POLICE DEPARTMENT
CITY AND COUNTY OF SAN FRANCISCO
HEADQUARTERS
1245 3rd STREET
SAN FRANCISCO, CALIFORNIA 94158

EDWIN M. LEE
MAYOR

GREGORY P. SUHR
CHIEF OF POLICE

San Francisco Police Department Agenda
4th Working Group Meeting
Body Camera Policy
July 28, 2015
12:30 p.m.

Roll Call

Item 1. Adoption of Minutes from July 14, 2015 Meeting (ACTION ITEM)

Item 2. Discussion of Follow-up Items from July 14, 2015 Meeting

Item 3. Discussion of ACLU letter dated July 13, 2015 to Commander Moser

Item 4. Future Agenda Items

Item 5. Future Meeting Dates

Item 6. General Public Comment
(The public is now welcome to address the working group regarding items that are within the subject matter jurisdiction of the working group. Speakers shall address their remarks to the working group as a whole and not to individual members of the working group. Working group members are not required to respond to questions by the public but may provide a brief response. Individual working group members should refrain, however, from entering into any debates or discussion with speakers during public comment).

Item 7. Adjournment (ACTION ITEM)

SUPPORTING DOCUMENTATION FOR BODY CAMERA POLICY WORKING GROUP AGENDA ITEMS THAT ARE NOT CONFIDENTIAL AND DOCUMENTATION THAT HAS BEEN DISTRIBUTED TO THE WORKING GROUP AFTER DISTRIBUTION OF THE AGENDA PACKETS ARE AVAILABLE FOR REVIEW AT THE POLICE COMMISSION OFFICE, 1245 3RD STREET, 6TH FLOOR, SAN FRANCISCO, CA 94158, DURING NORMAL BUSINESS HOURS.

END OF AGENDA

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San Francisco Police Department
Body Camera Policy Working Group
July 14, 2015 Meeting Minutes

The Body Camera Policy Working Group met at the Public Safety Building (PSB), 1245 3rd Street, Room 1025, San Francisco at 12:35 pm.

PRESENT: Teresa Caffese, Johnathan Yank, Brian Kneuker, Marc Marquez, Marquita Booth, Erick Baltazar, Martin Gran, Chris Hite, Commander Moser – quorum.

Also present Commission President Suzy Loftus.

Introductions:
Each member made brief introduction.

Item 1: Adoption of Minutes from June 30, 2015 meeting:
Officer Booth made a motion to adopt the minutes; second by Officer Marquez.
All voted in favor; motion passes.

Item 2: Discussion of Follow-up items from June 30, 2015 meeting:
Discussion of changes made to terminology: from Portable Digital Recording Device (PDRD) to Body Worn Camera (BWC).

Discussion of possible need for definition section. Department still waiting for definition of HIPPA and Health Care facility from the City Attorney's Office. Once those definitions come into the working group, the group can decide whether to add a definition section.

Discussion about section regarding consent being changed and about the notation that the working group has discussed that some agencies require officers to record at all times, but this working group is not making that recommendation.

Discussion about adding a title to the section about when not to record. This section is now Section D - Prohibited Recordings. The section includes prohibited circumstances that could be recorded in exigent circumstances. It also includes the strict prohibition of surreptitious recording of members in the SFPD and recording First Amendment Activities.

Discussion about moving section about "documentation" to follow the section on prohibited recordings.

There was a follow-up discussion about having officers record all of the time which would eliminate the issue of officers having to decide whether a situation was one that they could/could not record. Commander Moser mentioned that the group discussed this issue at a prior working group meeting. The working group's concern was that continual recording means that people's everyday encounters are captured by the recordings. Listing the times when officers can record is a way for the Department to balance the public's privacy concerns. There

is a note in the margin about the varying thoughts on this issue for the Police Commission to decide.

Item 3: Discussion of Working Document:
Discussion about working document started where the working group left of from the last meeting – Viewing BWC Recordings. Discussion mentioned that this version states officers "shall" view the video prior to writing the incident report, but having a "carve out" for situations when officers are involved in an officer-involved shooting, in-custody death, criminal investigation and an immediate administrative investigations.

Discussion about ACLU's letter that speaks directly to this issue. Commander Moser reminded the group that the ACLU letter will be on the July 28, 2015 agenda. There was discussion that some of the ACLU's concerns were already addressed in the current policy because of the carve outs out when officers cannot view video without coordinating with the investigator handling the incident.

Discussion about items 1 and 2 are contradictory: 1 states members shall review the recordings, and item 2 states that members may review the recording, except for the" carve out" items. The discussion was that item 1 is similar, and could be problematic.

Discussion about the dissenting views: 1) officers should be allowed to view the video prior to writing an incident report or an administrative/criminal investigation against the officer, 2) officers should not be allowed to view the video prior to writing an incident report or an administrative/criminal investigation against the officer. The discussion went on to mention that most members of the Bar Association of San Francisco (BASF), except for some in the District Attorney's office, and members of the community have the opinion that officers should not be able to view the recordings at all. The decision was to make note in the margins of the recommended policy about the 2 different views for the Police Commission to review.

Discussion about the comment regarding OCC Director's concern about being listed in the section about coordinating with Department investigators. Director Hicks not at this meeting, and this items will be discussed at the next meeting when she is present. Possible language was proposed to potentially address her concern: "Nothing in this section is intended to limit the OCC's role in these investigations."

Discussion about reorganizing the Reviewing BWC Recordings section to make it clearer and taking out the philosophy section.

Discussion about having moved the Documentation section up in the document and included a questions about why there are several documents typed listed instead of just an incident report. Commander Moser stated that not all instances require an incident report.

Discussion about the Storage and Use of Recording included mention that the type of BWC and storage system will determine the officers' ability and manner in which recordings are stored.

Discussion of Duplication and Distribution section included that OCC is not included as one of the agencies that is allowed to obtain copies of the recordings. Commander Moser agreed that language will be included to allow OCC to obtain recordings when OCC makes request.

Further discussion about when/how officers are allowed to request copies of recordings. Changed language to make the process clearer for both departmental and non-departmental requests.

Discussion on the Retention section included lengthening the time to two years. Some members of the working group felt that the costs to store the recordings would not be cost prohibitive. Commander Moser said the City will have to negotiate the costs of recording storage fees. The discussion continued about the many reasons for keeping the recoding for 2 years as opposed to one year: advice to clients not to file OCC complaints until after the criminal case is over, no statute on OCC fillings, federal law suits, minor involved, etc.

Working group members questioned whether officers would be allowed to delete on their own. Commander Moser mentioned that video and recording capabilities are subject to the type of BWC and storage system that the City purchases. However, the policy states that only members of the RMO office (BWC Unit) would be allowed to make the actual deletions based on retention times.

Discussion continued about the difference between requests for deletion of "routine videos" versus accidental recordings. Working group felt the language in the Retention section needs to be clarified.

Discussion on the Discovery of Potential Conduct section. There was concern there was a step missing – that officers viewing the video would need to report the potential misconduct to a superior officer in cases when the officer viewing the potential misconduct was not a supervisor. Commander Moser said the language will be changed.

Item 4: Future Agenda Items:
Discuss the ACLU letter July 13, 2015

Item 5: Future Meeting Dates:
Next meeting on Tuesday, July 28, 2015 at 12:30 pm at 1245 3rd Street, San Francisco.

Item 6: General Public Comment:
Commission President Suzy Loftus addressed the working group and thanked them for the thoughtful and thorough work the group was undertaking.

Item 7: Adjournment:
Mr. Gran made a motion to adjourn the meeting; second by Officer Kneuker.
All voted in favor; motion passes.

July 13, 2015

Via postal and electronic mail

Commander Robert Moser
San Francisco Police Department
1245 3rd Street
San Francisco, California 94158

Dear Commander Moser:

Thank you for inviting the feedback of the ACLU of California on the draft body camera policy dated 7/9/15 ("draft policy" or "policy").

We are joined by the Council on American-Islamic Relations and Color of Change in writing today to highlight several areas in the draft policy that need to be addressed in order to adequately safeguard civil liberties and civil rights. We also want to emphasize the need for consistent procedures to be in place to ensure that the community is fully involved and the right questions are considered before San Francisco moves forward with body cameras and any other technology with surveillance capabilities. These procedures are further explained in the ACLU of California's recent report, *Making Smart Decisions About Surveillance: A Guide for Communities,*[1] which provides helpful guidance on both process and policy issues that should be considered for body cameras.

For body cameras to deliver on their promise of accountability and promote public trust, there must be transparency and public trust in both the process that crafts the decision to adopt them and the policy that may ultimately govern their use. Although the San Francisco Police Department's initial public discussion of body cameras and the creation of a Working Group to draft a camera policy were promising, we are concerned that the Working Group has not delivered the transparency, full public debate, and community engagement needed for such an important issue. An ordinance has already been introduced in the San Francisco Board of Supervisors that seeks to standardize a process with transparency, accountability, and oversight for all technologies with surveillance capabilities. We urge the Board to consider and pass such an ordinance. [2]

We encourage San Francisco to take the following process and substantive policy points into consideration as efforts to move forward with body cameras continue.

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[1] ACLU of California, *Making Smart Decisions About Surveillance: A Guide for Communities* (Nov. 2014), available at https://www.aclusocal.org/community-making-smart-decisions-surveillance/.
[2] 150623, Legislation Introduced at Roll Call, San Francisco Board of Supervisors, June 9, 2015, *available at* http://www.sfbos.org/Modules/ShowDocument.aspx?documentid=52902.

In keeping with the report's recommendations, we recommend that before the City grant final approval for the purchase and deployment of body-worn video, it should do the following:

First, SFPD should submit a proposed use policy to the Commission and Board for body-worn video detailing the following:

- Purpose of body-worn video — What purposes will the use of body-worn video by SFPD serve?
- Policy for activation of body-worn cameras — When must officers turn them on, when must they keep them off, and under what circumstances, if any, do officers have discretion whether to record?
- Policy for access to and use of footage collected by body-worn cameras — For what reasons can police access footage taken by body-worn cameras? How do officers demonstrate or document that reasons for access have been satisfied?
- Data Protection— What safeguards protect against unauthorized access to data?
- Data Retention — How long are videos retained?
- Public Access — Under what circumstances will video be released to the public? Under what circumstances will video be kept confidential? Under what circumstances if any will video be shared with third parties but not publicly released?
- Oversight —What security and oversight mechanisms ensure polices on body worn video are being followed?

Second, SFPD should prepare a Privacy Impact Assessment that examines for the potential impact on privacy and civil liberties of body-worn video under its proposed policies.

Third, the City should hold public hearings about the acquisition and use of body-worn video and the SFPD's proposed body camera policy and obtain meaningful public input prior to final approval. We have some concerns about the effectiveness of the Working Group's role so far in engaging public participation. The ACLU has received complaints from community members who have been unable to access the draft policy online and the news media has reported that SFPD has refused to make a draft use policy available, citing confidentiality concerns.[5]

We urge SFPD to take additional efforts to make its draft policy available to the public and seek meaningful input. It is important that San Francisco follow a transparent, public process for body cameras and also move forward with standardizing a transparent, public process for considering adoption of any new technologies with surveillance capabilities. We urge prompt passage of a surveillance ordinance with safeguards that ensure no technologies capable of surveillance are acquired or deployed unless there is a transparent process that results in enforceable use policies and robust oversight mechanisms.[6] The process set forth in Ordinance 150623 already introduced in the San Francisco Board of Supervisors would help ensure that is possible.

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[5] Alex Emslie, *S.F. Mayor and Police Announce New Body Camera Initiative*, KQED News, Apr. 30, 2015, available at http://ww2.kqed.org/news/2015/04/30/s-f-police-expected-to-announce-body-camera-initiative.

[6] 150623, Legislation Introduced at Roll Call, San Francisco Board of Supervisors, June 9, 2015, *available at* http://www.sfbos.org/Modules/ShowDocument.aspx?documentid=52902.

when to turn cameras on also helps protect officers: because there will inevitably be an implicit assumption that an officer who did not record an incident was trying to hide something, which could harm officers if allegations of misconduct do arise.

SFPD's draft policy generally requires officers to record in most investigative circumstances, including all stops and detentions, consensual encounters where the citizen "may be involved in criminal activity as a suspect, victim or witness," and a number of enumerated searches of persons or property which we read to encompass all searches of a person or property that would occur in the field, including protective frisks. The policy also generally prohibits officers from activating recording during five enumerated circumstances, including sexual assault and child abuse victims during a preliminary investigation, in situations that could compromise the identity of confidential informants, and First Amendment activities, among others. While officers may record in situations other than those enumerated if the video would serve evidentiary purposes, and even in those generally prohibited if they can articulate an exigent circumstance, the policy does not authorize officers to turn off recordings outside the enumerated circumstances.

We believe SFPD's proposed rules properly require officers to record, at a minimum, all investigatory contacts, including consensual encounters initiated by officers for investigatory purposes. Because seemingly ordinary encounters can evolve quickly, and officers faced with a sudden fleeing or resisting suspects may not think to turn his or her body camera on, officers should be required to activate body cameras at the earliest stage of each interaction, before leaving a car or making contact with a pedestrian.

SFPD's current draft also properly authorizes officers not to record only in a few circumstances that are generally well-defined, involving highly sensitive circumstances, such as child abuse victims or in hospitals where patient confidentiality is at risk, or involving confidential information such as the identify of informants. Even as written, the policy should require officers to obtain on-camera consent of victims before turning off cameras, where feasible, and should document the reasons for not recording in all circumstances, not only when stopping a recording before the conclusion of an encounter.

We also have concerns about the provision allowing officers to stop recording "when gathering information from witnesses or community members, and there is concern that a [body camera] would inhibit information gathering efforts . . . ." The terms of that provision are less clearly defined and are potentially subject to a very broad interpretation, as officers may frequently believe that witnesses might be more forthcoming if body cameras are not on. While we are sensitive to the need for community members and witnesses to communicate freely with police, the breadth of this provisions threatens to make it an exception that often swallows the rule. We recommend this exception to the recording requirement be better defined and more clearly limited to exceptional circumstances where there is a demonstrable need for confidentiality. We also recommend that the Commission monitor and report on the use of this exception to ensure it is not abused as justification to routinely avoid recording.

Indeed, the Department must ensure that its policies requiring recording are actually followed by auditing officers' compliance and imposing disciplinary consequences for failure to activate of cameras or tampering with equipment. Where an incident under investigation should have been recorded, failure to record could also result in a rebuttable inference against the officer. For example, the Los Angeles Police Department ("LAPD") faced criticism that its officers went so far

Los Angeles County Office of Independent Review found in working on the Los Angeles Sheriff's Department's policy:

> In our review of the available research, we found ample evidence that seeing additional information than what was experienced (such as seeing the action from a different angle) can alter the memory of an event.[11]

A one-sided policy of allowing officers under investigation to view video before making a statement of an investigation undercuts the legitimacy of investigations. Because letting officers preview videos of an incident before giving a statement can allow them to lie, doing so undermines the credibility of officer statements and the integrity of investigations whether the officers actually lie or not. Such a policy will create an appearance of bias and therefore taint the integrity of investigations.

Some departments agree with us. The Oakland Police Department, which was one of the first police agencies to adopt body cameras in 2010, has a policy prohibiting officers from reviewing video prior to making a statement in an investigation arising out of a Level 1 use of force (the most serious, including shootings).[12] When the Los Angeles Sheriff's Department recently installed video cameras in its jails, the department, after careful consideration, adopted a policy that requires deputies in the jails to file reports on incidents before viewing video, for many of the reasons we articulate below.[13]

Officers may have an additional concern: because memories are fallible, particularly in stressful events, officers' initial accounts almost certainly are not going to match the videos exactly. Officers do not want to be disciplined because they misremembered some details such as which hand a subject used to reach for a door or wallet, or even important facts like how many shots they fired. That concern has some validity. Officers in a stressful incident like a shooting should not be disciplined for giving testimony that contradicts a video absent evidence that they intentionally misstated the facts. But every other subject of an investigation has to deal with those realities; police should not get special treatment in that regard. The right answer is to confront those misperceptions about the accuracy of eyewitness memory,[14] not to fabricate a false level of accuracy by letting officers tailor their accounts to video.

We cannot stress enough how central this issue is to ensuring SFPD's body camera program promotes accountability and retains public trust. To adopt a policy that allows officers to review video evidence before making statements during an investigation risks turning police body cameras from tools for police accountability into tools for police cover-up.

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[11] Los Angeles County Office of Independent Review, *Eleventh Annual Report,* 36 (Dec. 2013), available at http://shq.lasdnews.net/shq/LASD_Oversight/OIR-Eleventh-Annual-Report.pdf.

[12] Departmental General Order I-15.1, "Portable Video Management System," Oakland Police Department, 4 (effective Mar. 5, 2014), available at https://www.aclu.org/sites/default/files/assets/mar_14_pdrd_policy.pdf.

[13] Los Angeles County Office of Independent Review, *Eleventh Annual Report, supra* note 11, at 35.

[14] See Innocence Project, "Eyewitness Misidentification," available at http://www.innocenceproject.org/understand/Eyewitness-Misidentification.php.

2. Limitations on Use, Sharing and Disclosure of Video

ACLU of California supports the use of body-worn video for police accountability and oversight. Body camera footage should be reviewed where there is reason to believe the video contains evidence of misconduct or criminal activity; where there has been use of force or other reason for mandatory internal investigation; or for auditing as part of a randomized audit or corrective plan for an officer based on specified prior conduct. But the vast majority of body-worn video footage should never need to be reviewed by the Department in its original state, and will simply be deleted when the retention period ends.

Body cameras are a surveillance technology, but they should not be used as a backdoor for surveillance or tracking of the public. For example, body-worn video footage of protests against police brutality or against City officials could be reviewed to identify and build dossiers on protestors, or to scan for minor infractions that could be charged. The Department must enact strong policies limiting access to and use of body-worn video to prohibit use for surveillance of the public, especially the surreptitious gathering of intelligence information based on First Amendment protected speech, associations, or religion. The Department should bar review of any video absent specific reason to believe that video contains evidence of a crime or misconduct, and should expressly prohibit use of other surveillance tools, such as facial recognition technology, on body-worn video footage.

These concerns also apply to officers. Officers can reasonably expect that body-worn video would be consulted during an investigation into a use of force or an allegation of misconduct. As set forth above, the Department also can and should audit video to ensure quality of training and officer compliance with all policies and laws. But officers should not have to worry that supervisors who do not like them can spend the weekend reviewing their body-worn video footage looking for any violation of policy they could charge. Review of officers' video should be limited to investigations of particular incidents where there is some reason to believe misconduct has occurred, corrective action resulting from specified prior conduct, or randomized audits.

SFPD's draft policy rightly prohibits review that is not for any law enforcement purpose. But authorizing use of video for any law enforcement purpose is far too broad, as that standard would still allow fishing expeditions for recorded violations by disfavored civilians or officers, and would allow invasive processing, such as the use of facial recognition technology to identify civilians who appear on the video. The policy should allow SFPD officers and employees to review video only in the following circumstances: (1) in connection with resolving civilian complaints, (2) where there is reasonable suspicion to believe the recording contains evidence of criminal activity or administrative violations by an officer, (3) as part of randomized audits conducted by the Department of officers' performance; or (4) as part of corrective action plans for department members.

These limitations must be implemented with both sound technology and strong policies. To limit misuse of footage, the video must be securely stored and accessible only through a system that requires individualized logins, purpose-specification for access, and an impeccable auditing capabilities. Access must actually be audited to ensure the integrity of the system. Department policy should also clearly prohibit officers from duplicating or sharing video outside of a formal system for release, and should impose disciplinary consequences for any breach.

state agencies.[17] Under this approach, because the individual would have control over whether to make the footage public, most privacy concerns would be eliminated.[18]

The City may also investigate other solutions to balance privacy and transparency. For example, the City could anonymize all video footage recorded by body cameras, allowing it to be released to the public. The Seattle Police Department is currently investigating such an approach.[19] Releasing all video after blurring or removal or alteration of audio could preserve the anonymity of people recorded while still giving the public insight into officers' conduct, but the technology needs further investigation to insure video can be anonymized while retaining enough quality to provide meaningful access. As another approach, the police department of Oakland, California has adopted a similar policy of releasing all video footage, unless it is part of an active investigation. Prior to releasing the footage, OPD staff screen every video for privacy concerns that would justify withholding it. While such an additional process would require additional department resources, such an investment in transparency and public trust may be worthwhile.

To the extent that SFPD feels its policy requires a statutory framework, the balancing test explained in § 6255 of the Government Code should provide the necessary guidance. Body cameras' potential benefits to transparency and public trust are central to their usefulness and have been touted as a driving force in the push to adopt them, but any policy must protect the privacy of civilians as well.

* * *

Thank you for inviting our input on this very important issue. We would welcome any coming opportunity to meet with those involved with this process to discuss the elements of a public process and use policy for body cameras. Finally, we encourage the City to move forward with a surveillance ordinance that will ensure an open process that provides for transparency, accountable, and oversight of all surveillance technologies. Please do not hesitate to contact us at 415.621.2493.

Sincerely,

Nicole A. Ozer

Nicole A. Ozer
Technology & Civil Liberties Policy Director, ACLU of California

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[17] Cal. Civ. Code § 1798 *et seq.*

[18] Because the CPRA makes clear that disclosures required by law do not waive the agency's right to assert exemptions to future disclosure, Cal. Gov't Code § 6254.5(b), disclosure to the video's subjects need not necessarily constitute waiver. Section 6254(f) itself contains language requiring local agencies to disclose records of incidents to "victims," which would seem to encompass at least those individuals complaining of misconduct or subjected to uses of force. Moreover, to simplify matters, SFPD could request the City Council to pass an ordinance analogous to CIPA, making it a legal requirement to disclose body-worn video on which that individual appears absent certain exceptions. The City of San Diego adopted such an ordinance in 1994, and the San Bernardino City Council could use that ordinance as a model. *See* Telecommunications Policy, No. 900-13, San Diego City Council, 4 (adopted Oct. 1994), available at http://docs.sandiego.gov/councilpolicies/cpd_900-13.pdf.

[19] *See* Colin Wood, *Seattle Police Hackathon Tackles Video Transparency*, GovTech Magazine (Dec. 22, 2014), available at *http://www.govtech.com/public-safety/Seattle-Police-Hackathon-Tackles-Video-Transparency.html.*

Digital Recording Devices
DRAFT
07/20/15

I. Purpose:

The use of Body Worn Cameras (BWC) is an effective tool a law enforcement agency can use to demonstrate its commitment to transparency, ensure the accountability of its members, increase the public's trust in officers, and protect its members from unjustified complaints of misconduct. As such, the San Francisco Police Department is committed to establishing a BWC program that reinforces its responsibility to protecting public and officer safety. The purpose of this Order is to establish the policies and procedures governing that program and ensure effective and rigorous use and adherence.

The BWC is a small audio-video recorder with the singular purpose of recording audio/visual files, specifically designed to be mounted on a person. The BWC is designed to record audio and video activity to preserve evidence for use in criminal and administrative investigations (including disciplinary cases), civil litigation, officer performance evaluations, and to review police procedures and tactics, as appropriate.

Commented [rk1]: Goals taken from PERF/US DOJ Report: Implementing a Body-Worn Camera Program

Commented [S2]: Suggested by the Public Defenders' Office

Commented [S3]: Public Defenders Office suggestion is to use the word "peace officer."

Commented [rk4]: Should this go under the new section of DEFINITIONS?

II. Policy:

A. USE OF EQUIPMENT. The Department-issued BWC is authorized for use in the course and scope of official police duties as set forth in this Order. Only members authorized by the Chief of Police and trained in the use of BWCs are allowed to wear Department-issued BWCs. The use of non-Department issued BWCs while on-duty is prohibited.

B. TRAINING. The Department will train all members assigned BWCs prior to deployment. Members assigned BWCs shall use the devices in accordance with their training and the provisions outlined in this order.

C. PROGRAM ADMINISTRATOR. The Risk Management Office (RMO) is the BWC's program administrator. The duties of the RMO include, but are not limited to:

1. Tracking and maintaining BWC inventory
2. Issuing and replacing BWCs to authorized members
3. Granting security access to the computer server
4. Monitoring retention timeframes as required by policy and law
5. Complying with Public Record Act (PRA) requests and all other court record requests
6. Conducting periodic and random audits of BWC equipment and the computer server

III. Definitions:

BODY WORN CAMERAS. XXX

HEALTH FACILITY. XXX

IV Procedures:

A. Set Up and Maintenance.

Members shall be responsible for the proper care and use of their assigned BWC and associated equipment.

1. Members shall test the equipment at the beginning of their shift and prior to deploying the BWC equipment to ensure it is working properly and is fully charged.
2. If the member discovers a defect or that the equipment is malfunctioning, the member shall cease its use and shall promptly report the problem to his/her Platoon Commander or Officer in Charge.
3. If the member discovers that the BWC is lost or stolen, the member shall submit a memorandum though the chain of command memorializing the circumstances, in accordance with Department General Order 2.01, Rule 24, Loss or Damage to Department Property.
4. If the member's BWC is damaged, defective, lost or stolen, the member's supervisor shall facilitate a replacement BWC as soon as practical.
5. Members shall attach the BWC in such a way to provide an unobstructed view of officer/citizen contacts. The BWCs shall be considered mounted correctly if it is mounted in one of the Department-approved mounting positions.

Commented [rk5]: There was discussion about developing a form to report the malfunction/defect.

Commented [rk6]: Oakland PD

Commented [rk7]: Oakland PD

B. Consent Not Required.

Members are not required to activate or deactivate a BWC upon the request of a citizen.

Commented [S8]: Looking for the Supreme Court case to cite.

C. Authorized Use.

All members equipped with a BWC shall activate their BWC equipment to record in the following circumstances:

1. Detentions and arrests
2. Consensual encounters where the member suspects that the citizen may be involved in criminal activity as a suspect, victim or witness, except as noted in Section III, D.
3. 5150 evaluations
4. Traffic and pedestrian stops
5. When serving a search or arrest warrant
6. Conducting any of the following searches on one's person and/or property:
    a. Incident to an arrest
    b. Cursory
    c. Probable cause
    d. Probation/parole
    e. Consent
    f. Vehicles
7. Transportation of arrestees and detainees
8. During any citizen encounter that becomes hostile

Commented [rk9]: Oakland PD

Commented [rk10]: The working group did discuss that some agencies recommend that officers have the BWCs on all the time; the working group is not making that recommendation

Commented [S11]: Suggestion from Public Defenders Office to add the tem "pat search in parenthesis.

9. In any situation when the recording would be valuable for evidentiary purposes
10. Only in situations that serve a law enforcement purpose.

D. Prohibited Recordings

Members shall not activate the BWC when encountering:

1. Sexual assault and child abuse victims during a preliminary investigation
2. Situations that could compromise the identity of confidential informants and undercover operatives
3. Strip searches

However, a member may record in these circumstances if the member can articulate an exigent circumstance that required deviation from the normal rule in these situations.

Members shall not activate the BWC in a manner that is specifically prohibited by DGO 2.01, General Rules of Conduct, Rule 56 – Surreptitious Recordings - and DGO 8.10, Guidelines for First Amendment Activities.

E. Terminations of Recordings

Once the BWC has been activated, members shall continue using the BWC until their involvement in the event has concluded to ensure the integrity of the recording, unless the contact moves into an area restricted by this policy. Members shall deactivate the BWC in the following circumstances:

1. When discussing sensitive tactical or law enforcement information away from the citizen
2. After receiving an order from a higher ranking member
3. After arriving safely at the booking facility
4. When recording at a hospital would compromise patient confidentiality
   When gathering information from witnesses or community members, and there is concern that a BWC would inhibit information gathering efforts. .

F. Viewing BWC Recordings.

~~The accuracy of police reports, officer statements and other official documentation is essential for the proper administration of justice and complying with the Department's obligation to maintain full and complete records of enforcement and investigative activities, investigators, supervisors, prosecutors and other officials rely on complete and accurate records to perform their essential duties and responsibilities. Officers are therefore required to review body worn video recordings on their assigned device or authorized computer prior to documenting an incident, arrest, search, interview, use of force, or other enforcement or investigative activity to ensure that their reports, statements, and documentation are accurate and complete.~~

Commented [rk12]: Suggested by Officer Booth

Commented [S13]: Group suggestion after lengthy discussion.

Commented [rk14]: The group wanted to add a title to this section

Commented [S15]: As suggested by DC Ali.

Commented [rk16]: Additional language was going to be developed by a member of the group, but to date, not received

Commented [S17]: As suggested by Commander Moser.

Commented [rk18]: Oakland PD

Commented [rk19]: The working group acknowledges that there are two opposing views on this issue: 1) allow officers to view the recording prior to writing an incident report, and 2) not allowing the officers to view prior to writing an incident report.

Commented [rk20]: From LAPD policy

~~A member's recollection and perception of an incident may vary from what he/she may later recall and/or from what a recording captures. A review of a recording is intended to aid in recollection. However, members should remember to focus on their own perspective and specific recollection of the event.~~

21. A member may review a BWC ~~R~~recordings ~~may be reviewed by a member~~ on his/her assigned device or on an authorized computer for any legitimate investigatory purpose, including but not limited to, preparing an incident report, preparing statements, conducting a follow-up investigation, or providing testimony, except when the member is the subject of the investigation in any of the following circumstances that were captured by the BWC:
    a. An officer-involved shooting or in-custody death,
    b. A member is the subject of a criminal investigation or an immediate administrative investigation.
    c. At the discretion of the Chief of Police or his/her designee.

    For the above listed circumstances, the Department's administrative or criminal investigator will coordinate with the member or the member's legal representative to arrange the viewing of the BWC recording prior to the member's interview. Nothing in this section is intended to limit the Office of Citizens Complaints' (OCC) role in these investigations.

    2. Members shall not access or view a BWC recording unless doing so involves a ~~with no~~ legitimate law enforcement purpose. ~~shall not access or view BWC recordings.~~

Commented [rk21]: There is not consensus in the working group about this issue. Some members feel that officers should not be able to look at the video under any circumstance prior to writing the incident report.

Commented [rk22]: Director Hicks feels that the OCC investigators should be included as one of the entities that will coordinate with the member or the member's legal representative for the above listed "carve outs"

Commented [rk23]: Similar to LAPD

G. Documentation.

Officers submitting an incident report or completing a written statement shall indicate whether the BWC was activated and whether it captured footage related to the incident.

If a member deactivates a BWC recording prior to the conclusion of an event, the member shall document the reasons for terminating the recording in CAD, the incident report, a written statement or a memorandum.

If a member reactivates the BWC after turning the equipment off, the member shall document the reasons for restarting the recording in CAD, the incident report, a written statement or a memorandum.

If a member determines that officer or public safety would be compromised if a BWC were activated during an incident requiring its use, the member shall document in CAD, an incident report, a written statement or a memorandum the reasons for not using the BWC.

H. Storage and Use of Recordings

1. A member who has recorded an event shall upload the footage prior to the end of his/her watch unless instructed to do so sooner by an assigned investigator or a superior officer

2. When uploading recordings to the computer server, members shall identify each BWC recording with the incident report number, CAD number or citation number and the appropriate incident category title to ensure the recording is accurately retained and to comply with local, state and federal laws.

I. Duplication and Distribution.

1. Departmental Requests

a. The officer-in-charge or commanding officer of the investigative unit assigned the ~~investigation~~ incident recorded by the BWC, or ~~the officer-in-charge or~~ the commanding officer of the RMO ~~Legal Division~~ shall have the authority to permit the duplication and distribution of the BWC files. ~~Other than routine discovery request stemming from the rebooking process or court proceedings, a~~

b. Any member requesting to duplicate or distribute a BWC recording shall obtain prior approval from the officer-in-charge or the commanding officer of the unit assigned the investigation, or the ~~officer-in-charge or~~ commanding officer of the RMO. ~~Legal Division.~~

c. Duplication and distribution of BWC recordings are limited to those who have a "need to know" and a "right to know" and are for law enforcement purposes only.

~~a.~~d. When releasing BWC recordings, members shall comply with federal, state and local statutes and Department policy.

2. Non-Departmental Requests

a. Members (The Department) shall accept and process PRA requests in accordance with the provisions of federal, state and local statutes and Department policy.

b. Members shall provide discovery requests related to the rebooking process or other court proceedings by transferring the BWC recording to the requesting agency by using the computer server where the BWC recording is stored.

~~b.~~c. When requested by the OCC, members of the Legal Division shall provide the BWC recordings consistent with the Department's policy on OCC non-routine requests.

J. Retention.

Commented [rk24]: The language in this section may have to be changed once the City has purchased the BWCs. At this time, the working group does not know the specific capabilities/limitations of the BWC or the computer storage system.

Commented [rk25]: The process of transferring files related to non-departmental requests may have to be revised once the exact type of BWC is known.

Commented [rk26]: There was discussion about whether the terminology here should be "members" or "the Department"

The Department shall retain all BWC recordings for a minimum of ~~one~~ two years in adherence with local, state, federal statues and Department policy.

Commented [rk27]: A majority of the working group is recommending a two year retention period.

A BWC recording may be saved for a longer or indefinite period of time as part of a specific case if deemed relevant to a criminal, civil or administrative matter.

~~Except for members of the RMO, a~~A member may not delete any BWC recording without prior authorization. The member seeking to delete a recording shall submit a memorandum to his/her Commanding Officer requesting to delete footage from a BWC file and shall make an entry of the request in the appropriate case file, if applicable.

The Commanding Officer shall then forward the memorandum to the Commanding Officer of the Risk Management Office for evaluation and appropriate action.

Members of the RMO are authorized to delete BWC recordings in accordance with the Department's established retention policies on BWC recordings ~~and~~ or when directed by the Commanding Officer of the Risk Management Division.

K. Accidental or Unintentional Recordings.

If a BWC accidentally or inadvertently captures an unintended recording, the member may submit a memorandum through the chain of command specifying the date, time, location and a summary of the unintentionally recorded event. This memorandum shall be forwarded to the Commanding Officer of the Risk Management Office for evaluation and appropriate action.

L. Discovery of Potential Misconduct during Authorized Review.

Commented [rk28]: From San Diego PD

Members reviewing recordings should remain focused on the incident captured in the BWC and should review only those recordings relevant to the investigative scope. If a member discovers potential misconduct ~~is discovered~~ during any review of the BWC, the member shall report the potential misconduct to a superior officer. ~~,~~ aThe superior officer shall initiate ~~conduct~~ an administrative investigation pursuant to Department General Order 1.06, Duties of Superior Officers, Section I.A.4. Nothing in this procedure prohibits addressing Department policy violations.

References:
Los Angeles Police Department's Body Camera Policy
Oakland Police Department's Body Camera Policy
Bart Police Department's Body Camera Policy
San Diego Police Department's Body Camera Policy
PERF/US DOJ Report: Implementing a Body-Worn Camera Program

DGO 1.06, Duties of Superior Officers

DGO 2.01, Rules 23 and 24, Use of Department Property and Loss or Damage to Department Property
DGO 2.01, Rule 56, Surreptitious Recordings
DGO 8.10, Guidelines for First Amendment Activities