERKELEY POLICE DEPARTMENT PRESENTATION OF DE-ESCALATION TRAINING PROGRAM FOR POLICE OFFICERS (discussion or action)**

The presentation was delivered by Sgt. Spencer Fomby with questions from Commissioners and members of the public. (No action.)

**4. ADJOURNMENT**


**By general consent, the meeting was adjourned at 10:08 p.m.**





Police Review Commission (PRC)

October 18, 2018

To: Police Review Commissioners  
From: Katherine J. Lee,  Police Review Commission Officer  
Re: Analysis of Berkeley Police Department Lexipol Policy 424, Body Worn Cameras, and Comparison to PRC and BPD Proposed Policies of April 2017

## I. Background

Following the work of the PRC Subcommittee on Body-Worn and Dash Cameras, with a BPD representative participating in almost all meetings, the PRC approved a proposed policy for the use of Body-Worn Cameras on June 8, 2016. The BPD did not agree with all aspects of the PRC's proposal, and PRC and BPD representatives presented their respective proposals to the City Council at a July 19, 2016 Worksession.

The Council asked the PRC and BPD to attempt to work out their differences on four main issues. Representatives of the two groups met beginning in September 2016 and, on April 26, 2017, the PRC approved a revised draft policy. As of that date, PRC and BPD had reached agreement on one issue and were unable to fully resolve their differences on three aspects of the policy, and had identified a fifth additional issue.

The BPD did not release another version of its BWC policy until issuing Lexipol Policy 424 on September 28, 2018. The policy was revised during the meet-and confer process with the Berkeley Police Association.

At your October 10, 2018 meeting, you asked me to provide an analysis of the just-issued BWC policy compared with the PRC's 2016<sup>1</sup> policy, specifically regarding the four outstanding disagreements, and any other aspects of the BDP's policy that the PRC may have concerns about. That analysis follows.

*Policy versions and references:* The recently-issued policy is Lexipol 424 (Attachment A). At the time of drafting in 2016 and 2017, the policy number was 450. Sections of the PRC's desired policy will be referred to as "PRC 450.xx" (Attachment D) and the BPD's latest draft, dated April 4, 2017, as "BPD 450.xx" (Attachment C.)

## II. Issues as of April 2017 and current status

A. Use of mobile recording devices other than department-issued BWCs. Initially, the PRC policy prohibited the use of personal recording devices, except with the Chief's express permission, because of the lack of safeguards in preserving and maintaining

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<sup>1</sup> I assume the desired analysis is of the most recent draft policy approved by the PRC in April 2017.

recordings from non-departmental equipment. The Department, on the other hand, maintained that if a BWC is not available or not working, an officer should be allowed to use other means, such as a cell phone, to record an incident.

Thus, the BPD proposed that officers “may additionally use personally owned recorders (e.g. cell phone)” in addition to or in lieu of the BWC “where the issued device fails and/or is not functioning (e.g. malfunction, broken, or battery dead).” [BPD 450.6.] Videos captured with a personally owned recorder were subject to the retention and release requirements of the BWC policy, and required the reason for using the personal device to be documented and explained in the police report. The PRC approved the BPD’s alternative language, except for a minor wording change to make clear the restriction on using personal devices.

Lexipol 424.13. The new policy seems to broaden the circumstances in which officers can use personal devices, “Officers may not use personally owned recorders . . . to document contacts unless exigent circumstances exist to warrant the use” of the personal device. (Note language change from allowing their use in certain situations to prohibiting their use, with exceptions.)

Videos captured with personal devices remain subject to the retention and release requirements of the policy, and the reason must still be documented and explained.

**Discussion point: Get clarification on the meaning of “exigent circumstances” and perhaps require some examples be listed in the policy.**

B. Release of recordings to PRC. The PRC wanted BWC video to be released to PRC staff in conjunction with a PRC investigation of a civilian complaint. The BPD initially maintained that video from body-worn cameras should be treated as other BPD records under General Order R-23, “Release of Public Records and Information.” Subsequently, the BPD revised its position to allow the PRC Officer or Investigator and Commissioners assigned to a Board of Inquiry (BOI) to review video related to the investigation of a specific complaint, but viewing would have to occur at the police department, conducted by an Internal Affairs sergeant. [BPD 450.8(a).]

While the PRC initially endorsed this change, staff had concerns about the viability of viewing video at the police department only. PRC staff access to relevant video while interviewing a complainant, subject officer, or witness in the course of an investigation is critical. Due to the independent and confidential nature of the PRC’s investigation, even as to Internal Affairs, staff believed that video review at the department with IA present was not appropriate. The PRC hoped it would be technologically feasible to access to video from the Department’s server, which access would be limited to video in specific cases, and trackable.

Lexipol 424.18.1 has addressed many of these concerns. It provides the PRC Officer and Investigator with user account access to evidence files for use during a complaint investigation and to facilitate viewing by BOI members during a BOI. Staff may not make copies, allow unauthorized people to view, or access anywhere except from City premises. Staff access will create an audit trail, BPD retains custody and control of the recordings, and content is subject to the confidentiality provisions of POBRA, the Penal Code, and the PRA. These provisions are reasonable to staff.



**Discussion point: Chief has told PRC Officer that BOI members may review video with PRC staff before the BOI. Need clarification on whether complainants and civilian witnesses may do so. Suggest revision to expressly state that all such parties are authorized to view.**

C. Activation of the BWC during interrogations. The PRC wanted BWCs to be activated for all interrogations. [PRC 450.5(b).] The BPD believed it should have discretion for interactions that transition into interrogations, and for people unwilling to give a statement with the camera on, and did not initially include interrogations in the list of events that trigger discretionary activation of the BWC. However, the BPD later added to its proposed policy custodial interviews as a circumstance when the camera *should* be turned on. [BPD 450.5(f).]

Lexipol 424.7 retains the “should” (i.e. discretionary activation) for custodial interviews, but adds “unless there are other recording devices being used.” Also, officers must document and explain in their report why an interview was not recorded, if the BWC was de-activated during a custodial interview or interrogation.

**Discussion point: Decide whether use of other recording devices during custodial interviews and interrogations is sufficient.**

D. Review of recordings before giving a statement or writing report. The PRC proposed that in all reportable use-of-force incidents, the officer not be allowed to view the video of the incident until after he or she provides an initial report or statement, which may be supplemented after viewing the video. Additional procedures were provided for preserving recordings in cases of grave bodily injury, which include an officer-involved shooting or in-custody death. [PRC 450.7.2.]

The BPD allowed officers to view video before writing a report in all cases except those involving “an officer-involved shooting or in-custody death.” [BPD 450.8.] The Department viewed the PRC’s broader requirements as onerous. However, as there are only about 40 to 50 use-of-force incidents per year, according to BPD, the PRC did not believe its proposal to be overly burdensome.

Lexipol 424.17 retains the gist of the BPD’s policy as last seen; officers may review their own BWC video in furtherance of official duties, including report writing, with the exception of incidents resulting in grave bodily injury or death, including an officer-involved shooting or an in-custody death (424.17.1). The procedures in 424.17.1 are more detailed than in the BPD’s draft: BWC of the involved officer is to be taken away and secured, and the officer may not access or obtain the footage until the criminal investigator has reviewed the file(s); also, no officer involved in a critical incident may view any video recordings before an interview by the criminal investigative unit and command approval. The involved officer and his/her representative may review the recording before the interview ends and may supplement his/her statement.

**Discussion point: PRC should decide whether to reiterate its original position.**

5. Mandatory activation in specified circumstances. This is an issue the PRC did not identify until after the July 2016 Worksession. The BPD draft policy stated that the portable recorder “should” be activated in any of the situations described; i.e., activation is discretionary. The PRC believed that this amount of discretion undermines the value of the body-worn camera, as civilians would view officers as having the ability to selectively

record. Furthermore, this discretionary language is at odds with the body-worn camera policies adopted by the Oakland, Richmond, BART, and San Francisco Police Departments. So, the PRC's policy states that the body camera "shall" be activated; i.e., activation is mandatory in the circumstances described. [PRC 450.5.]

The PRC identified a related concern, with Cessation of Recording; under both the PRC and BPD draft policies, "Once activated, the BWC should remain on continuously under the member's direct participation in the incident is complete or the situation no longer first the criteria herein for activation." [PRC 450.5.4; BPD 450.5.2] The PRC changed "should" to "shall" in its proposed policy, because the point of mandatory activation is negated if officers have absolute discretion as to when they may cease recording.

Lexipol 424.7 states, "The BWC shall be activated" in the listed situations, which are essentially the same situations as in the PRC policy except for interrogations. Under Lexipol 424.11, once activated, the officer "may mute or deactivate their BWC at any time based on their discretion, and in the following circumstances: . . ." Also, "Decisions regarding the reason for muting or BWC deactivation should be documented."

Thus, while BPD's policy on activation has changed and is now in alignment with the PRC's position, the discretion to cease recording remains a concern. The BPD language requiring documenting the reason for muting or deactivating is helpful, however.

**Discussion point: Consider reiterating the case against discretionary muting or deactivating of the BWC, or limit discretion to specified situations.**

### **III. New and significant issue arising after April 2017**

The BPD and PRC's April 2017 policies were written before the BWC equipment was purchased. Eventually, the BPD entered into a contract with Axon for BWCs and associated hardware and software, including an iPhone for using the Axon View and Axon Capture applications.

According to Chief Greenwood's February 12, 2018 memo (Attachment B), Axon View will allow users to, among other things, view live video, and review video while it is stored on the BWC (that is, until videos are uploaded from the BWC at the end of each shift). Axon Capture will allow officers to use the iPhone camera and microphone to take photographs, and record audio and video.

While both applications will apparently enhance use of the BWC and make video tagging and evidence collection more efficient, very little of Lexipol 424 applies to the iPhone. The prohibition in Lexipol 424.13 against retaining BWC recordings appears to apply to BWC recordings viewed on the iPhone. It is unclear, however, whether the requirement in that same section that officers who use a recording device aside from or in addition to their BWC, must document and explain such use, applies to recordings made with the iPhone.

Other issues raised by use of the iPhone and the applications include:

- In incidents resulting in grave bodily injury or death, the BWC is taken from the officer and secured. Is the iPhone taken as well?

- In such incidents, the officer is not to view video before giving a statement. How is an officer prevented from viewing the video on his/her iPhone?
- Per the Chief's Feb. 12 memo, items uploaded from Axon Capture to evidence.com are subject to the same evidentiary standards as video collected from BWCs. In what policy is that contained? Is there a requirement to upload all photos, audio, and video recordings taken or made with the iPhone?

#### **IV. Comparison of Lexipol Policy 424: Body Worn Cameras (issued Sept. 28, 2018) with policy 450: Portable Audio/Video Recorders (draft dated April 4, 2017).**

This is a section-by-section review, with new or revised sections raising possible questions or concerns indicated by double lines in the left margin.

##### **424.1 PURPOSE AND SCOPE**

Applies to portable BWCs only. Does not apply to non-BWC evidence, including other methods of audio or video recordings, interviews or interrogations at BPD, or undercover operations, wiretaps, eavesdropping.

In contrast, **450.1** applied to all portable audio/video recording devices, but not to lawful surreptitious audio/video recording or eavesdropping. Thus, all references to portable audio/video recorders are changed to BWCs.

##### **424.2 POLICY**

Substantially similar to **450.2**.

##### **424.3 CONFIDENTIALITY AND PROPER USE OF RECORDINGS**

This language was in the PRC's draft (PRC 450.2a) but not the BPD's draft. It limits BWC use to enforcement and investigative activities involving members of the public. Recordings will capture evidence for use in a variety of proceedings protected by confidentiality laws and department policy. Improper use or release of BWC records is prohibited.

##### **424.4 COORDINATOR**

Chief appoints an officer to coordinate the use and maintenance of BWCs and the storage of recordings, and delineates specific tasks, such as establishing a system for downloading, storing and security of recordings. Almost identical to **450.9**, except that item (g), on maintain logs of access and deletions recordings, is more detailed in current policy.

Also, **424.4** incorporates, with substantially the same language, **450.3** Member Privacy Expectation (recordings are the property of the BPD and no expectation of privacy or ownership interest in them).

##### **424.5 MEMBER RESPONSIBILITIES**

Before going into service, each uniformed officer assigned to wear a BWC must make sure that s/he is equipped with a working BWC; officer must report nonworking or malfunctioning equipment promptly to supervisor and get a functioning device as soon as practicable. Substantially similar to **450.4**.

However, where both the current policy and 450.4 required officers to wear the recorder "in a conspicuous manner," but are not required to obtain consent from members of the public before recording, 450.4 also required officers to "otherwise notify persons that they are being recorded, whenever possible." That language is not included in current policy. Instead, 424.5 states that officers are not required give notice to members of the public before recording with their BWC. (2<sup>nd</sup> paragraph.)

Draft 450.4 allowed non-uniformed officers to use a BWC whenever that officer believed that it "may be useful." Current policy 424.5 is more restrictive: non-uniformed members must obtain the Chief's approval to use a BWC.

The requirement for officers to document the existence of a recording in any report or other official record of the contact, any BWC malfunction or deactivation, or failure to record when required (with an explanation), is retained.

#### **424.6 SUPERVISOR RESPONSIBILITIES**

This section is revised and slightly more detailed than the draft **450.4.1**. Current policy states that the "on-scene" supervisor "shall" take immediate custody of involved officer's/officers' BWC when it may have captured "an incident involving an officer-involved shooting or use of force resulting in death or great bodily injury" and ensure it is timely uploaded.

The draft did not specify the on-scene supervisor, and used "should" instead of "shall." However, these responsibilities applied to incidents "involving an officer-involved shooting or in-custody death." While the current policy of including incidents of "great bodily injury" is broader, it is unclear whether in-custody deaths *not* caused by use of force are covered.

The requirement that supervisors must review relevant body worn camera recordings before submitting administrative reports is maintained. The current policy adds that the supervisor "may" review relevant BWC video and audio in the field "in furtherance of their duties and responsibilities."

#### **424.7 ACTIVATION OF THE BODY WORN CAMERA**

As discussed earlier in Sec. II.E. of this memo, the discretionary activation of the BWC in the draft policy (**450.5** Activation of the Portable Recorder) has been changed to mandatory activation in enumerated situations. The specified situations are substantially similar, with the following exceptions:

-- Subsection (d) regarding search activity states that, "once a location has been secured and the [officer] is not interacting with detainees or arrestees, the [officer] may mute their BWC when conducting a search for evidence." The reason for allowing muting could be that no conversations are taking place, but this should be clarified.

-- Reference to use during Crowd Control situations was deleted, and given its own section (**424.9**).

As discussed in Sec. II.C. above, custodial interviews are a situation in which activation is discretionary.

Language that an officer is not expected to jeopardize his/her safety to activate a BWC, and to activate as soon as it is safe, is retained.

#### **424.8 VICTIMS AND WITNESSES OF CRIMES; INFORMANTS**

This section of the current policy is new, except for two subsections that formerly appeared in the 'Activation' section and are discussed below.

(a) This subsection gives officers the discretion to not to record interviews with witnesses to a crime or a community member who wishes to report or discuss criminal activity anonymously. Officers can offer to audio record only

(b) Upon a victim's request, officers have the discretion to not record the interview, and may offer to audio record only.

1. However, officers "should attempt to record interviews of domestic violence victims to facilitate future prosecution efforts and discourage later recanting of statements. Members should also record interviews with children who witness domestic violence, when the child is willing."

2. Also officers "shall have the discretion to record, absent any request to not record the interview by victims, witnesses, or non-suspect parents of victims, during child abuse and/or sexual assault investigations."

3. Officers "shall not" activate records when interviewing or engaging in a conversation with a confidential informant, "unless needed as evidence."

424.8 further states that officers "have no obligation to advise a victim or witness that he or she is being recorded, but may do so at their discretion." Officers "may" consider a victim or witness request not be recorded," with a cite to Penal Code sec. 632.

A paragraph in 424.8 that appeared in the Activation section of the draft (450.5) states, "Members shall [formerly "should"] remain sensitive to the dignity of all individuals being recorded and exercise discretion to respect privacy by discontinuing recording whenever it reasonably appears to the member that such privacy may outweigh any legitimate law enforcement interest in recording. [\*] Recording should resume when privacy is no longer at issue unless the circumstances no longer fit the criteria for recording."

\* The draft included this sentence: "Requests by members of the public to stop recording should be considered using this same criterion." The reason for its deletion in current policy should be explained.

Finally, the last paragraph of 424.8 has been carried over verbatim from the draft policy; it gives officers the discretion to record informal, non-enforcement related interactions with community members.

#### **424.9 ACTIVATION IN CROWD CONTROL SITUATIONS**

This is newly expanded from the BPD's draft policy (450.5(h)) and substantially similar to the PRC's draft (PRC 450.5.1) in substance and in form, by being given its own section. Officers shall use their BWCs during crowd control, protest or mass arrest incidents consistent with this policy or when directed by the Incident Commander. Limitations in the Intelligence Procedures for First Amendment Activities policy governing intelligence-gathering procedures apply to BWCs and other devices. Language not in the PRC draft: Video recording of those who are picketing or peacefully protesting will be avoided unless a crime is occurring or may occur, or if the officer interacts with a participant or third party to the event. (Jim Chanin thought this section was pretty good.)

#### **424.10 SURREPTITIOUS USE OF THE BWC**

The first two paragraphs are almost identical to the draft **450.5.1**. Officers may surreptitiously record any conversation during a criminal investigation if the officer reasonably believes the recording will be lawful and beneficial to the investigation. But officers shall not surreptitiously record another officer unless by court order or with the Chief authorization.

A third paragraph is new, and prohibits officers from using BWCs for non-work related personal activity, or where officers have a reasonable expectation of privacy, such as workplace locker rooms or private vehicles.

#### **424.11 CESSATION OF RECORDING**

As discussed in Sec. II.E. above, in conjunction with mandatory activation, discretionary muting or deactivation in this section is problematic. Documenting the reason for actions is helpful, but is also discretionary and should be made mandatory.

#### **424.12 EXPLOSIVE DEVICE**

New section that allows officers to deactivate BWCs if they believe its use may detonate an explosive device.

#### **424.13 PROHIBITED USE OF BODY WORN CAMERAS**

Officers cannot: use department-issued BWCs for personal use, make personal copies of recordings created while on duty or while acting in their official capacity, retain BWC recordings, or duplicate or distribute recordings except for departmental business purposes. Recordings shall be retained at the BPD. Recordings are not be used for embarrassment, intimidation or ridicule. These provisions are unchanged from the draft policy section **450.6**.

As discussed in Sec. II.A. above, the allowable use of personally-owned devices seems to have been broadened.

#### **424.14 PROCESSING AND HANDLING OF RECORDINGS**

This section captures some language in draft **450.4**, Member Responsibilities, and **450.7**, Retention of Recordings. It requires officers to tag and download recordings "in accordance with procedure," (where are these procedures?) and document the recording's existence in the related case report.

Downloading must occur at the end of a shift and any time the officer is aware that the BWC's storage capacity is almost full. If an officer cannot complete the transfer, his/her supervisor must immediately upload the data. Files must be appropriately tagged; language in the current policy referring to using the Axon View app or the Evidence.com site is new.

The provision in 450.7 that members are prohibited from intentionally erasing, altering, reusing, modifying, or tampering with audio or video recordings is retained here.

However, language in 450.7 that if an officer believes a recorded contact may be beneficial in a non-criminal matter (e.g., a hostile contact), he/she should promptly notify a supervisor of the existence of the recording and document the contact appropriately, is omitted. Should get clarification.

#### **424.15 RETENTION REQUIREMENTS**

Keeps the requirement in draft **450.7.1** to retain all recordings for a minimum of 60 days, and to retain incidents involving cold reports for a year. Shortens retention time for incidents involving consensual contacts and aid to citizens from one year to six months.

Recordings of incidents involving a police officer's use of force, detentions, arrests, or recordings relevant to a formal or informal complaints must be kept at least two years and one month (this is an extension of one month from the draft). Recordings relating to court cases and personnel complaints that are being adjudicated will be manually deleted at the same time other evidence associated with the case is purged and consistent with the department's evidence retention policy. (Unchanged from draft.)

New: recordings related to administrative or civil proceedings must be kept until the matter is fully adjudicated, and then deleted in accordance with the Department's evidence retention policy and any court orders. Also new: recordings resulting from equipment testing or accidental activation may be deleted after 60 days.

#### **424.16 ACCIDENTAL RECORDING – REQUEST FOR RESTRICTION**

New section: if an accidental or sensitive personal recording of non-departmental business activity is made, and the recording is of no investigative or evidentiary value, the recording employee may request via the chain of command to the Professional Standards Captain that the file be restricted pending 60-day deletion. PRC's 450.7.1(b) said recording cause by testing or accidental activation may be deleted after 60 days.

#### **424.17 REVIEW OF RECORDINGS BY A MEMBER**

The current policy separates what was formerly in **450.8, Review of Recordings**, by creating **424.17** for officer and other departmental review of recordings, and **424.18, Release of Recordings**, covering release to the PRC, the public, and the media.

424.17 Allows officers to review their own BWC files at any time in furtherance of official business, except in officer-involved incidents resulting in grave bodily injury or death. (See Sec. II.D. above.) Retains language from draft that when preparing written reports, officers should review their recordings as a resource, but shall not retain personal copies of recordings, and should not use the fact of a recording as a reason to write a less detailed report.

424.17.2 Supervisory Review. New section: Except for cases involving grave bodily injury or death, supervisors may review recordings any time they are reviewing and approving case reports from their subordinates.

424.17.3 Investigatory Review. Retains language authorizing supervisor to review recordings when investigating alleged misconduct or reports of meritorious conduct or (new) when recordings support review of a member's performance. Retains language allowing review in conducting an official investigation, or under lawful process or by court or D.A. personal otherwise authorized to review evidence.

New language allows review by personnel assigned to investigatory units authorized to view video associated with active investigations, and, with Chief's approval, IA may review BWC video with a complainant.

New language sets forth procedures that investigators conducting criminal or internal investigations must use.

424.17.4 Teaching or Learning Tool. Expands on provision in the draft as to when and how BWC video may be used as an internal learning or teach tool. New language requires consultation with the involved officer and a procedure for the officer to object.

424.17.5 COB Civil Claims and Lawsuits. New language allowing City defense counsel to review recordings for defending the city against civil claims and lawsuits, with the Chief's permission.

#### **424.18 RELEASE OF RECORDINGS**

Retains language of 450.8 that recordings should be reviewed by the Custodian of Records prior to public release, with reference to General Order R-23, but omits provision that recordings that unreasonably violate a person's privacy or sense of dignity should not be publicly released unless disclosure is required by law or order of the court.

Adds language that before the BPD or the City releases or publishes video that captures officers or their actions in the course of official duties, the officers must be given 48 hours' prior notice. Also new, a provision that BPD may share video with law enforcement, national security, military or other government agencies when there is reasonable suspicion that criminal activity has occurred or is about to occur.

##### 424.18.1 Police Review Commission

See discussion above in Sec. II.B.

##### 424.18.2 Public Records Act Request

Elaborates on language in draft by making specific reference to the Public Records Act (Gov't Code sec. 6254(f) exemption for investigatory records) and G.O. R-23, Release of Public Records and Information, which prohibits release of investigative files or documents that would constitute an unwarranted invasion of privacy.

##### 424.18.3 Media

Retrains language in the draft that authorized release to the media with the Chief's permission, but includes members of the public and states that the release is subject to G.O. R-23 and privacy protections of this policy.

#### **424.19 COMPLIANCE WITH BMC 2.99 ACQUISITION AND USE OF SURVEILLANCE TECHNOLOGY**

New provision stating that this policy "shall at all times" comply with the Surveillance Ordinance. Get answer as to whether this policy has gone through the process required by the Surveillance Ordinance.

(PRC's 450.10, "Surveillance," prohibited use of facial recognition and other biometric technologies in conjunction with body camera images until BPD adopted a policy addressing the use of such technologies.)

#### **424.20 TRAINING REQUIRED**

Draft **450.3A** contained a simple provision requiring officers to complete department training in the proper use and maintenance of BWCs before deploying them in the field.



This is retained in 424.20, which further suggests that BPD staff conduct regular review of the training and of the use of BWCs. Information from this review shall be incorporated into the City Manager's annual Surveillance Technology Report.

Finally, "The Department, Police Review Commission and other City Departments shall maintain the confidentiality of Department sworn employee personnel records as required by state and local law." Failure to do so may subject individuals to civil penalties and discipline. This new provision does not seem problematic except for its placement in this section on training.

**Attachments:**

Attachment A: Lexipol Policy 424, Body Worn Cameras

Attachment B: February 12, 2018 memo from Chief Greenwood to PRC Officer

Attachment C: BPD draft policy 450 (April 4, 2017)

Attachment D: PRC draft policy 450 (April 26, 2017)



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## Body Worn Cameras

### 424.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of portable Body Worn Cameras (BWCs) by members of this department while in the performance of their duties.

This policy does not apply to non-BWC evidence, including other methods of audio or video recordings, interviews or interrogations conducted at any Berkeley Police Department facility, authorized undercover operations, wiretaps or eavesdropping (concealed listening devices).

### 424.2 POLICY

The Berkeley Police Department recognizes that video recording of contacts between department personnel and the public provides an objective record of these events, and that the use of a recording system complements field personnel in the performance of their duties by providing a video record of enforcement and investigative field contacts, which can enhance criminal prosecutions, limit civil liability, increase transparency, and enhance professionalism in the delivery of police services to the community. A video recording of an event or contact also enables the delivery of timely, relevant, and appropriate training to maximize safety for both community members and BPD personnel.

While recordings obtained from BWCs provide an objective record of events, it is understood that video recordings do not necessarily capture all events, activities and information, or reflect the full experience of the individual member(s) in a given incident. Moreover, the recordings, especially video, have limitations and may depict events differently than the events as perceived and recalled by the involved member. Specifically, it is understood that the BWC will capture information that may not have been seen and/or heard by the involved member and that the involved member may see and hear information that may not have been captured by the BWC.

### 424.3 CONFIDENTIALITY AND PROPER USE OF RECORDINGS

BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigation, and other proceedings protected by confidentiality laws and department policy. Improper use or release of BWC recordings may compromise ongoing criminal and administrative investigations or violate the privacy rights of those recorded and is prohibited.

### 424.4 COORDINATOR

The Chief of Police, or his/her designee shall appoint a member of the Department to coordinate the use and maintenance of BWCs and the storage of recordings, including (Penal Code § 832.18):

- (a) Establishing a system for uploading, storing and security of recordings.
- (b) Designating persons responsible for uploading recorded data.

# Berkeley Police Department

## Law Enforcement Services Manual

### *Body Worn Cameras*

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- (c) Establishing a maintenance system to ensure availability of BWCs.
- (d) Establishing a system for tagging and categorizing data according to the type of incident captured.
- (e) Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.
- (f) Working with the City Attorney's office to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
- (g) Maintaining an audit trail record for all access to evidence files, wherein access information for each evidence file is logged through use of a secure log-in system. The Department's storage system associates an audit trail record with each evidence file, thereby logging the date, time, user name, activity and client IP address occurring during each evidence file access.

All recordings made by members acting in their official capacity shall remain the property of the Department. Subject to the provisions of this Policy, members shall have no expectation of privacy or ownership interest in the content of these recordings.

#### **424.5 MEMBER RESPONSIBILITIES**

Prior to going into service, each uniformed member who is assigned to wear a BWC will be responsible for making sure that he or she is equipped with a BWC issued by the Department, and that the BWC is in good working order. If the BWC is not in working order or the member becomes aware of a malfunction at any time, the member shall promptly report the failure to his/her supervisor to permit the supervisor or other department employee to provide the member with a functioning BWC as soon as practicable. Uniformed members should wear the recorder in a conspicuous manner as prescribed by the Department, to provide a generally unobstructed camera view of contacts between members of the public and department members.

Members lawfully engaged in their duties as a police officer are not required to obtain consent from, or give notice to, members of the public, prior to recording with their BWC.

Upon the approval of the Chief of Police, or his/her designee, non-uniformed members lawfully engaged in their duties as a police officer may use an approved BWC.

Members are required to document the existence of a recording in any report or other official record of the contact, such as a CAD entry, including any instance where the member is aware that the BWC malfunctioned or the member deactivated the recording. In the event activity outlined in section 450.5 is not captured in whole or in part the member shall document this and explain in their report their understanding, if any, of why the footage was not captured in the recording.

#### **424.6 SUPERVISOR RESPONSIBILITIES**

At such time as the scene is considered secure and safe, the on-scene supervisor shall take immediate physical custody of involved officer's/officers' BWC when the device may have captured an incident involving an officer-involved shooting or use of force resulting in death or great bodily injury, and shall ensure the data is uploaded in a timely manner as prescribed by BPD policy

# Berkeley Police Department

## Law Enforcement Services Manual

### *Body Worn Cameras*

---

(Penal Code § 832.18). Supervisors may review relevant BWC video and audio files in the field in furtherance of their duties and responsibilities.

Supervisors shall also review relevant BWC recordings prior to submitting any administrative reports.

#### **424.7 ACTIVATION OF THE BODY WORN CAMERA**

This policy is not intended to describe every possible situation in which the BWC should be used. Members shall activate the BWC as required by this policy in (a)-(f) below, and may activate the BWC at any time the member believes it would be appropriate or valuable to record an incident within the limits of privacy described herein.

The BWC shall be activated in any of the following situations:

- (a) All in-person enforcement and investigative contacts including pedestrian stops and field interview (FI) situations.
- (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops.
- (c) Self-initiated field contacts in which a member would normally notify the Communications Center.
- (d) Any search activity, including the service of search or arrest warrants; probation, parole, or consent searches where the member is seeking evidence of an offense, or conducting a safety sweep or community caretaking sweep of the premises. Once a location has been secured and the member is not interacting with detainees or arrestees, the member may mute their BWC when conducting a search for evidence.
- (e) Any other contact that the member determines has become adversarial after the initial contact in a situation where the member would not otherwise activate BWC recording.
- (f) Transporting any detained or arrested person and where a member facilitates entry into or out of a vehicle, or any time the member expects to have physical contact with that person.

At no time is a member expected to jeopardize his or her safety in order to activate a BWC. The BWC should be activated by members in anticipation of situations described above, and in any unanticipated, rapidly unfolding situation where activation becomes required, as soon as the member can do so safely.

Members should activate their BWC when conducting custodial interviews unless there are other recording devices being used. Members shall document and explain in their report the reason for not recording custodial interviews, should a BWC be de-activated while conducting a custodial interview or interrogation.

**Berkeley Police Department**  
Law Enforcement Services Manual

*Body Worn Cameras*

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**424.8 VICTIMS AND WITNESSES OF CRIMES; INFORMANTS**

In the event that an officer has the opportunity to record interviews of victims and witnesses of crimes, they shall consider the following:

- (a) **Witnesses:** In the event a crime witness or a member of the community wishes to report or discuss criminal activity anonymously, officers have the discretion to not record. Members may offer to avert their camera to capture only audio during the interview, when doing so would facilitate obtaining the witness's recorded statement. In cases where a witness requests they not be recorded, and the member agrees not to record, members should record their request prior to turning the camera off. When a member is already recording, the member shall record their explanation for turning the camera off prior to doing so.
  
- (b) **Victims:** Upon request by the victim, officers have the discretion to not record the interview. Members may offer to avert their camera to capture only audio during the interview, when doing so would facilitate obtaining the victim's recorded statement. In cases where a victim requests they not be recorded, and the member agrees not to record, members should record their request prior to turning the camera off. When a member is already recording, the member shall record their explanation for turning the camera off prior to doing so.
  - 1. **Domestic Violence Victims:** Members should attempt to record interviews of domestic violence victims to facilitate future prosecution efforts and discourage later recanting of statements. Members should also record interviews with children who witness domestic violence, when the child is willing.
  - 2. **Child Abuse and Sexual Assault Victims:** Members shall have the discretion to record, absent any request to not record the interview by victims, witnesses, or non-suspect parents of victims, during child abuse and/or sexual assault investigations.
  
- (c) **Informants:** Members shall not activate their recorders when conducting an interview or engaging in a conversation with a confidential informant, unless needed as evidence.

Members have no obligation to advise a victim or witness that he or she is being recorded, but may do so at their discretion. When a victim or witness requests they not be recorded, members may consider their request (Penal Code § 632).

Members shall remain sensitive to the dignity of all individuals being recorded and exercise discretion to respect privacy by discontinuing recording whenever it reasonably appears to the member that such privacy concerns may outweigh any legitimate law enforcement interest in recording. Recording should resume when privacy concerns are no longer at issue unless the member determines that the circumstances no longer fit the criteria for recording.

Informal community interactions differ from "consensual encounters" in which members make an effort to develop reasonable suspicion to detain or probable cause to arrest. To strengthen relationships between police and citizens, members may use discretion regarding the recording of informal, non-enforcement related interactions with members of the community.

# Berkeley Police Department

## Law Enforcement Services Manual

### *Body Worn Cameras*

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#### **424.9 ACTIVATION IN CROWD CONTROL SITUATIONS**

During crowd control, protest or mass arrest incidents, members shall use their BWCs consistent with this policy, or when directed by the Incident Commander. The Incident Commander shall document his or her orders to activate in an appropriate report (e.g. Operations Plan or After Action Report).

The limitations outlined in the Intelligence Procedures for First Amendment Activities Policy governing intelligence-gathering procedures for First Amendment activities, apply to the use of BWCs and other recording devices.

Video recording of individuals who are picketing or engaged in peaceful protest will be avoided unless the officer believes a violation of criminal law is occurring, may occur, or if the officer interacts with a participant or third party to the event, or a participant or third party initiates contact with the member.

#### **424.10 SURREPTITIOUS USE OF THE BWC**

Members of the Department may surreptitiously record any conversation during the course of a criminal investigation in which the member reasonably believes that such a recording will be lawful and beneficial to the investigation.

Members shall not surreptitiously record another department member without a court order unless lawfully authorized by the Chief of Police, or his/her designee.

Members are prohibited from using department-issued BWCs for non-work related personal activity. BWCs will not be activated in places where members have a reasonable expectation of privacy, such as workplace locker rooms, dressing rooms, members' private vehicles or restrooms.

#### **424.11 CESSATION OF RECORDING**

Once activated, the member may mute or deactivate their BWC at any time based on their discretion, and in the following circumstances:

- (a) Discussion of tactical or confidential information with other law enforcement personnel.
- (b) Where members are on a perimeter or assigned to a static post where the member's direct participation in the incident is complete and they are not actively part of an investigation.
- (c) If it is necessary to discuss issues or concerns with an employee, supervisor, doctor, nurse, or paramedic in private.
- (d) In the member's judgment, a recording would interfere with his or her ability to conduct an investigation.

Decisions regarding the reason for muting or BWC deactivation should be documented.

Members shall cease audio/video recording whenever necessary to ensure conversations are not recorded between a person in custody and the person's attorney, religious advisor or physician,

# Berkeley Police Department

## Law Enforcement Services Manual

### *Body Worn Cameras*

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unless there is explicit consent from all parties to the conversation. This does not apply to conversations with paramedics or EMTs during their response at a scene, and during transport.

#### **424.12 EXPLOSIVE DEVICE**

Many portable recorders, including BWCs and audio/video transmitters, emit radio waves that could trigger an explosive device. Therefore, these devices should not be used where an explosive device may be present.

Members believing that the use of a BWC may detonate an explosive device may deactivate their BWC in such cases.

#### **424.13 PROHIBITED USE OF BODY WORN CAMERAS**

Members are prohibited from using a department-issued BWC for personal use and are prohibited from making personal copies of recordings created while on duty or while acting in their official capacity.

Members are prohibited from retaining BWC recordings. Members shall not duplicate or distribute such recordings, except for department business purposes. All such recordings shall be retained at the Department.

Members may not use personally owned recorders (e.g. personal cell phone) to document contacts unless exigent circumstances exist to warrant the use of personally owned recording devices. Regardless, if a member is using a department-issued BWC, and/or another recording device, members shall comply with the provisions of this policy, including retention and release requirements. In every event where members use any recording device aside from or in addition to their department-issued BWC, the member shall document and explain the use and the exigent circumstance in their police report (e.g. the BWC failed and evidence needed to be captured at that moment in time).

Recordings shall not be used by any member for the purpose of embarrassment, intimidation or ridicule.

#### **424.14 PROCESSING AND HANDLING OF RECORDINGS**

To assist with identifying and preserving data and recordings, members shall tag and download recordings in accordance with procedure, and document the existence of the recording in the related case report. Transfers must occur at the end of the member's shift, and any time the member is aware that the storage capacity of the BWC is nearing its limit. In circumstances when the officer cannot complete this task, the officer's supervisor shall immediately take custody of the BWC and be responsible for uploading the data. Officers shall tag each file with the appropriate case/incident number, provide a descriptive title, and select an appropriate category for each recording, using the Axon View app or via the Evidence.com site.



# Berkeley Police Department

## Law Enforcement Services Manual

### *Body Worn Cameras*

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Members are prohibited from intentionally erasing, altering, reusing, modifying or tampering with original audio video recordings. Members may request restriction and subsequent deletion of an accidental recording as described under section 424.16 below.

#### **424.15 RETENTION REQUIREMENTS**

The Department shall retain all recordings for a minimum of 60 days. Incidents involving consensual contacts, and aid to citizens will be retained for six months, and cold reports will be retained for one year. Recordings of incidents involving use of force by a police officer, detentions, arrests, or recordings relevant to a formal or informal complaint shall be retained for a minimum of two years and one month. Recordings relating to court cases and personnel complaints that are being adjudicated will be manually deleted at the same time other evidence associated with the case is purged in line with the Department's evidence retention policy. Any recordings related to administrative or civil proceedings shall be maintained until such matter is fully adjudicated, at which time it shall be deleted in line with the Department's evidence retention policy, and any applicable orders from the court.

Recordings created by equipment testing or accidental activation may be deleted after 60 days.

#### **424.16 ACCIDENTAL RECORDING - REQUEST FOR RESTRICTION**

In the event of an accidental or sensitive personal recording of non-departmental business activity, where the resulting recording is of no investigative or evidentiary value, the recording employee may request that the file be restricted pending 60-day deletion by submitting an email request via their chain of command to the Professional Standards Division Captain. The Professional Standards Division Captain will approve or deny the restriction request. In cases where the request is denied, an appeal may be submitted to the Chief of Police, or his/her designee, for restriction authorization. In all cases of restriction requests, a determination should be made within seven calendar days.

#### **424.17 REVIEW OF RECORDINGS BY A MEMBER**

Members are authorized to review their own BWC video files at any time in furtherance of official business. Such official business includes, but is not limited to, preparing written reports, prior to or while providing testimony in a case or being deposed. Members may review recordings as an evidentiary resource, except as stated in subsection 424.17.1 below. Members shall not retain personal copies of recordings. Members shall not use the fact that a recording was made as a reason to write a less detailed report.

##### **424.17.1 OFFICER INVOLVED INCIDENTS RESULTING IN GRAVE BODILY INJURY OR DEATH**

- (a) In the event of a critical incident that results in grave bodily injury or death, including an officer-involved shooting or an in-custody death, the BWC of the involved member(s) shall be taken from him or her and secured by a supervisor, commander, or appropriate investigator, as necessary. The involved member(s) shall not access or obtain their

# Berkeley Police Department

## Law Enforcement Services Manual

### Body Worn Cameras

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footage of the incident until such time as the criminal investigator(s) have reviewed the video files. It will be the responsibility of the investigation team's supervisor to coordinate with the involved member's supervisor to obtain footage of the incident on behalf of the member.

- (b) Personnel uploading secured BWC video files shall not view the files unless authorized.
- (c) No member involved in a critical incident may view any video recordings prior to an interview by the appropriate criminal investigative unit, and receiving command approval.
- (d) Prior to the conclusion of the criminal interview process, the involved member and/or the member's representative will have an opportunity to review the member's recording(s). The involved member may choose to provide additional information to supplement his or her statement by providing a supplemental statement or separate supplemental document. In no case shall a member alter a report made prior to reviewing the recording.
- (e) The Department acknowledges that recordings taken during critical incidents obtained from BWCs do not necessarily reflect the full extent of the nature of the event or the experience, analysis, training, threat assessment or state of mind of the individual officers(s) in a given incident. Moreover, the recordings, especially video, have limitations and may depict events differently than the events recalled by the involved officer. Specifically, it is understood that the recording device will capture information that may not have been heard and/or observed by the involved officer and that officers may see and hear events that are not captured by the camera.

Officers who are involved in any critical incident where video recordings exist depicting the involved officer, either as a subject officer or witness, shall be provided the following admonishment to the initial interview or submission of the initial written report:

"In this case, there is video evidence that you will have an opportunity to view. Video evidence has limitations and may depict the events differently than you recall, and may not depict all of the events as seen or heard by you. Video has a limited field of view and may not capture events normally seen by the human eye. The "frame rate" of video may limit the camera's ability to capture movements normally seen by the human eye. Lighting as seen on the video may be different than what is seen by the human eye. Videos are a two-dimensional medium and may not capture depth, distance or positional orientation as well as the human eye. Remember, the video evidence is intended to assist your memory and ensure that your statement explains your state of mind at the time of the incident."

#### 424.17.2 SUPERVISORY REVIEW

With the exception of section 424.17.1 above, supervisors are authorized to review relevant recordings any time they are reviewing and approving case reports from their subordinates.

# Berkeley Police Department

## Law Enforcement Services Manual

### *Body Worn Cameras*

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#### 424.17.3 INVESTIGATORY REVIEW

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct, or whenever such recordings support review of the member's performance.

Recorded files may also be reviewed:

- (a) Upon approval by a supervisor, by any member of the Department who is participating in conduct of an official investigation, such as a personnel complaint, an administrative investigation or a criminal investigation.
- (b) Pursuant to lawful process or by court or District Attorney personnel who are otherwise authorized to review evidence in a related case.
- (c) By personnel assigned to investigatory units who are authorized to view any BWC video file associated to their active investigations, unless otherwise prohibited by policy.
- (d) Upon approval by the Chief of Police, Internal Affairs investigators may review BWC video with a complainant.

Investigators conducting criminal or internal investigations shall:

1. Advise the coordinator to restrict access to the BWC file in criminal or internal investigations, as necessary.
2. Review the file to determine whether the BWC file is of evidentiary value and process it in accordance with established protocols.
3. Notify the coordinator to remove the access restriction when the criminal/internal investigation is closed.

#### 424.17.4 TEACHING OR LEARNING TOOL

BWC files may also be reviewed by training staff regarding specific incidents where such files may serve as an internal learning or teaching tool. In the event that videos are intended to be used for training purposes, the involved officer(s) will first be consulted. If he/she objects to the use of the video, such objection shall be submitted to the person in charge of training who shall weigh the value of the video for training against the officer(s) objections and basis for the objection. Should the person in charge of training refuse to grant the request of the involved officer(s), the matter shall be heard by the Chief of Police, or his/her designee, prior to utilizing the video.

#### 424.17.5 COB CIVIL CLAIMS AND LAWSUITS

BWC recordings may be reviewed and used by City of Berkeley defense counsel for the purposes of defending the city in civil claims and lawsuits, with the authorization of the Chief of Police, or his/her designee.

#### 424.18 RELEASE OF RECORDINGS

All recordings should be reviewed by the Custodian of Records and the City Attorney's Office prior to public release, see General Order R-23 (Release of Public Records and Information).

# Berkeley Police Department

## Law Enforcement Services Manual

### *Body Worn Cameras*

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In the event that the Police Department or City Department intends to release or publish for any purpose video recordings where officers are captured on video or the video depicts actions taken by them in the course of the performance of their official duties, those officers shall be given written notice of the intention to release or publish said video at least 48 hours prior to such release.

BPD may, without prior notice to involved officers, share video footage with law enforcement, national security, military, or other government agencies outside of Berkeley, when there is reasonable suspicion that criminal activity has occurred or is about to occur.

#### 424.18.1 POLICE REVIEW COMMISSION (PRC)

Access to recorded files will be granted for the purposes of review to the Police Review Commission Officer and/or Investigator investigating a specific complaint where BWC evidence files are available, and are not part of any ongoing criminal investigation.

- (a) The PRC Officer and PRC Investigator will be provided user account access to evidence files through the evidence management system for their use during a complaint investigation and to facilitate viewing by Board of Inquiry members during a Board of Inquiry.
- (b) The PRC Officer and PRC investigator shall not make or create a copy of any evidence file, nor make or allow to be made any audio or video recording of any evidence file while it is being streamed and viewed from the evidence management system.
- (c) The PRC Officer and PRC Investigator shall not allow any unauthorized individuals to view or access evidence files.
- (d) The evidence management system associates an audit trail record with each evidence file, thereby logging the date, time, user, activity, and client IP address occurring during each evidence file access.
- (e) The evidence management system shall only be accessed on City premises.
- (f) The Department retains custody and control of the recordings, and content of the video will be subject to applicable legal standards including, but not limited to the confidentiality requirements of the Public Safety Officers' Procedural Bill of Rights, (Government Code § 3300, et seq., Penal Code § 832.7, and the California Public Records Act; Government Code § 6250, et seq.)

#### 424.18.2 PUBLIC RECORDS ACT (PRA) REQUEST

Access to recorded files will be granted for the purposes of review in response to a public records request, as permitted under Government Code § 6254(f) and BPD General Order R-23 (Release of Public Records and Information). General Order R-23 does not authorize release of investigative files or documents that would constitute an unwarranted invasion of privacy. Circumstances where this might arise in video include footage taken inside a home, a medical facility, the scene of a medical emergency, or where an individual recorded has a "reasonable expectation of privacy."

# Berkeley Police Department

Law Enforcement Services Manual

## *Body Worn Cameras*

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### 424.18.3 MEDIA

Access to recorded files will be granted for the purposes of review to media personnel or the general public with permission of the Chief of Police, or his/her designee, subject to General Order R-23 and privacy protections indicated in this policy.

### **424.19 COMPLIANCE WITH BMC 2.99 ACQUISITION AND USE OF SURVEILLANCE TECHNOLOGY**

This policy shall comply at all times with the requirement of BMC 2.99 Acquisition and Use of Surveillance Technology.

### **424.20 TRAINING REQUIRED**

Officers who are assigned BWCs must complete department-approved training in the proper use and maintenance of the devices before deploying to the field.

As part of a continual improvement process, regular review should be conducted by BPD staff of the training on this policy and the related use of BWCs under this policy. Information resulting from the outcomes of this review shall be incorporated into the City Manager's annual "Surveillance Technology Report" as required under BMC 2.99 Acquisition and Use of Surveillance Technology.

The Department, Police Review Commission and other City Departments shall maintain the confidentiality of Department sworn employee personnel records as required by state and local law. Failure to maintain the confidentiality of Department sworn employee personnel records, whether or not intentional, may subject individuals to civil penalties and discipline, up to and including termination of employment.



**Lee, Katherine**

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**From:** Lee, Katherine  
**Sent:** Tuesday, March 07, 2017 5:21 PM  
**To:** Lee, Katherine  
**Subject:** FW: Public records ruling by Calif. Supreme Court

Dear Commissioners,

I am forwarding from Commissioner Bernstein an article about a recent state Supreme Court decision, as well as the text of the decision. The gist: Texts and emails sent by public employees on their personal devices or accounts are a matter of public record if they deal with official business.

-Kathy

**Katherine J. Lee**  
**Police Review Commission Officer**  
**City of Berkeley**  
**510.981.4960**

**From:** Alison Bernstein [mailto:alibernstein@gmail.com]  
**Sent:** Friday, March 03, 2017 11:14 AM  
**To:** Lee, Katherine <KLee@cityofberkeley.info>  
**Subject:** Public records ruling by CSC

I think we all already knew this, but you may want to share out to the commission

<http://www.latimes.com/local/lanow/la-me-ln-public-officials-email-20170302-story.html>.

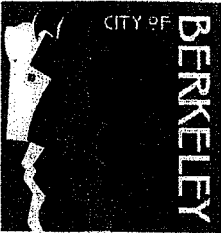
Here is the opinion:

<http://www.courts.ca.gov/opinions/documents/S218066.PDF>

AB







Police Department

February 12, 2018

Katherine Lee  
Officer, Police Review Commission  
(via email)

Dear Ms. Lee,

At a recent PRC meeting, a question was raised regarding the use of iPhone applications in conjunction with the Axon Body Worn Cameras (BWCs). I wanted to offer this additional clarifying information to ensure Commissioners have a clear understanding of the apps' functions. Please consider this as supplemental information to Lt. Okies' PRC presentation on December 13<sup>th</sup>, 2017 on Body Worn Cameras. It is intended to clarify the role and capabilities of the smartphone applications that support our BWCs.

We will be using two Axon applications which allow officers to collect and review evidence in the field and more effectively use their BWCs. The applications use secure Bluetooth and Wi-Fi technology to access the BWC systems and footage. These widely-used applications are compliant with US Department of Justice evidentiary standards, meaning that they are both secure and are set up in a way that prohibits the altering or destruction of evidence. The Department will be using Axon View and Axon Capture, as described below:

#### Axon View

The Axon View application allows users to change their camera settings, view live video, and review and tag recorded videos while they are stored on the BWC. Recorded videos remain in the BWC's memory, and cannot be manipulated or deleted. (Note: All videos are uploaded—and thereby removed—from each BWC at the end of each shift. Once removed, these videos are *not* accessible through Axon View.) Axon View provides significant functionality for the cameras and includes the following features:

- Stream live video from the BWC—This feature allows officers to see what the camera lens is capturing on their phone screen. It is used to properly position cameras at the beginning of shift and, under certain circumstances, ensures that officers properly frame their videos when recording evidence.
- Review video that has been captured by the BWC— This feature allows officers to review evidence in the field and will help to ensure thorough and complete preliminary investigations. Another benefit is that this feature will allow officers to provide detailed suspect descriptions based on video footage.
- Add metadata for each BWC video file – the application has the ability to add case numbers and evidence categories in the field, helping to ensure and support the officer's efficient and accurate work-flow.

- Provides users with critical BWC functional information – Axon View shows officers how much battery life and storage capacity remains on their BWC as well as show the camera's recording status. These features help to ensure officers always have a functioning camera in the field.
- Allows users to change camera settings – Axon View allows officers to easily change camera settings such as alert volume, recording status light, and camera vibration. During some critical incidents and investigations officers must be able to quickly and easily adjust these settings to support their safety and investigative efforts.

#### Axon Capture

The Axon Capture application allows officers to use the city-issued smartphone's camera and microphone to take photographs, and record audio and video, and to upload this data directly to evidence.com. This feature not only removes the additional staffing and time requirements of the current processes, it also makes evidence collection and documentation more intuitive and efficient. If, for example, a few photos are needed, officers do not need to wait for a Crime Scene Technician, but rather can take a few pictures themselves, and upload them to evidence.com. Items uploaded from Axon Capture to evidence.com are subject to the same evidentiary standards as video collected from BWCs, which includes both audit trails and access control. Evidence collected with Axon Capture cannot be tampered with, deleted, or reviewed by unauthorized persons.

These applications do not allow users to alter, manipulate, or edit any of the footage recorded by the BWC. These applications are widely deployed by Axon customers, using secure technology to add value and efficacy to the BWC program.

We hope this information clarifies the use of the applications' functions with regards to the Body Worn Camera program.

Sincerely,



Andrew Greenwood  
Chief of Police  
Berkeley Police Department

cc: J. Grogan, Dep. City Manager

## **Portable Audio/Video Recorders**

### **450.1 PURPOSE AND SCOPE**

This policy provides guidelines for the use of portable audio/video recording devices by members of this department while in the performance of their duties. Portable audio/video recording devices include all recording systems whether body-worn, hand held or integrated into portable equipment.

This policy does not apply to lawful surreptitious audio/video recording, interception of communications for authorized investigative purposes or to mobile audio/video recordings (see the Investigation and Prosecution and Mobile Audio/Video policies).

### **450.2 POLICY**

The Berkeley Police Department recognizes that video recording of contacts between Department personnel and the public provides an objective record of these events and that the use of a recording system complements field personnel in the performance of their duties by providing a video record of enforcement and investigative field contacts which can enhance criminal prosecutions and limit civil liability. A video recording of an event or contact also enables the delivery of timely, relevant, and appropriate training to maximize safety for BPD personnel and improve the delivery of police services to the community.

While recordings obtained from video recorders provide an objective record of events, it is understood that video recordings do not necessarily reflect the experience or state of mind of the individual member(s) in a given incident. Moreover, the recordings, especially video, have limitations and may depict events differently than the events recalled by the involved member. Specifically, it is understood that the recording device will capture information that may not have been heard and/ or observed by the involved member and that the involved member may see and hear information that may not be captured on video.

### **450.3 MEMBER PRIVACY EXPECTATION**

All recordings made by members acting in their official capacity shall remain the property of the Department regardless of whether those recordings were made with department-issued or personally owned recorders. Members shall have no expectation of privacy or ownership interest in the content of these recordings.

### **450.3A TRAINING**

Members of the department who are assigned Body Worn Cameras must complete department training in the proper use and maintenance of the devices before deploying them in the field.

### **450.4 MEMBER RESPONSIBILITIES**

Prior to going into service, each uniformed member will be responsible for making sure that he/ she is equipped with a portable recorder issued by the Department, and that the recorder is in good working order. If the recorder is not in working order or malfunctions at any time, the member shall promptly report the failure to his/her supervisor and obtain a functioning device as soon as practicable.

Uniformed members should wear the recorder in a conspicuous manner or otherwise notify persons that they are being recorded, whenever possible.

Officers are not required to obtain consent from members of the public when the officer is lawfully in the area where the recording takes place. For example an officer who lawfully enters a business or residence shall record any enforcement or investigative activity, as set forth in this policy, and is not required to obtain consent from members of the public who may also be present. In addition, officers are not required to play back recordings to allow members of the public to review the video footage.

Any member assigned to a non-uniformed position may carry an approved portable recorder at any time the member believes that such a device may be useful. Unless conducting a lawful recording in an authorized undercover capacity, non-uniformed members should wear the recorder in a conspicuous manner when in use or otherwise notify persons that they are being recorded, whenever possible.

When using a portable recorder, the assigned member shall record his/her name, BPD identification number and the current date and time at the beginning and the end of the shift or other period of use, regardless of whether any activity was recorded. This procedure is not required when the recording device and related software captures the user's unique identification and the date and time of each recording.

Members are required to document the existence of a recording in any report or other official record of the contact, including any instance where the recorder malfunctioned or the member deactivated the recorder. In the event activity outlined in section 450.5 is not captured in whole or in part the member shall document this and the reason the footage was not captured.

Members are required to download video footage prior to the end of their shift. If the member is unable to do so the supervisor will perform this function.

#### **450.4.1 SUPERVISOR RESPONSIBILITIES**

Supervisors should take custody of a portable audio/video recording device as soon as practicable when the device may have captured an incident involving an officer-involved shooting or in-custody death, or and ensure the data is downloaded (Penal Code § 832.18).

Supervisors shall review relevant body worn camera recordings prior to submitting any administrative reports.

#### **450.5 ACTIVATION OF THE PORTABLE RECORDER**

This policy is not intended to describe every possible situation in which the portable recorder should be used, although there are many situations where its use is appropriate. Members should activate the recorder any time the member believes it would be appropriate or valuable to record an incident.

The portable recorder should be activated in any of the following situations:

- (a) All enforcement and investigative contacts including stops and field interview (FI) situations
- (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops
- (c) Self-initiated activity in which a member would normally notify the Communications Center

(d) Probation or parole searches

(e) Service of a search or arrest warrant

(f) Custodial Interviews

(g) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording.

(h) During crowd control, protest, or mass arrest incidents, members shall use their BWC's consistent with this policy, and when directed by the Incident Commander. The Incident Commander shall document their orders in an appropriate report.

Members should remain sensitive to the dignity of all individuals being recorded and exercise sound discretion to respect privacy by discontinuing recording whenever it reasonably appears to the member that such privacy may outweigh any legitimate law enforcement interest in recording. Requests by members of the public to stop recording should be considered using this same criterion. Recording should resume when privacy is no longer at issue unless the circumstances no longer fit the criteria for recording.

Informal community interactions differ from "consensual encounters" in which officers make in an effort to develop reasonable suspicion to detain or probable cause to arrest. To strengthen relationships between police and citizens, officers may use discretion regarding the recording of informal, non-enforcement related interactions with members of the community.

At no time is a member expected to jeopardize his/her safety in order to activate a portable recorder or change the recording media. However, the recorder should be activated in situations described above as soon as practicable.

#### **450.5.1 SURREPTITIOUS USE OF THE PORTABLE RECORDER**

Members of the Department may surreptitiously record any conversation during the course of a criminal investigation in which the member reasonably believes that such a recording will be lawful and beneficial to the investigation (Penal Code § 633).

Members shall not surreptitiously record another department member without a court order unless lawfully authorized by the Chief of Police or the authorized designee.

#### **450.5.2 CESSATION OF RECORDING**

Once activated, the portable recorder should remain on continuously until the member's direct participation in the incident is complete or the situation no longer fits the criteria for activation. Recording may be stopped during significant periods of inactivity such as report writing or other breaks from direct participation in the incident.

Members shall cease audio recording whenever necessary to ensure conversations are not recorded between a person in custody and the person's attorney, religious advisor or physician, unless there is explicit consent from all parties to the conversation (Penal Code § 636).

#### **450.6 PROHIBITED USE OF PORTABLE RECORDERS**

Members are prohibited from using department-issued portable recorders and recording media for personal use and are prohibited from making personal copies of recordings created while on duty or while acting in their official capacity.

Members are also prohibited from retaining recordings of activities or information obtained while on-duty, whether the recording was created with department-issued or personally owned recorders. Members shall not duplicate or distribute such recordings, except for authorized legitimate department business purposes. All such recordings shall be retained at the Department.

Members shall utilize their department-issued body worn camera as specified in this policy. Members may additionally use personally owned recorders (e.g. cell phone) to document contacts in addition to the departmentally issued body worn camera, or in lieu of the departmentally issued BWC, where the issued device fails and/or is not functioning (e.g. malfunction, broken or battery dead). Regardless, if a member is using a department-issued body worn camera, and/or another recording device, members shall comply with the provisions of this policy, including retention and release requirements. In every event where members use any recording device aside from the department-issued body worn camera, the member shall document and explain the use in their police report (e.g. the body worn camera failed and evidence needed to be captured at that moment in time).

Recordings shall not be used by any member for the purpose of embarrassment, intimidation or ridicule.

#### **450.7 RETENTION OF RECORDINGS**

Any time a member records any portion of a contact that the member reasonably believes constitutes evidence in a criminal case, the member shall record the related case number and transfer the file in accordance with current procedure for storing digital files and document the existence of the recording in the related case report. Transfers should occur at the end of the member's shift, or any time the storage capacity is nearing its limit. In circumstances when the officer cannot complete this task, the officer's supervisor shall immediately take custody of the portable recorder and be responsible for downloading the data. Officers must properly categorize and tag video recordings any time they are downloaded.

Any time a member reasonably believes a recorded contact may be beneficial in a non-criminal matter (e.g., a hostile contact), the member should promptly notify a supervisor of the existence of the recording and document the contact appropriately.

Members are prohibited from intentionally erasing, altering, reusing, modifying, or tampering with audio or video recordings.

#### **450.7.1 RETENTION REQUIREMENTS**

All recordings shall be retained for a minimum of 60 days. Incidents involving consensual contacts, aid to citizens and cold reports will be retained for one year. Recordings of incidents involving the use of force by a police officer, detentions, arrests, or recordings relevant to a formal or informal complaint shall be retained for a minimum of two years. Any recordings relating to court cases and personnel complaints that are being adjudicated will be manually deleted at the same time other evidence associated with the case is purged and be done in line with the department's evidence retention policy.

#### **450.8 REVIEW OF RECORDINGS**

When preparing written reports, members should review their recordings as a resource. However, members shall not retain personal copies of recordings. Members should not use the fact that a recording was made as a reason to write a less detailed report.

In the event of an officer-involved shooting or in-custody death, officers shall provide an initial interview before they review any audio or video recordings of the incident. An involved officer will have an opportunity to review recordings after the initial statement has been taken, and he or she can be re-interviewed if either the officer or members of the investigating team believe it is necessary.

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct.

Recorded files may also be reviewed:

- (a) Upon approval by a supervisor, by any member of the Department who is participating in an official investigation, such as a personnel complaint, administrative investigation or criminal investigation.
- (b) Pursuant to lawful process or by court or District Attorney personnel who are otherwise authorized to review evidence in a related case.
- (c) By media personnel with permission of the Chief of Police or the authorized designee.
- (d) In compliance with a public records request, if permitted, and in accordance with the Records Maintenance and Release Policy.
- (e) By training staff regarding incidents which may serve as a learning or teaching tool.
- (f) By Police Review Commission Investigators and Board of Inquiry Members investigating a specific complaint where body worn camera footage is available. For purposes of the investigation, video review should take place at the police department, and will be conducted by an Internal Affairs Sergeant, or other designee as directed by the Chief of Police. For purposes of the Board of Review, where video review is deemed necessary by the PRC Investigator, or by commission members, the Department shall facilitate such viewing, at the meeting site for the Board of Inquiry, and which will be conducted by an Internal Affairs Sergeant, or other designee as directed by the Chief of Police. No one shall be allowed to make a copy of the video, or to otherwise record the video being shown, except as noted in other provisions of this policy. The department retains custody and control of the recordings, and content of the video will be subject to the confidentiality requirements of the Police Officer Bill of Rights (POBAR).

All recordings should be reviewed by the Custodian of Records prior to public release (see the Records Maintenance and Release Policy). Recordings that unreasonably violate a person's privacy or sense of dignity should not be publicly released unless disclosure is required by law or order of the court.

#### **450.9 COORDINATOR**

The Chief of Police or the authorized designee shall appoint a member of the Department to coordinate the use and maintenance of portable audio/video recording devices and the storage of recordings, including (Penal Code § 832.18):

- (a) Establishing a system for downloading, storing and security of recordings.
- (b) Designating persons responsible for downloading recorded data.
- (c) Establishing a maintenance system to ensure availability of operable portable audio/video recording devices.
- (d) Establishing a system for tagging and categorizing data according to the type of incident captured.
- (e) Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.
- (f) Working with counsel to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
- (g) Maintaining logs of access and deletions of recordings.



**PRC Recommended Policy for Berkeley Police Department Use of Body Worn Cameras  
(Proposed General Order)  
4-26-2017**

**450.1 PURPOSE AND SCOPE**

This policy provides guidelines for the use of portable Body Worn Cameras (BWC) by members of this department while in the performance of their duties.

This policy does not apply to lawful surreptitious audio/video recording, interception of communications for authorized investigative purposes.

**450.2 POLICY**

The Berkeley Police Department recognizes that video recording of contacts between Department personnel and the public provides an objective record of these events, and that the use of a recording system complements field personnel in the performance of their duties by providing a video record of enforcement and investigative field contacts, which can enhance criminal prosecutions, limit civil liability, increase transparency, and enhance professionalism in policing. A video recording of an event or contact also enables the delivery of timely, relevant, and appropriate training to maximize safety for both community members and BPD personnel and will improve the delivery of police services to the community.

While recordings obtained from video recorders provide an objective record of events, it is understood that video recordings do not necessarily capture all events, activities and information, or reflect the full experience of the individual member(s) in a given incident. Specifically, it is understood that the recording device will capture information that may not have been heard and/or observed by the involved member and that the involved member may see and hear information that may not be captured on video.

**450.2a Confidentiality and Proper Use of Recordings.**

Body Worn Video use is limited to enforcement and investigative activities involving members of the public. The recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, and other proceedings protected by confidentiality laws and Department policy. Improper use or release of BWC recordings may compromise ongoing criminal and administrative investigations or violate the privacy rights of those recorded and is prohibited.

**450.2b Training Required.**

Officers who are assigned BWC's must complete department-approved training in the proper use and maintenance of the devices before deploying to the field.

As part of a continual improvement process, regular review should be conducted by BPD staff of the training on this policy and the related use of BWC's under this policy. The department shall make an annual report to the PRC regarding the outcome of this review

### **450.3 MEMBER PRIVACY EXPECTATION**

All recordings made by members acting in their official capacity shall remain the property of the Department. Members shall have no expectation of privacy or ownership interest in the content of these recordings.

### **450.4 MEMBER RESPONSIBILITIES**

Prior to going into service, each member who is assigned to wear a BWC will be responsible for making sure that he or she is equipped with a portable recorder issued by the Department, and that the recorder is in good working order. If the recorder is not in working order or malfunctions at any time, the member shall promptly report the failure to his/her supervisor and obtain a functioning device as soon as practicable. Uniformed members should wear the recorder in a conspicuous manner or otherwise notify persons that they are being recorded, whenever possible.

Officers are not required to obtain consent to record from members of the public when the officer is lawfully at the location where the recording takes place.

Upon the approval of the police chief or his or her designee, non-uniformed members may use an approved portable recorder. Unless conducting a lawful recording in an authorized undercover capacity, non-uniformed members should wear the recorder in a conspicuous manner when in use and notify persons that they are being recorded, whenever possible.

When using a portable recorder, the assigned member shall record his or her name, BPD identification number and the current date and time at the beginning and the end of the shift or other period of use, regardless of whether any activity was recorded. This procedure is not required if the recording device and related software captures the user's unique identification and the date and time of each recording.

Members are required to document the existence of a recording in any report or other official record of the contact, including any instance where the recorder malfunctioned or the member deactivated the recording. In the event activity outlined in section 450.5 is not captured in whole or in part the member will need to document this and the reason the footage was not captured.

#### **450.4.1 SUPERVISOR RESPONSIBILITIES**

Supervisors shall take immediate physical custody of a BWC when the device may have captured an incident involving a use of force, an officer-involved shooting or death or other serious incident, and shall ensure the data is uploaded in a timely manner as prescribed by BPD policy.(Penal Code § 832.18).

Supervisors shall also review relevant BWC recordings prior to submitting any administrative reports.

#### **450.5 ACTIVATION OF THE BWC**

This policy is not intended to describe every possible situation in which the BWC should be used. Members shall activate the recorder as required by this policy or at any time the member believes it would be appropriate or valuable to record an incident within the limits of privacy described herein.

The BWC shall be activated in any of the following situations:

- (a) All enforcement and investigative contacts including stops and field interview (FI) situations.
- (b) Interrogations.
- (c) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops.
- (d) Self-initiated activity in which a member would normally notify the Communications Center.
- (e) Probation or parole searches.
- (f) Service of a search or arrest warrant.
- (g) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording.
- (h) Transporting any detained or arrested person, any time the member expects to have physical contact with that person.

Members shall remain sensitive to the dignity of all individuals being recorded and exercise sound discretion to respect privacy by discontinuing recording whenever it reasonably appears to the member that such privacy may outweigh any legitimate law enforcement interest in recording. Requests by members of the public to stop recording should be considered using this same criterion. Recording should resume when privacy is no longer at issue unless the circumstances no longer fit the criteria for recording.

Informal community interactions differ from "consensual encounters" in which officers make an effort to develop reasonable suspicion to detain or probable cause to arrest. To strengthen relationships between police and citizens, officers may use discretion regarding the recording of informal, non-enforcement related interactions with members of the community.

At no time is a member expected to jeopardize his or her safety in order to activate a BWC or change the recording media. However, the BWC should be activated in situations described above as soon as practicable.

#### **450.5.1 ACTIVATION IN CROWD CONTROL SITUATIONS**

During crowd control, protest or mass arrest incidents members shall use their BWC's consistent with this policy, and when directed by the Incident Commander. The Incident Commander shall document their orders in an appropriate report (e.g. Operations Plan or After Action Report).

The limitations outlined in General Order C-1, governing intelligence-gathering procedures for First Amendment activities, apply to the use of BWCs and other recording devices.

#### **450.5.3 SURREPTITIOUS USE OF THE PORTABLE RECORDER**

Members of the Department may surreptitiously record any conversation during the course of a criminal investigation in which the member reasonably believes that such a recording will be lawful and beneficial to the investigation.

Members shall not surreptitiously record another department member without a court order unless lawfully authorized by the Chief of Police or the authorized designee.

#### **450.5.4 CESSATION OF RECORDING**

Once activated, the BWC shall remain on continuously until the member's direct participation in the incident is complete or the situation no longer fits the criteria required herein for activation. Recording may be stopped during significant periods of inactivity such as report writing or other breaks from direct participation in the incident.

Members shall cease audio/video recording whenever necessary to ensure conversations are not recorded between a person in custody and the person's attorney, religious advisor or physician, unless there is explicit consent from all parties to the conversation.

#### **450.6 PROHIBITED USE OF PORTABLE RECORDERS**

Members are prohibited from using department-issued portable recorders and recording media for personal use and are prohibited from making personal copies of recordings created while on duty or while acting in their official capacity.

Members are also prohibited from retaining recordings of activities or information obtained while on duty. Members shall not duplicate or distribute such recordings, except for authorized legitimate department business purposes. All such recordings shall be retained at the Department.

Members shall utilize their department-issued body worn camera as specified in this policy. Members may additionally use personally owned recorders (e.g. cell phone) to document contacts in addition to the departmentally issued body worn camera, or in lieu of the departmentally issued BWC, where the issued device fails and/or is not functioning (e.g. malfunction, broken or battery dead). Regardless, if a member is using a department-issued body worn camera, and/or another recording device, members shall comply with the provisions of this PRC Recommended Policy for BPD Use of Body-Worn Cameras

policy, including retention and release requirements. In every event where members use any recording device aside from the department-issued body worn camera, the member shall document and explain the use in their police report (e.g. the body worn camera failed and evidence needed to be captured at that moment in time).

Recordings shall not be used by any member for the purpose of embarrassment, intimidation or ridicule.

#### **450.7 PROCESSING AND HANDLING OF RECORDINGS**

Any time a member records any portion of a contact that the member reasonably believes constitutes evidence in a criminal case, the member shall record the related case number and transfer the file in accordance with current procedure for storing digital files and document the existence of the recording in the related case report. Transfers must occur at the end of the member's shift, and any time the storage capacity of the recorder is nearing its limit. In circumstances when the officer cannot complete this task, the officer's supervisor shall immediately take custody of the portable recorder and be responsible for uploading the data. Officers must properly categorize and tag video recordings any time they are uploaded.

Any time a member reasonably believes a recorded contact may be beneficial in a non-criminal matter (e.g., a hostile contact), the member should promptly notify a supervisor of the existence of the recording and document the contact appropriately.

Members are prohibited from intentionally erasing, altering, reusing, modifying, or tampering with audio video recordings

##### **450.7.1 RETENTION REQUIREMENTS**

- a) All recordings shall be retained for a minimum of 60 days. Incidents involving consensual contacts, aid to citizens and cold reports will be retained for one year. Recordings of incidents involving use of force by a police officer, detentions, arrests, or recordings relevant to a formal or informal complaint shall be retained for a minimum of two years and one month. Any recordings relating to court cases and personnel complaints that are being adjudicated will be manually deleted at the same time other evidence associated with the case is purged in line with the department's evidence retention policy.
- b) Recording caused by either testing or accidental activation may be deleted after 60 days.

##### **450.7.2 REVIEW OF RECORDINGS BY A MEMBER**

When preparing written reports, members should review their recordings as a resource, except as stated in subsections A and B below. However, members shall not retain personal copies of recordings. Members shall not use the fact that a recording was made as a reason to write a less detailed report.

A. Incidents that involve use of force.

PRC Recommended Policy for BPD Use of Body-Worn Cameras

A member involved in a use of force shall not review or receive an accounting of any related body camera video footage prior to completing any required initial reports and statements regarding the recorded event. An involved member will be given the opportunity to supplement his or her statement in a separate document, a separate section of the report, or in a separate version of the same document if the earlier document(s) can be easily accessed. In no case shall a member alter a report made prior to reviewing the recording.

**B. Incidents that result in grave bodily injury.**

1. In the event of an officer-involved incident that results in grave bodily injury, including an officer-involved shooting or an in-custody death, the BWC of the involved member(s) shall be taken from him or her and secured by a supervisor, commander, or appropriate investigator, as necessary. Involved members are not to access or obtain their footage of the incident. It will be the responsibility of the investigation team's supervisor to coordinate with the involved member's supervisor to obtain footage of the incident.
2. Personnel uploading secured BWC video files shall not view the files unless authorized.
3. No member involved in the incident may view any video recordings prior to being interviewed by the appropriate investigative unit and receiving command approval.
4. Once a member's report(s) has been submitted and approved and the member has been interviewed by the appropriate investigator, the involved member will have an opportunity to review the recordings prior to the conclusion of the interview process and to provide additional information to supplement his or her statement in a separate document or separate section of the report. In no case shall a member alter a report made prior to reviewing the recording.

**C. Investigatory Review**

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct or whenever such recordings would be beneficial in reviewing the member's performance.

Recorded files may also be reviewed:

(a) Upon approval by a supervisor, by any member of the Department who is participating in an official investigation, such as a personnel complaint, administrative investigation or criminal investigation.

(b) Pursuant to lawful process or by court or District Attorney personnel who are otherwise authorized to review evidence in a related case.

Personnel assigned to investigatory units are authorized to view any BWC video file associated to their active investigations, unless otherwise prohibited by policy.

Investigators conducting criminal or internal investigations shall:

PRC Recommended Policy for BPD Use of Body-Worn Cameras

1. Advise the coordinator to restrict public disclosure of the BWC file in criminal or internal investigations, as necessary.
2. Review the file to determine whether the BWC file is of evidentiary value and process it in accordance with established protocols.
3. Notify the coordinator to remove the access restriction when the criminal/internal investigation is closed.

D. Recorded files may also be reviewed by training staff regarding incidents that may serve as a learning or teaching tool.

#### **450.8 RELEASE OF RECORDINGS**

Recorded files will be released:

(a) To the Police Review Commission Officer and/or Investigators and Board of Inquiry Members investigating a specific complaint where body worn camera footage is available. For purposes of the investigation, video will be made available to the PRC Officer and/or Investigator for their use and to facilitate pre-hearing viewing by BOI Commissioners. For purposes of the Board of Inquiry, where video review is deemed necessary by the PRC Officer and/or Investigator, or by commission members, the Department shall facilitate such viewing, at the meeting site for the Board of Inquiry, and which will be conducted by an Internal Affairs Sergeant, or other designee as directed by the Chief of Police. No one shall be allowed to make a copy of the video, or to otherwise record the video being shown, except as noted in other provisions of this policy. The department retains custody and control of the recordings, and content of the video will be subject to the confidentiality requirements of the Police Officer Bill of Rights (POBAR).

(b) In compliance with a public records request, as permitted under General Order R-23 (RELEASE OF PUBLIC RECORDS AND INFORMATION), R-23 does not authorize release of documents that would constitute an unwarranted invasion of privacy. Circumstances where this might arise in video include footage taken inside a home, a medical facility, the scene of a medical emergency, or where an individual recorded has a "reasonable expectation of privacy." However, all subjects of any footage or their next of kin may authorize its release unless prevented by other city policy, law or the courts.

(c) To media personnel or the general public with permission of the Chief of Police or authorized designee, subject to privacy protections indicated in this policy.

All recordings should be reviewed by the Custodian of Records prior to public release (see the Records Maintenance and Release Policy).

BPD may share video footage with law enforcement, national security, military, or other government agencies outside of Berkeley, when there is reasonable suspicion that criminal activity has occurred or is about to occur.

PRC Recommended Policy for BPD Use of Body-Worn Cameras

#### **450.9 COORDINATOR**

The Chief of Police or the authorized designee shall appoint a member of the Department to coordinate the use and maintenance of portable audio/video recording devices and the storage of recordings, including (Penal Code § 832.18):

- (a) Establishing a system for uploading, storing and security of recordings, including for video recordings made using personally-owned recording devices .
- (b) Designating persons responsible for uploading recorded data.
- (c) Establishing a maintenance system to ensure availability of operable portable audio/video recording devices.
- (d) Establishing a system for tagging and categorizing data according to the type of incident captured.
- (e) Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.
- (f) Working with counsel to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
- (g) Maintaining logs of access and deletions of recordings.

#### **450.10 SURVEILLANCE**

The use of facial recognition and other biometric technologies by BPD in conjunction with body camera images is prohibited until a BPD policy is adopted addressing the uses of such technologies.



**Lee, Katherine**

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**From:** jbcofc@aol.com  
**Sent:** Sunday, October 14, 2018 11:09 AM  
**To:** Lee, Katherine  
**Subject:** Re: Clarification of Oakland PD body-worn camera policy  
**Attachments:** DGO I-19 Duty Use of Cellular Telephones and Personal Electronics Oakland Phone policy.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Ms. Lee,

I was successful in obtaining OPD DGO I-19 which covers the Duty Use of Cellular Telephones and Personal Electronic Devices.

Even though this policy is dated before OPD got Department issued cell phones, I am told this policy applies to those phones as well.

While you should look at any part of the policy you and the PRC believes is appropriate, I would point out two provisions that seem particularly relevant to this discussion:

Page 2 II H. Provides for the searches of personal cell records, bills and text message for the time the member is on duty or engaged in work-related communications only when "there are reasonable grounds for suspecting that the search will reveal the employee is guilty of work-related misconduct in accordance with prevailing law."

Page 2 I "Personnel are prohibited from communicating with other involved or witness personnel following a use of force incident in accordance with the provisions of Department General Order K-04, Reporting and Investigation the Use of Force"

As we discussed Friday, I do not know of a similar prohibition in Berkeley that would prevent officers from showing other officers their body camera video when there is a use of force and both officers are witnesses and/or inflicted the use of force. If I am incorrect, then I would of course have no objection to the lack of such a policy in Berkeley.

-----Original Message-----

**From:** Lee, Katherine <KLee@cityofberkeley.info>  
**To:** Lee, Katherine <KLee@cityofberkeley.info>  
**Cc:** 'Jim Chanin (jbcofc@aol.com)' <jbcofc@aol.com>  
**Sent:** Fri, Oct 12, 2018 6:07 pm  
**Subject:** Clarification of Oakland PD body-worn camera policy

Dear Commissioners,

Wanted to let you know that Mr. Chanin called me to correct what he had stated at the PRC meeting regarding OPD's body-worn camera policy. He had said that officers are not allowed to view camera footage before writing a report, but in fact, the policy allows such viewing except in "Level 1" Use of Force, "Level 1" Pursuit, and In-custody Death cases. Also, officers under investigation are not allowed to view video of the incident in question except upon written request and when written approval is granted.

That is the gist of it. Mr. Chanin provided more detail (and I have a copy of the OPD policy which I will send), but I wanted to let you know at least this much for now, and provide further information on Monday.

Enjoy the weekend,





DEPARTMENTAL  
GENERAL  
ORDER

Effective Date  
16 July 15

I-15.1

Evaluation Coordinator:  
Information Systems Manager

Index as:

Evaluation Due Date:  
18 Jan 16

Portable Video Management  
System

Automatic Revision Cycle:  
2 Years

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### PORTABLE VIDEO MANAGEMENT SYSTEM

The purpose of this order is to set forth Departmental policy and procedures for the Portable Video Management System (PVMS), which includes a Portable Digital Recording Device (PDRD), designed to record both audio and video of field activity.

Progressive police departments are increasingly utilizing a variety of audio/video technology to further the mission of their departments. The Oakland Police Department has adopted PDRD technology because of its flexibility to capture audio/video evidence and enhance the Department's ability to conduct criminal investigations, administrative investigations, and review police procedures and tactics.

#### I. POLICY

- A. All personnel in an assignment with primarily field based responsibilities, as determined by the Chief of Police (COP), shall be assigned a PDRD for the duration of the assignment.

Other personnel, as determined by the COP, may also be assigned a PDRD.

- B. All personnel assigned a PDRD shall carry and use the PDRD in accordance with the provisions of this order.
- C. All PDRD files are the property of the Oakland Police Department. Unauthorized use, duplication, editing, and/or distribution of PDRD files is prohibited.
- D. Personnel shall not delete any PDRD file, except as specified in Part VII, C.
- E. Personnel shall not remove, dismantle or tamper with any hardware/software component or part of the PDRD.
- F. Personnel are prohibited from wearing or using personally owned video recording devices in place of or in conjunction with an assigned PDRD.

- G. The Project Resource Management Unit is designated as the Custodian of Record for all PDRD data files.
- H. Personnel shall not intentionally use the PDRD recording functions to record any personal conversation of, or between another member/employee without the recorded member/employee's knowledge.
- I. Personnel shall not intentionally use the PDRD to record at Department facilities where a reasonable expectation of privacy exists (e.g., bathrooms, locker rooms, showers) unless there is a legal right to record and a Departmental requirement to record.
- J. Part II also applies to cover officers.

## II. PDRD ACTIVATION AND DE-ACTIVATION

### A. Required activation

Members shall activate their PDRD under any of the following circumstances:

1. Citizen contacts to confirm or dispel a suspicion that the citizen may be involved, as a suspect, in criminal activity;
  2. Detentions and Arrests;
  3. Assessment or evaluation for a psychiatric detention (5150 W&I);
  4. Involved personnel, as defined by DGO J-4, PURSUIT DRIVING, during a vehicle pursuit;
  5. Serving a search or arrest warrant;
  6. Conducting any of the following searches of a person and/or property:
    - a. Incident to arrest;
    - b. Cursory\* (i.e., patdown or limited weapons search);
- \* Refer to Training Bulletin (TB) I-O.02, THE LEGAL ASPECTS OF SEARCHING PERSONS
- c. Probable Cause;
  - d. Probation/Parole;

- e. Consent; or
- f. Inventory
- 7. Transporting any detained or arrested citizen (excluding prisoner wagon transports); or
- 8. Upon the order of a higher ranking member.

**Members shall activate their PDRD prior to initiating the circumstances enumerated in Part II. A. 1-7, above.**

**B. Crowd Control Operations**

During crowd control, protest or mass arrest incidents members shall use their PDRD consistent with this policy, and when directed by the Incident Commander. The Incident Commander shall document their orders in an appropriate report (e.g. Operations Plan or After Action Report) and provide the orders to all personnel.

**C. PDRD Activation is not required under any of the following circumstances:**

- 1. Members taking a report when the information available to them indicates the suspect is not on the scene;
- 2. During a preliminary investigation with a child abuse victim or a victim of a sexual assault;
- 3. Members meeting with any Confidential Informant, as defined in DGO O-4, INFORMANTS; or
- 4. Members on a guard assignment at a Police, Medical, Psychiatric, Jail or Detention facility. Members shall assess the circumstances (e.g., suspect's demeanor/ actions, spontaneous statements, etc.) of each guard assignment, on a continuing basis, to determine whether to discretionarily activate or de-activate their PDRD.

**D. De-activation of the PDRD**

- 1. Members shall not de-activate their PDRD, when it was activated as required by this policy, until one of the following occurs:

- a. Their involvement in the citizen contact, arrest or detention has concluded or becomes a hospital guard (see part II, C, 4 above);
- b. They receive an order from a higher ranking member;
- c. They are discussing administrative, tactical or law enforcement sensitive information away from the citizen;
- d. They are at a location where they are not likely to have interaction or a chance encounter with the suspect (e.g. outer perimeter post, traffic control post, etc.);
- e. The searches requiring activation as enumerated in Part II, A have concluded and the member believes they will have no further interaction with the person;
- f. They reasonably believe the recording at a hospital may compromise patient confidentiality;
- g. A pursuit has been terminated and the member performs the required actions, as specified in DGO J-4, or notifies Communications they are in-service; or
- h. They are interviewing an informant for the purpose of gathering intelligence. At the conclusion of the interview, the PDRD shall be re-activated until no longer required by policy.
- i. They are meeting with an undercover officer. At the conclusion of the meeting, the PDRD shall be re-activated until no longer required by policy.

After a member de-activates their PDRD, it is their responsibility to ensure they re-activate their PDRD should the circumstances require it.

2. Statement taking

Personnel are authorized to use the PDRD to record statements in lieu of taking a written statement. PDRDs, however, shall not be used to record statements from child abuse or sexual assault victims.

- a. Personnel shall advise or obtain consent from victims or witnesses when taking a PDRD recorded statement.

- b. PDRD statements shall be recorded as an individual separate file, barring exigent circumstances. Therefore, during a required activation, where none of the de-activation criteria have been met, members may temporarily de-activate their PDRD to record individual separate statements.
- c. Personnel shall follow the steps below when de-activating their PDRD for statement taking:
  - 1). Prepare to immediately take the statement;
  - 2). De-activated the PDRD then immediately re-activate the PDRD and begin taking the statement.
  - 3). Upon completion of the statement, de-activate the PDRD then immediately re-activate the PDRD, if continued recording is required.

Members shall repeat the above steps when de-activating/activating their PDRD to take multiple statements.

- d. Personnel whose PDRD is not already activated shall activate it before and deactivate it after each statement is taken to create a separate individual file.

Refer to Report Writing Manual (RWM) S-01, STATEMENTS.

E. Discretionary Activation and De-Activation

Members, when not prohibited from or required to activate their PDRD, may use their own discretion when deciding to activate and de-activate the PDRD.

**III. USE OF THE PORTABLE VIDEO MANAGEMENT SYSTEM**

A. PDRD Operability

Members shall not utilize or wear a PDRD unless it is properly functioning. If at any time, after deploying to the field, a PDRD malfunctions or becomes inoperable it shall be replaced as soon as practical.

1. Function Check

- a. Members assigned or checking out a PDRD shall test the equipment prior to every shift. Once activated, the indicator light of a fully functioning PDRD should change from solid green to blinking green. If this does not occur, the PDRD is not fully functional and a backup camera shall be checked out prior to deploying in the field.
- b. Members shall report all malfunctioning or inoperable PDRD issues to a supervisor as soon as practical. Additionally any unresolved PDRD equipment malfunctions/problems shall be reported to the Project Administrator for camera replacement or repair.
- c. Absent exigent circumstances, members shall check out a backup camera prior to deploying in the field and utilize it as required until such time as their assigned camera is operational or a new camera is assigned.

2. Battery Maintenance

- a. Members shall ensure their PDRD battery is fully charged at the beginning of their shift.
- b. Personnel assigned to maintain and issue backup PDRDs shall ensure the batteries are fully charged before issuing.

3. Data Upload

Members shall upload PDRD data files at the end of and, if needed, during their shift to ensure storage capacity is not exceeded.

B. PDRD Placement

1. Members shall position and securely attach the PDRD to the front of their uniform or uniform equipment, as the primary recording location, to facilitate recording.
2. The PDRD may be temporarily moved from the primary location to facilitate recording in furtherance of a police objective. Upon completion of the objective, the PDRD shall be returned to the primary recording location as soon as practical.



C. PDRD Use Documentation

1. Personnel are required to document all activations of their PDRD, except for test or accidental recordings.

Documentation shall be provided in at least one of the following reports, as appropriate:

- a. Crime Report;
  - b. Consolidated Arrest Report, electronic or paper, or Juvenile Record;
  - c. Field Interview; or
  - d. CAD notes
  - e. Use of Force Report
2. Personnel are required to document and explain in one of the reports specified above any delayed or non-activation of their PDRD when PDRD activation was required.

**IV. VIEWING PDRD VIDEO FILES**

Viewing PDRD video files is authorized, restricted or prohibited as follows (refer to Part V for required documentation):

A. Level 1 Use of Force, Level 1 Pursuit or In-Custody Death

1. In the event of a Level 1 use of force, Level 1 pursuit or an in-custody death, all PDRD recordings shall be uploaded to the server as soon as practical.
  - a. An involved or witness member's PDRD shall be taken from them and secured by a supervisor, commander or appropriate investigator, as necessary. The recordings shall be uploaded by personnel designated by the CID investigator.
  - b. After the recordings are uploaded, the CID investigator or designee shall turn the PDRD in to property until the CID and IAD Commander determine it may be released back to the member. The CID investigator shall ensure the chain of custody is documented in their report.

- c. All personnel uploading secured PDRDs shall document that fact in their report and the "Comment" field of each video file they uploaded.
  - d. Personnel uploading secured PDRD video files shall not view the files unless authorized by the CID investigator.
2. No personnel involved in or a witness to the incident may view any audio/video recordings prior to being interviewed by the appropriate investigative unit and receiving command approval.
  3. Once a member's report(s) has been submitted and approved and the member has been interviewed by the appropriate investigator, the investigator will show the member his/her audio/video. This will occur prior to the conclusion of the interview process

Personnel will be given the opportunity to provide additional information to supplement their statement and may be asked additional questions by the investigators.

**B. Investigation of a Member**

1. Criminal - Personnel who are the subject of a criminal investigation may not view any audio/video recordings related to the incident except upon approval, as specified below, by the CID or IAD Commander.
2. Administrative – Personnel having received notification (Complaint Notification Report [CNR]) from the IAD and who are considered to be a subject or witness officer, may not view any audio/video recordings related to the incident except upon approval, as specified below, by the IAD Commander.
3. Requesting Review of Audio/Video Recordings  
  
Subject or witness personnel wanting to view any of the audio/video recordings related to the incident shall make a request to do so, in writing or via email, to the CID or IAD Commander, as appropriate.
4. Approval or Denial to Review Audio/Video Recordings
  - a. The CID or IAD Commander receiving the above request shall notify the member, in writing or via email, of the approval or denial to view the recordings.

The CID or IAD Commander shall document the approval or denial in the case file notes/log or include a copy of the approval or denial correspondence in the case file.

- b. Approval to view the audio/video recordings may be made by the CID or IAD Commander as long as he/she has determined that allowing the recordings to be viewed will not be detrimental to the investigation.

C. Investigatory Review

Personnel assigned to CID or other investigatory units are authorized to view any PDRD video file associated to their active investigations, unless otherwise prohibited by policy.

Investigators conducting criminal or internal investigations shall:

1. Advise the Project Administrator or a System Administrator to restrict public disclosure of the PDRD file in criminal or internal investigations, as necessary.
2. Review the file to determine whether the PDRD file is of evidentiary value and process it in accordance with established protocols.
3. Investigators shall notify the System Administrator to remove the access restriction when the criminal/internal investigation is closed.

D. Supervisor and Commander Review

Supervisors and commanders are authorized to review their own PDRD video files, all video files of their subordinates and, as necessary to complete required duties, any associated video files of non-subordinate members, unless otherwise prohibited by policy.

1. In addition to other required video recording reviews, all supervisors shall conduct a random review of at least one PDRD recording for each of their subordinates on a monthly basis. The selected recordings shall be viewed in their entirety and shall have a minimum length of ten (10) minutes.
2. When a supervisor is approving or investigating a UOF or vehicle pursuit they shall review the PDRD recordings of all members who are a witness to or involved in the use of force.

3. Supervisors review of subordinate PDRD recordings shall include an assessment of:
  - a. Officer performance and training needs;
  - b. Policy compliance; and
  - c. Consistency between written reports and video files.
4. When a member does not activate or de-activate their PDRD as required, supervisors and commanders shall determine if the delayed or non-activation was reasonable, based upon the circumstances.

If the supervisor determines that the delay or non-activation was reasonable they shall document their justification in the UOF report or, if no UOF report is generated, in the officer's SNF. The supervisor's commander shall be advised and their name noted in the SNF.

5. Supervisors, commanders, and managers who discover Class II misconduct during the review of PDRD video, that does not indicate a pattern of misconduct, may address the Class II misconduct through non-disciplinary corrective action. Supervisors shall, at a minimum, document any Class II violation of this policy in the officer's SNF.

E. Member Review

Members are authorized to review their own PDRD recordings to properly identify the data files, refresh their memory regarding an incident or any other work related purpose, unless otherwise prohibited by policy.

F. Other Review

1. OIG staff (when conducting audits), supervisors, commanders, active FTOs and the FTO Coordinator are authorized to view PDRD files to investigate allegations of misconduct or evaluate the performance of members, unless otherwise prohibited by policy.
2. Training staff is authorized to view PDRD video files regarding incidents which may serve as learning or teaching tool.

- G. When personnel are authorized to view a PDRD video file by this policy, the video file shall be reviewed on a Department computer by logging onto the VERIPATROL system.

## V. VIDEO FILE DOCUMENTATION AND CHAIN OF CUSTODY

To ensure accountability for the proper identification, tracking and chain of custody for all original PDRD video files stored on the Department server and external copies of the PDRD video files, all personnel shall follow the protocols below.

### A. PDRD File Information Documentation

1. Members shall enter in VERIPATROL the RD # associated with each video file. If no RD # is created for the video, the full CAD incident number shall be entered. Members shall add this data to the file by using the "Add Details" button in the VERIPATROL software program:
  - a. Category column- Select the appropriate category from the drop down menu; and
  - b. Case # column- Enter the report number if one exists, or if none exists, the full 15 digit incident number (i.e. LOP141002001196); or
  - c. If a PDRD video file was created and does not have an associated RD or incident number, the member shall enter "NONE" in the comment column.

This task should be completed by logging into VERIPATOL Mobile in the patrol vehicle where viewing and annotation can be completed daily throughout the member's shift.

2. Members are authorized to view their video in order to properly identify the data file unless otherwise prohibited by policy.
3. Entering the information specified in Section 1, above, shall be completed daily. Should conditions exist that prohibit completion during the member's shift, it shall be completed minimally by the end of the member's next regularly scheduled work day.

During incidents that require a large scale activation of the Department's members, (i.e. protest, natural disaster, etc.), the incident commander may approve delayed information entry, except in cases that require an investigative callout (e.g. Level 1 UOF, ICD, VPRD, criminal investigation of a member or employee.) The Incident Commander shall document their orders in the After Action Report.

B. Viewing a PDRD video file

Authorized personnel viewing any video file shall document the reason for access in the "Comments" field of each video file viewed. The entry shall be made either prior to viewing the video or immediately after viewing the video.

C. Copying a PDRD video file other than for court

1. Personnel authorized to make copies of PDRD video files shall document the reason for making the copy and the name of the person receiving the copy in the "Comments" field of each video file copied. If applicable the name entry shall also include the person's rank and serial number.

The entry shall be made either prior to copying the video file or immediately upon completion.

2. Copies of PDRD video files for internal use shall be maintained in the appropriate case file or a secure location. When the copy is no longer needed, it shall be returned to a system administrator for destruction. The system administrator shall make an entry in the "Comments" field of the video file that the copy was destroyed.
3. Copies of PDRD video files for release pursuant to a public records request or as authorized by the Chief of Police or designee, shall be redacted, as required by prevailing law and Department procedures, prior to release. (Refer to Part VII regarding public records access.)
4. All personnel are prohibited from:
  - a. Making unauthorized copies of an original or copied PDRD video file;
  - b. Giving or showing copies of PDRD video files to anyone without a lawful right to know and need to know, unless authorized by the Chief of Police;
  - c. Posting or having another person post a copied PDRD video file on any social media site or public site, unless authorized by the Chief of Police.

D. Copying a PDRD video file for court

1. Personnel authorized to make copies of PDRD video files shall document the reason for making the copy and the name of the person receiving the copy in the "Comments" field of each video file copied. If applicable, the name entry shall also include the person's rank and serial number.

The entry shall be made either prior to copying the video file or immediately upon completion.

2. The person receiving the copy shall maintain the copy in a secure location until it is needed for court or custody is transferred to another person. Additionally, they shall document, as soon as practical, the name and/or position of the person receiving the copy in the "Comments" field of each video file.

The documentation of the chain of custody and responsibility to secure the copy shall transfer to the person receiving the copy until:

- a. The copy is received by non-Department personnel (e.g. District Attorney, City Attorney, Court Clerk, etc.);
  - b. The copy is admitted in to evidence; or
  - c. The copy is returned to a system administrator for destruction.
3. System Administrators receiving a video file copy for destruction shall ensure the copy is destroyed and make an entry in the "Comments" field of the video file that the copy was destroyed.
  4. CID or other investigative personnel taking a case to the District Attorney for charging are responsible for obtaining copies of all applicable PDRD files for presentation to the DA.

**VI. RESPONSIBILITIES**

- A. Project Administrator

The Project Administrator is designated by the Chief of Police and has oversight responsibilities to include, but not limited to, the following:

1. Document and track malfunctions and equipment failures;
2. Policy and procedure review and evaluation;
3. Ensure PDRD files are secured and retained for a minimum of two (2) years;
4. Ensure PDRD files are reviewed and released in accordance with federal, state, local statutes, and Departmental General Order M-9.1, PUBLIC RECORDS ACCESS;
5. Train the System Administrators to ensure consistency; and
6. Establish policy and procedures for the replacement of non-functioning PDRDs and the check-out of spare PDRDs.

B. System Administrators

System Administrators shall be designated by the Bureau Commander for non-patrol assignments or the CID Commander for CID personnel. All Sergeants of Police assigned to the Patrol Division are System Administrators.

System Administrator responsibilities shall include, but are not limited to, the following:

1. Ensure officers are assigned a fully functional PDRD. Malfunctioning PDRDs shall be replaced as soon as practical, in the manner specified by the Project Administrator;
2. User training;
3. Ensure the return of damaged equipment to the Project Administrator;
4. Make copies of PDRD files for court or other authorized activities;
5. Destruction of copied PDRD files not admitted as evidence in court or no longer needed internally; and
6. Approve/disapprove requests for deleting accidental recordings.



## VII. PDRD FILE REQUESTS

### A. Departmental Requests

Personnel requiring a copy of PDRD audio/video file(s) for court shall contact their first line supervisor. If the first line supervisor is unavailable, personnel shall contact any System Administrator.

1. In non-patrol assignments, requests for PDRD audio/video file(s) shall be forwarded to the designated System Administrator.
2. Any PDRD copies not entered into evidence shall be returned to the first line supervisor or a System Administrator for destruction.

### B. Non-Departmental Requests.

Public Records requests shall be accepted and processed, in accordance with the provisions of federal, state, local statutes and DGO M-9.1, PUBLIC RECORDS ACCESS, and forwarded to the Project Administrator.

### C. Request for deletion of an accidental recording.

In the event of an accidental activation of the PDRD and the resulting recording is of no investigative or evidentiary value, the respective personnel may request that the PDRD file be deleted by submitting an email request to their immediate supervisor with sufficient information to locate the PDRD file.

Approved requests shall be submitted to the Project Administrator at [PDRD@oaklandnet.com](mailto:PDRD@oaklandnet.com).

### D. A PDRD file may be utilized as a training tool for individuals, specific units, and the Department as a whole. A recommendation to utilize a PDRD file for such purpose may come from any source.

1. A person recommending utilizing a PDRD file for training purposes shall submit the recommendation through the chain-of-command to the Training Section Commander.
2. The Training Section Commander shall review the recommendation and determine how best to utilize the PDRD file considering the identity of the person(s) involved, sensitivity of the incident and the benefit of utilizing the file versus other means.

**VII. REPLACEMENT PROCEDURES**

- A. Personnel shall report any recognized problems with the PDRD as well as a lost, stolen or damaged PDRD to their immediate supervisor as soon as practical. Upon notification, the supervisor shall facilitate the replacement of the PDRD as soon as practical.
- B. Supervisors shall document a lost, stolen or damaged PDRD as specified in DGO N-5, LOST, STOLEN, DAMAGED CITY PROPERTY, unless the PDRD stops functioning properly for no apparent reason and the supervisor does not observe any sign of damage.

By Order of



Sean Whent  
Chief of Police

Date Signed: 21 Jul 15



DEPARTMENTAL  
GENERAL  
ORDER

Effective Date:  
2 Feb 09

I-19

Evaluation Coordinator:  
BFO Deputy Chief

Index as:

Evaluation Due Date:  
3 Aug 09

Duty Use of Cellular Telephones and  
Personal Electronic Devices

Automatic Revision Cycle:  
3 Years

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**DUTY USE OF CELLULAR TELEPHONES AND  
PERSONAL ELECTRONIC DEVICES**

**I. PURPOSE**

The purpose of this order is to set forth Departmental policy and procedures to maintain accountability and professional demeanor while utilizing Department-issued and privately-owned cellular telephones, other telecommunications devices (voice and/or text capability), and personal electronic devices.

**II. POLICY**

- A. Personnel may use Department-issued and privately-owned cellular telephones, and other telecommunications devices to conduct official police business when the use of radio communication or hard line telephone is inappropriate, unavailable, or inadequate to meet communication needs.
- B. The cost for privately-owned cellular telephones or other telecommunication devices is not reimbursable.
- C. Department personnel shall not utilize Department-issued and privately-owned cellular telephones, other telecommunications devices, and personal electronic devices to the point of distraction from their performance of duty or interference with officer safety. Please refer to section II (O) for examples of permissible use.
- D. One communication device, other than an approved radio, Departmental cellular phones, other telecommunications devices, or Departmental pager, may be worn on the uniform in a clear, black, or dark navy blue carrier, or kept in a pocket. When worn on the uniform, communication devices shall be in the silent/vibrate mode.

- E. Sworn members who carry a personal cellular telephone or other telecommunications device, while on-duty, shall initially provide their regularly assigned supervisor with the phone number and advise of any change in service or phone number.
- F. The Communications Division shall retain sworn members' cellular phone numbers in a secure location for use only in an emergency.
- G. Commanders/managers shall review records of excessive usage of Department-issued cellular telephones.
- H. Members and employees are on notice that the Department may search personal cellular records, bills, and text messages for the time the member is on-duty or engaged in work-related communications. Such searches shall be made only when there are reasonable grounds for suspecting that the search will reveal the employee is guilty of work-related misconduct in accordance with prevailing law.
- I. Personnel are prohibited from communicating with other involved or witness personnel following a use of force incident in accordance with the provisions of Departmental General Order K-4, Reporting and Investigating the Use of Force.
- J. Personnel shall not operate a Department vehicle while using a cellular phone. When possible, personnel shall pull off the roadway in a safe location when using a cellular phone unless a hands-free device is utilized.
- K. Unless engaged in a conversation, on-duty personnel shall not wear a cellular telephone earpiece outside of a Department vehicle.
- L. On-duty personnel shall not wear a cellular telephone earpiece at any time if a transceiver radio earpiece is worn.
- M. On-duty Department personnel, regardless of assignment, shall not use Department-issued cellular telephones to conduct any off-duty, personal business-related activity.
- N. The use of any cellular telephone or other device shall not interfere with safety or distract a member or employee from their assigned duties.
- O. Any on-duty personal calls shall be kept to a minimum and brief. Examples include, but are not limited to:

1. Calls to notify family members, physicians, etc. regarding an injury on the job;
2. Calls to notify family members when required to work overtime without advance notice; and
3. Daily calls to speak to family members, partners, friends (or those responsible for them such as school, day care, or senior center) to check on their well-being.

### III. PERSONAL ELECTRONIC/ENTERTAINMENT DEVICES.

- A. Personal electronic/entertainment devices (e.g., televisions, DVD players, video games, or computer game systems) shall **not** be used while on duty. Approved cellular telephones and electronic devices with the capability of playing video files shall not be used in such a manner while on duty. Music devices may only be utilized in City vehicles while on duty without headphones.
- B. On-duty personnel are prohibited from using electronic equipment, computers, televisions, and DVD players for entertainment purposes. Personnel are permitted to monitor major newsworthy events, training, traffic monitoring, and other work related material.
- C. The Department may search any personal files, records or bills of other electronic devices that record electronic material (e.g., pictures, audio, text messages, or electronically generated messages), potentially related to a criminal or internal investigation or for the time the member is on-duty or engaged in work-related communications while off duty. Such searches shall be made only when there are reasonable grounds for suspecting that the search will reveal evidence that the employee is guilty of work related misconduct in accordance with prevailing law.
- D. The City will accept no responsibility for the purchase, maintenance, loss, or damage to personal electronic devices used while in the performance of assigned duties.
- E. Work produced on Department-issued electronic devices or while on-duty is the property of the City.

DEPARTMENTAL GENERAL ORDER  
OAKLAND POLICE DEPARTMENT

I-19

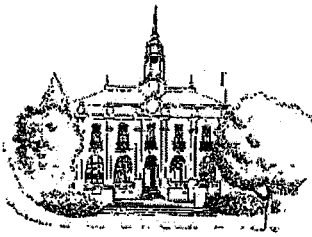
Effective Date:  
2 Feb 09

- F. Personnel shall be prohibited from placing confidential information on any electronic device that is not secure from access by unauthorized persons. All Department/work-related material, saved to any electronic media, shall be secured at all times.
  
- G. Electronic material (e.g., pictures, audio, text messages, electronically generated messages), potentially related to a criminal or internal investigation, recorded on a personal or Department-issued cellular telephone or other device shall be handled as evidence.

By Order of

Wayne G. Tucker  
Chief of Police

Date Signed: \_\_\_\_\_



## Kriss Worthington

Councilmember, City of Berkeley, District 7  
2180 Milvia Street, 5<sup>th</sup> Floor, Berkeley, CA 94704  
PHONE 510-981-7170, FAX 510-981-7177,  
EMAIL [kworthington@cityofberkeley.info](mailto:kworthington@cityofberkeley.info)

### CONSENT CALENDAR

October 2, 2018

To: Honorable Mayor and Members of the City Council  
From: Councilmember Kriss Worthington

Subject: Refer the Police Review Commission to extend time period to impose discipline on Berkeley Police Department officers pursuant to Police Review Commission findings

#### RECOMMENDATION:

Recommend that the Council refer to the Police Review Commission to extend the time limit for Police Review Commission investigations and notification of discipline from the current limit to one calendar year.

#### BACKGROUND:

While certain structural reforms to the Berkeley Police Review Commission (PRC) necessitate an amendment to the City Charter, it is possible to extend the time limit for PRC investigations and notification of discipline on Berkeley Police Department officers without such an amendment. There is no legal obstacle to enacting this reform, so long as meet-and-confer occurs in good faith between the City and any bargaining units affected by this change.

Berkeley's current time limit of 120 days for the investigatory and disciplinary process lags far behind neighboring jurisdictions such as San Francisco, BART, and Oakland. We must ensure that Berkeley's PRC is in line with the best regional practices for conducting police oversight.

#### FINANCIAL IMPLICATIONS:

Unknown

#### ENVIRONMENTAL IMPLICATIONS:

No Negative Impact.

#### CONTACT PERSONS:

Councilmember Kriss Worthington

510-981-7170

ATTACHMENTS:

1. City Attorney's Memo regarding meet-and-confer over proposed Charter Amendment
2. Comparison of time limits on Investigation/Discipline for neighboring Police Commissions