

# City of Brisbane

## Agenda Report

TO: Honorable Mayor and City Council

FROM: Elizabeth Macias, Chief of Police *EM*

SUBJECT: Response to the 2015/2016 Grand Jury Report on Body Cameras –The Reel Truth

DATE: July 14, 2016

### **City Council Goals:**

- To provide public service that assures the safety of property and citizens residing, working or visiting in Brisbane.
- To provide for effective and efficient delivery of City services.

### **Purpose:**

The 20015-2016 San Mateo County Civil Grand Jury (Grand Jury) filed a report on May 24, 2016 which contained findings and recommendations that pertain to the City of Brisbane regarding the effectiveness of body worn cameras.

### **Recommendation:**

The City of Brisbane was asked to respond to these findings and recommendations as they pertain to the City of Brisbane and have the City Council approve the attached recommendation.

### **Background:**

The Grand Jury reviewed the status of local Law Enforcement's use of body worn cameras. They found that out of the 16 independent police departments and the Sheriff's Office, 5 agencies currently deploy body worn cameras. After studying the advantages and disadvantages of police use of body worn cameras, the Grand Jury has concluded that there are several excellent reasons for law enforcement to employ body worn cameras.

The Grand Jury made several findings and recommendations regarding the matter and requested Brisbane respond to the recommendations. We have responded to their findings and recommendations which are attached.

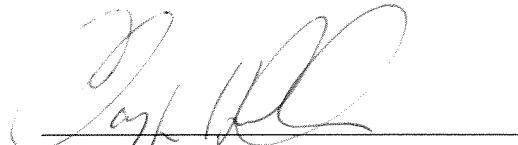
**Attachments:**

Item A

Grand Jury Findings, Conclusions and Recommendations

Item B

City of Brisbane Response to Grand Jury's Findings and Recommendations

  
\_\_\_\_\_  
Chief of Police  
\_\_\_\_\_  
City Manager

A copy of supporting materials provided to the City Manager and City Council for this agenda item is available for public inspection and copying at 50 Park Place, City of Brisbane Community Development Department, Brisbane, CA, 94005, Telephone: (415) 508-2120.

Item A



Superior Court of California, County of San Mateo  
Hall of Justice and Records  
400 County Center  
Redwood City, CA 94063-1655

RODINA M. CATALANO  
COURT EXECUTIVE OFFICER  
CLERK & JURY COMMISSIONER

(650) 261-5066  
FAX (650) 261-5147  
[www.sanmateocourt.org](http://www.sanmateocourt.org)

May 24, 2016

City Council  
City of Brisbane  
50 Park Place  
Brisbane, CA 94005

Re: Grand Jury Report: "Body Cameras – The Reel Truth"

Dear Councilmembers:

The 2015-2016 Grand Jury filed a report on May 24, 2016 which contains findings and recommendations pertaining to your agency. Your agency must submit comments, within 90 days, to the Hon. Joseph C. Scott. Your agency's response is due no later than August 22, 2016. **Please note that the response should indicate that it was approved by your governing body at a public meeting.**

For all findings, your responding agency shall indicate one of the following:

1. The respondent agrees with the finding.
2. The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

Additionally, as to each Grand Jury recommendation, your responding agency shall report one of the following actions:

1. The recommendation has been implemented, with a summary regarding the implemented action.
2. The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
3. The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.
4. The recommendation will not be implemented because it is not warranted or reasonable, with an explanation therefore.

Please submit your responses in all of the following ways:

1. Responses to be placed on file with the Clerk of the Court by the Court Executive Office.
  - Prepare original on your agency's letterhead, indicate the date of the public meeting that your governing body approved the response address and mail to Judge Scott.

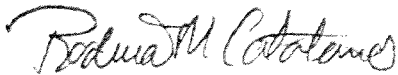
Hon. Joseph C. Scott  
Judge of the Superior Court  
c/o Charlene Kreseovich  
Hall of Justice  
400 County Center; 2<sup>nd</sup> Floor  
Redwood City, CA 94063-1655.

2. Responses to be placed at the Grand Jury website.
  - Copy response and send by e-mail to: [grandjury@sanmateocourt.org](mailto:grandjury@sanmateocourt.org). (Insert agency name if it is not indicated at the top of your response.)
3. Responses to be placed with the clerk of your agency.
  - File a copy of the response directly with the clerk of your agency. Do not send this copy to the Court.

For up to 45 days after the end of the term, the foreperson and the foreperson's designees are available to clarify the recommendations of the report. To reach the foreperson, please call the Grand Jury Clerk at (650) 261-5066.

If you have any questions regarding these procedures, please do not hesitate to contact Paul Okada, Chief Deputy County Counsel, at (650) 363-4761.

Very truly yours,



Rodina M. Catalano  
Court Executive Officer

RMC:ck  
Enclosure

cc: Hon. Joseph C. Scott  
Paul Okada

Information Copy: City Manager



## BODY CAMERAS—THE REEL TRUTH

### ISSUE

What is the status of local law enforcement's use of officer body-worn cameras?

### SUMMARY

Recent officer-involved shootings around the country, including the 2014 shooting in Menlo Park,<sup>1</sup> have focused public attention on the use of body-worn cameras by law enforcement agencies. The 2015-2016 San Mateo County Civil Grand Jury investigated the use of body-worn cameras by local law enforcement and discovered the following:

- Sixteen independent police departments and the Sheriff's Office provide local law enforcement in San Mateo County. The Grand Jury surveyed all of these agencies regarding use of body-worn cameras.
- Five police departments are currently using body-worn cameras.
- The Grand Jury interviewed representatives from the Sheriff's Office and five of the 11 police departments not using body-worn cameras. All six of these agencies have considered or are considering the use of body-worn cameras.
- Among those agencies that have not currently deployed body-worn cameras, the Grand Jury discovered common concerns regarding the cost, policy development (including civil rights concerns), impact of future camera technology, and unknown future legal mandates.
- Each local law enforcement agency utilizing body-worn cameras weighed these concerns. Some found innovative cost-reduction strategies and all developed policies and practices for their use.

After reviewing the literature on the advantages and disadvantages of police use of body-worn cameras and conducting over 25 interviews with local law enforcement commanders, line officers, police union representatives, and other interested parties, the Grand Jury has concluded that there are several excellent reasons for law enforcement to employ body-worn cameras. The costs associated with the acquisition and operation of body-worn cameras have decreased over the past several years, making this technology much more affordable. Standardized policies for use have been developed by professional police organizations. These guidelines have been modified and adopted by the local police departments using body-worn cameras. These existing policies may well serve as templates for other local law enforcement agencies.

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<sup>1</sup> CBS SF Bay Area, *Menlo Park Police Shoot, Kill Armed Burglary Suspect; Officer Injured during Foot Chase*, November 11, 2014. <http://sanfrancisco.cbslocal.com/2014/11/11/menlo-park-police-shoot-officer-injured-during-foot-chase/>.

After weighing the advantages and disadvantages of body-worn cameras, the Grand Jury recommends that:

- All law enforcement agencies in San Mateo County adopt body-worn cameras.
- The Board of Police Commissioners of the Broadmoor Police Protection District and the city councils of those communities that have not adopted body-worn cameras review use with their respective chief of police to determine an appropriate body-worn camera implementation plan and advise the public of their plan by November 30, 2016.
- All law enforcement agencies in the County implement body-worn camera systems with the assistance of city/county administration by October 31, 2017.

## BACKGROUND

According to the American Civil Liberties Union (ACLU), “the August 2014 shooting of Michael Brown in Ferguson, Missouri, and the subsequent protests and civil unrest focused new public attention on the problem of alleged police violence—and on the possibility that body-worn cameras might be part of the solution.”<sup>2</sup>

The above incident, as well as other recent officer-involved shootings in the news, has created a lack of confidence in law enforcement by some of the public. The *perception* that law enforcement is not accountable to citizens for its actions is a dangerous development and is troublesome for police professionals and concerned citizens alike. The existence and media replays of bystander videos and police car dashboard and body-worn cameras have contributed to a heightened awareness regarding the use of force by members of law enforcement.

Through interviews of local law enforcement, the Grand Jury learned of incidents where the use of video evidence by law enforcement was of significant assistance in determining whether allegations of excessive use of force or improper behavior by police officers were valid. In such cases, video evidence may be beneficial, but in addition, it can also be valuable in cases where complaints against a police officer for being rude or unprofessional need to be resolved. In one example, a city police chief recounted to the Grand Jury a story of a young man's father calling to complain about the treatment his son received from a police officer when issuing a traffic citation. When invited in to review the video, both father and son saw that the officer acted appropriately. The Grand Jury's investigation further revealed that this is not an isolated case. Several law enforcement officials interviewed by the Grand Jury recounted situations where filmed encounters with police officers reviewed with complainants resulted in formal complaints being withdrawn or not pursued in addition to rare cases that resulted in officers being disciplined.<sup>3</sup>

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<sup>2</sup> Jay Stanley, *Police Body-Mounted Cameras: With Right Policies in Place, a Win for All* v.2, American Civil Liberties Union, March 2015. <https://www.aclu.org/police-body-mounted-cameras-right-policies-place-win-all>.

<sup>3</sup> Local law enforcement: multiple interviews by the Grand Jury.

According to a 2012 nationwide survey conducted by Taser,<sup>4</sup> a majority of police officers believe that there is a need for body-worn cameras.<sup>5</sup> The survey included 785 federal, state, and local law enforcement professionals. According to Doug Wyllie, PoliceOne Editor in Chief, “perhaps the most important single piece of data was that more than 85% of respondents believe that body-worn cameras reduce false claims of police misconduct, and reduce the likelihood of litigation against the agency.”<sup>6</sup> A surprising statistic in the survey relates to the perceived effectiveness of body-worn cameras versus in-car systems, with 77% of officers saying they think the body-worn solution is more effective.<sup>7</sup> A 2015 study conducted by the University of South Florida with the Orlando Police Department reported that “most officers felt that their agency should adopt body-worn cameras for all front-line officers and reported that they would feel comfortable wearing a body-worn camera.”<sup>8</sup>

A commonly cited indicator of body cameras’ potential to reduce instances of officer-civilian conflict is the “Rialto Study.” In Rialto, a small city outside of Los Angeles, the police department outfitted all 70 of their uniformed officers with body-worn cameras, theorizing that use of the cameras would reduce complaints and lawsuits, and accordingly also reduce expensive litigation costs, as well as settlements and payouts.<sup>9</sup>

The introduction of body-worn cameras in Rialto as standard equipment in 2012 led to an 88% reduction in public complaints against officers, and a 60% decline in officers’ use of force. This dramatic reduction in the use of force indicates that body-worn cameras may have had a moderating effect on officers’ behavior, as the presence of a camera appeared to drastically lower the frequency with which officers “resorted to the use of physical force—including the use of OC spray (‘pepper spray’), batons, Tasers, firearms, or canine bites.”<sup>10</sup>

Showing citizen interactions from the officer’s perspective to the community at large has resulted in a reduced rate of public complaints.<sup>11</sup> Based on its investigation, including its

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<sup>4</sup> Taser is a manufacturer of body-worn cameras and related law enforcement equipment. See <https://www.taser.com/>.

<sup>5</sup> Doug Wyllie, *Survey: Police Officers Want Body-Worn Cameras*, October 23, 2012, PoliceOne, <http://www.policeone.com/police-products/body-cameras/articles/6017774-Survey-Police-officers-want-body-worn-cameras/>.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Evaluating the Impact of Police Officer Body-Worn Cameras (BWCs): The Orlando Police Department (OPD) Experience. <http://media.cmgdigital.com/shared/news/documents/2015/10/09/OPD-Final-Report-Executive-Summary-10-6-15.pdf>.

<sup>9</sup> The Effect of Police Body-Worn Cameras on Use of Force and Citizens’ Complaints against the Police: A Randomized Controlled Trial Original Paper, *Journal of Quantitative Criminology*, September 2015, Volume 31, Issue 3, pp. 509-535.

<sup>10</sup> PoliceOne Staff, *5 Ways Body-Worn Cameras Have Helped Police Officers: How Video from the Officer’s Perspective Is Making Their Jobs Easier*, September 30, 2014, PoliceOne, <https://www.policeone.com/police-products/body-cameras/articles/7522310-5-ways-body-worn-cameras-have-helped-police-officers>.

<sup>11</sup> “Considering Police Body Cameras,” *Harvard Law Review* 128.6 (April 10, 2015): 1794-802. <http://harvardlawreview.org/2015/04/considering-police-body-cameras/>.



interviews with law enforcement personnel, the Grand Jury concludes that body-worn cameras are a net positive in law enforcement.

Local law enforcement officials informed the Grand Jury of the following perceived advantages and disadvantages to the utilization of body-worn cameras by their officers:

#### **Advantages of Body-Worn Cameras<sup>12</sup>**

- Reducing complaints:
  - Police behavior is improved and the use of force is reduced.
  - Resident behavior is improved.
- Providing unedited video evidence of decisions made by officers in high-intensity situations
- Increasing transparency and accountability of police officers' activities and improving community perception of law enforcement
- Providing valuable evidence in court proceedings and/or in obtaining witness and victim statements

#### **Disadvantages of Body-Worn Cameras<sup>13</sup>**

- Officers must manually activate/deactivate the camera in most systems in use today.
- Policy development has potential for risk (e.g., privacy issues, chain of custody, and officer activation of camera) due to lack of clarity as to applicable federal and/or state law.
- Technology is changing rapidly, which may limit product support after a few years' use. Replacement equipment may be costly. Future local, state, and/or federal legal and policy mandates could add to overall costs.
- Increased Public Records Act requests could add to administrative costs such as locating a video segment, redacting or blurring images of individuals not relevant to the incident, documenting changes, and copying the specific video segment.

The San Mateo County Sheriff's Office and other local law enforcement agencies use many forms of modern technology including audio recorders worn on police officers, automobile dashboard cameras ("dash cams"), and gunshot detection systems,<sup>14</sup> as well as surveillance technologies such as license plate readers and closed-circuit TV. All of these technologies have

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<sup>12</sup> Officials from San Mateo County law enforcement: interviews by the Grand Jury. Adapted from Atherton Police Department document.

<sup>13</sup> Ibid.

<sup>14</sup> A gunfire locator, or gunshot detection system, is a system that detects and conveys the location of gunfire or other weapon fire using acoustic, optical, potentially other types of sensors, as well as a combination of such sensors.

advantages and disadvantages. Police command staff, elected officials and city administrators, as well as concerned and informed citizens must determine which of today's technologies and those in development are appropriate to ensure their community's safety and security. Equally important is the concern for the civil rights and privacy of citizens and police officers.

## DISCUSSION

Body-worn cameras are in limited use today among the County's 15 independent city/town police departments, the Broadmoor Police Protection District, and the Sheriff's Office (whose jurisdiction includes unincorporated areas of the County and the communities of Half Moon Bay, Millbrae, Portola Valley, San Carlos, and Woodside).

The Grand Jury found that five local police departments are currently using body-worn cameras. They are:

- Atherton PD                      deployed in 2006
- Belmont PD                      deployed in 2014
- Foster City PD                  deployed in 2012
- Hillsborough PD                deployed in 2014
- Menlo Park PD                  deployed in 2013

The Grand Jury interviewed representatives from five of the remaining 11 police departments. All five indicated varying levels of interest in adopting body-worn cameras but have decided to wait. These departments are:

- Daly City PD
- East Palo Alto PD
- Redwood City PD
- San Mateo PD
- South San Francisco PD

The Grand Jury interviewed representatives from the San Mateo County Sheriff's Office, which has also considered use of body-worn cameras and has decided to wait.

The police departments using body-worn cameras describe their experience of deploying, maintaining, and managing body-worn cameras as ranging from "positive" to "extremely positive." Training for the use of these systems generally takes less than two hours. Department representatives also reported that the most difficult task involved in implementing a body-worn camera system is deciding which of the many available systems is the best fit for the agency's needs and budget. With a large and growing number of manufacturers, there is a wide variety of features and options available on individual cameras and systems including:

- Camera mounting options
- Selectable camera resolution
- Expanded field-of-view capability
- Zoom capability
- Enhanced low-light capabilities
- Improved image stabilization

- Expandable internal storage capacity
- Extended battery life
- Software management platform
- Software compatibility options
- Data storage medium
- Integration compatibility with other law enforcement tools (i.e., dash cams, on-board computers, light bar/siren activation, etc.)
- Available technical support

Three of the five local police departments using body-worn cameras (Atherton PD, Foster City PD, Menlo Park PD) have opted for cameras typically mounted on the officer's torso. They are approximately 2" x 3.25" x 0.75", clipped to the shirt/blouse, and are activated by a button on the front of the camera. A disadvantage of this camera style is that when mounted mid-chest on the officer, it does not automatically move in the same direction with the officer's head. In addition, the camera tends to be directly behind an officer's standard two-handed pistol grip stance, thus somewhat restricting the camera's view when confronting a suspect. However, this system is generally less expensive.

Both the Hillsborough and Belmont Police Departments have deployed a camera—the Taser Axon Flex—that is mountable on an officer's shoulder epaulette, collar, glasses, or helmet (see Figure 1). This camera, including its integrated storage module, is slightly larger than one AA battery and attached to its battery pack by a thin cable. It is also one of the more expensive cameras currently in use but it allows considerable mounting flexibility.



**Figure 1. Taser Axon Flex Mounted to an Officer's Glasses**

Photo: TASER International<sup>15</sup>

Other options currently available on the Axon Flex include high-definition (HD) resolution, expanded on-camera storage capacity, image stabilization, and extended battery life. According to law enforcement commanders interviewed by the Grand Jury, a low-light camera is optimal as

<sup>15</sup> Source: <http://www.fastcompany.com/1817960/tasers-new-police-glasses-cam-lets-citizens-see-what-cops-see>.

long as it *only* mimics what the human eye can see. For example, an officer might see a weapon in low light, but it is revealed as a newspaper in enhanced light. This disparity could create evidentiary issues when used at trial.<sup>16</sup>

Experience among local law enforcement indicates body-worn cameras have had a beneficial effect on the police officers as well as the public they encounter. In interviews, local police department representatives described the reaction of officers to body-worn cameras as overwhelmingly positive.<sup>17</sup> Initial concerns on the part of a few officers about learning a new technology were overcome by training.<sup>18</sup> Interviewees also noted that the body-worn camera recordings have been valuable when training new recruits on proper procedures and operations. In addition, according to both command staff and line officers, law enforcement as well as the public seem to be on better behavior when they know they are being recorded. According to Sean Whent, Chief of Police, Oakland (CA) Police Department, “we have about 450 body-worn cameras actively deployed, and in the overwhelming majority of the cases, the footage demonstrates that the officer's actions were appropriate.”<sup>19</sup>

This anecdotal evidence from several local law enforcement personnel at command and patrol levels supports findings in a recent research report from the University of South Florida:

Following completion of the 12-month University of South Florida Orlando Police Department BWC Evaluation, which was based on a randomized experiment where 46 officers were randomly assigned to wear BMCs and 43 officers were randomly assigned not to wear BWCs, the results suggest that BWCs are an effective tool to reduce response-to-resistance (R2R) incidents and serious complaints. . . . Interestingly, although nearly all of the officers were skeptical about the (positive) impact that BWCs would have on their behavior . . . wearing a BWC did positively influence their behavior and lead to significant reductions in R2R and serious external complaints.

Finally, the majority of the officers want to keep their body-worn cameras, believe the agency should implement a full-scale adoption, and are willing to train their peers in BWC implementation and operation.<sup>20</sup>

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<sup>16</sup> Official from the Hillsborough Police Department: interview by the Grand Jury.

<sup>17</sup> Officials from city police departments using body-worn cameras: interviews by the Grand Jury.

<sup>18</sup> According to law-enforcement officials interviewed, training patrol personnel on procedures and operational use of the body-worn camera system was typically a two-hour exercise.

<sup>19</sup> “Editorial: Sheriff's Department to Further Test Body Cameras,” *The Press Enterprise*, November 7, 2014. <http://www.pe.com/articles/cameras-753724-body-police.html>.

<sup>20</sup> Wesley G. Jennings, Mathew D. Lynch, and Lorie A. Fridell, “Executive Summary—Evaluating the Impact of Police Officer Body-Worn Cameras (BWCS): The Orlando Police Department (OPD) Experience,” Tampa, FL: University of South Florida, 2015, p. 2.

## Reasons for County Law Enforcement Not Implementing Body-Worn Cameras

Even law enforcement leaders in San Mateo County whose agencies have *not* adopted body-worn cameras agree that body-worn cameras will likely be beneficial.<sup>21</sup> A representative from one local law enforcement agency commented, “Not only are they [body-worn cameras] expected, it’s almost required by our citizens.”<sup>22</sup>

They also concede it is highly probable that body-worn cameras will be adopted either voluntarily or by statute. These agencies that have not implemented body-worn cameras, however, have cited similar reasons for waiting. These reasons include:

- Cost of system hardware
- Cost of data storage
- Development of standard use policies
- Limited case law affecting policies regarding the use of body-worn cameras such as data retention time and privacy and civil rights concerns among other issues
- Concern that technology developments will render existing equipment obsolete within a few years
- Concern that state or federal law may dictate use of body-worn cameras with specific features or technology

Each of the five law enforcement agencies in San Mateo County currently using body-worn cameras has addressed these six issues. While the Grand Jury acknowledges that there are several concerns raised by those agencies that have not yet adopted body-worn cameras, the critical question is whether these concerns are sufficient to delay implementing a body-worn camera system.

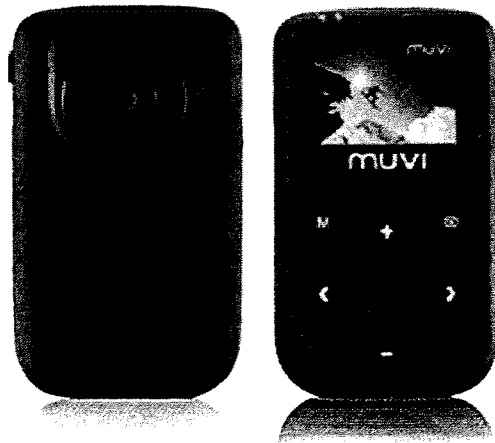
## Cost and Technology of Body-Worn Camera Systems

Five San Mateo County law enforcement agencies have deployed three different manufacturer’s systems with varying features including mounting options. A commercially available off-the-shelf system used by one department is by far the most economical. The specified functionality of this camera system indicates it offers an exceptional value when compared to other brands and models.

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<sup>21</sup> Officials from local law enforcement agencies: interviews by the Grand Jury.

<sup>22</sup> Local city police chief: interview by the Grand Jury.



**Figure 2. Low-Cost, Off-the-Shelf Muvi™ HD Body-Worn Camera**  
Photo: Veho World<sup>23</sup>

The cost of data storage can vary widely as well. However, the Grand Jury found that the actual cost of implementing even the most expensive system is significantly less than the *perception* of the many agencies that have not adopted body-worn cameras.<sup>24</sup> Several police departments informed the Grand Jury that the cost of data storage is on a downward trajectory. These departments expect it will be a small percentage of the cost of the body-worn camera system over time.

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<sup>23</sup> Source: <http://www.veho-muvi.com/law-enforcement/>.

<sup>24</sup> Officials from local law enforcement agencies: interviews by the Grand Jury.

The following table summarizes the systems and some key features of the body-worn cameras adopted by local law enforcement:

**Table 1. Comparison of Body-Worn Camera Systems in Use in San Mateo County**

City	Atherton	Belmont	Foster City	Hillsborough	Menlo Park
<b>Manufacturer/Model</b>	VIEVU LE3 <sup>i</sup>	Taser Axon Flex <sup>ii</sup>	Veho <sup>iii</sup> MUVI <sup>TM</sup> HD (off-the-shelf) <sup>iii</sup>	Taser Axon Flex <sup>iv</sup>	VIEVU LE3 <sup>v</sup>
<b>Deployed</b>	2006	2014	2012	2014	2013
<b>Officers Equipped</b>	23	28	39	26	50
<b>Per-Unit Camera Cost</b>	\$1,200	\$900	\$115	\$614	\$900
<b>Data Software</b>	VIEVU Proprietary	Taser Proprietary	Non-proprietary	Taser Proprietary	VIEVU Proprietary
<b>Storage Site</b>	In-house	Cloud	In-house	Cloud	In-house
<b>Annual Storage Cost</b>	Minimal cost	~ \$20,000	~ \$1,000	~ \$4,400	~\$10,000 for initial 10 TB <sup>vi</sup>
<b>Annual Data Usage</b>	~1 TB	No Information	~535 GB	~2 TB	~6-7 TB <sup>vii</sup>
<b>Training</b>	No Information	Two hours	Two hours	Minimal training required	< One hour

Table Notes:

- i. VIEVU—<http://www.viewu.com/viewu-products/hardware>.
  - ii. Taser Axon Flex— [www.axon.io/products](http://www.axon.io/products).
  - iii. Veho<sup>TM</sup> MUVI— Veho-VCC-005-MUVI-HD10-Handsfree-Wireless Mounting.
  - iv. Taser Axon Flex—[www.axon.io/products/flex](http://www.axon.io/products/flex).
  - v. VIEVU— [www.viewu.com/viewu-products/hardware](http://www.viewu.com/viewu-products/hardware).
  - vi. In-house storage is shared by several City of Menlo Park departments.
  - vii. Annual usage is for all City of Menlo Park departments.
- N.B. The links above may not show the specific model used by the police departments.

The good news for law enforcement agencies is that strong competition between the two most prominent vendors of the devices—VIEVU LLC and Taser International—as well as additional prominent companies entering this market means lower cost and more feature-rich products will likely be available in the near future.<sup>25</sup>

<sup>25</sup> Christopher Mims, “Competing Body Cam Companies Drive Down Prices for Cops,” *Wall Street Journal*, August 25, 2014. <https://www.policeone.com/police-products/body-cameras/articles/7498274-Competing-body-cam-companies-drive-down-prices-for-cops/>.

## Policies for Body-Worn Camera Systems

Developing agency policies regarding body-worn camera use has not been a significant problem for local law enforcement agencies. Four of the five city police departments have developed written operational policies that average less than five pages and are similar in content. In all cases, the agencies used a standard policy version from Lexipol's Policy 450<sup>26</sup> and modified it for their agency's application. The fifth department, Hillsborough, is in the process of revising its existing policy, which it is also basing on modifications of Lexipol's Policy 450. Menlo Park Police Department's policy is available online and all others are available on request to the public from the police departments. These policies are included in Appendixes A through E.

Three commonly discussed operational policy issues have been addressed by these five agencies, including:

- When does activation of the camera occur?
- Can the officer review the video when writing his/her report?
- How long is data retained?

The following is a brief overview of the policies and practices adopted by the five local law enforcement agencies that are currently using body-worn cameras:

### Atherton

- Officer activated—turned on prior to actual contact or as soon as safely possible
- Officer may review video while writing his/her report
- Data is retained until the criminal proceeding, pending litigation, or personnel complaint is resolved and/or in accordance with the law

### Belmont

- Officer activated—whenever contacting a citizen in official capacity
- Officer may review video while writing his/her report
- Recordings shall be retained for a period consistent with the organization's records retention schedule

### Foster City

- Officer activated—required during traffic stops or whenever officer deems appropriate
- Officer may review video while writing his/her report
- Data retention is for a period consistent with the requirements of the organization's records retention schedule but in no event less than 180 days

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<sup>26</sup> Lexipol LLC is a private company providing state-specific policies and verifiable policy training for public safety organizations. Many local law enforcement agencies subscribe to this service.



#### Hillsborough<sup>27</sup>

- Officer activated whenever unit emergency lights are activated
- Officer may review video while writing his/her report subject to approval of Watch Commander
- Data retention is minimum of one year

#### Menlo Park

- Officer activated prior to arrival to any in-progress or serious or high-priority call for service
- Officer may review video while writing his/her report
- Data retention is 2.5 years for all citizen contacts. Recordings classified as evidence will be retained for a period of time determined by applicable laws and the City of Menlo Park's retention guidelines.

The command staff interviewed by the Grand Jury acknowledged that some policies may require modification as more experience with body-worn cameras is obtained, as case law on body-worn cameras develops, and as applicable state or federal law evolves.

### **Privacy and Civil Rights Issues**

Not surprisingly, civil rights issues are of concern to local law enforcement agencies when generating policies regarding use of body-worn cameras. Protection of the privacy and civil rights of all individuals encountered by law enforcement is a topic of discussion throughout the country. In the case of body-worn cameras, privacy concerns apply to the public's right to privacy and the police officer's rights as well. According to several police chiefs interviewed by the Grand Jury, there are occasions when it is inadvisable or prohibited by written policy to turn on a body-worn camera. For example:

- Discussions among police officers not related to encounters with the public (i.e., administrative, procedural, tactical, and training)
- Officer personal time such as break time, private conversations with colleagues, or non-police-call related conversations among others
- During certain extremely sensitive investigations such as interviews with sexual assault victims and some family disputes especially when minors may be involved
- Officer interactions with confidential informants, undercover agents, federal agents, issuing K-9 commands to police dogs, or when discussing confidential tactical information such as SWAT team deployments
- When there are no encounters with the public or when writing shift reports

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<sup>27</sup> Until the Hillsborough Police Department completes its Body-Worn Camera Policy, it is using the policy written for Mobile Audio Video (i.e., dash cams) as modified by Chief's Departmental Directive 14-01, September 2, 2014.

The Menlo Park Chief of Police appointed a Citizens Advisory Committee to review and comment on proposed policies and procedures for use of body-worn cameras that met the department's needs but did not infringe on citizens' civil rights. This committee included an individual active in both the ACLU and the Electronic Frontier Foundation, two organizations active in protecting citizens' privacy and civil rights.<sup>28</sup> The committee recommended acceptance of the Menlo Park policy. (See Appendix E for *Body-Worn Camera Policy—Menlo Park Police Department* and Appendix F for *Body Cameras—Menlo Park Police Department Citizens Advisory Committee Report*.)

According to the ACLU, "the challenge of on-officer cameras is the tension between their potential to invade privacy and their strong benefit in promoting police accountability. Overall, we think they can be a win-win but only if they are deployed within a framework of strong policies to ensure they protect the public without becoming yet another system for routine surveillance of the public, and maintain public confidence in the integrity of those privacy protections. Without such a framework, their accountability benefits would not exceed their privacy risks."<sup>29</sup>

The Grand Jury acknowledges that further developments are likely, such as new statutes and court decisions interpreting existing privacy and other civil rights laws related to the use of body-worn cameras in the coming years. However, this process is not uncommon in the field of law enforcement generally and there was no indication to the Grand Jury that the evolution of policies regarding body-worn cameras cannot be effectively managed by the local law enforcement community. Further, the Grand Jury suggests that policies such as those developed by Atherton, Belmont, Foster City, Hillsborough, and Menlo Park can serve as templates for other law enforcement agencies.

### **Chain of Custody Concerns**

Local police policies and the inherent design of the body-worn camera hardware and software severely limit officers' access to body-camera footage so as to protect the chain of custody for its potential use in future legal proceedings. For example, officers have no capability to edit the video except to tag a segment with a case number or an arrest report number, or to assign a criticality status to it. Once the video has been stored, access is typically limited to a select few senior command personnel who are assigned special access codes. An electronic trail is created that tracks who, when, and what was done. Exceptions are typically only allowed when pre-determined non-critical data is scheduled to be purged from system storage after reaching the retention period defined in the department's policies. However, video data that involves legal proceedings, citizen complaints, or which is otherwise retained upon request are often stored indefinitely.

The district attorney's office, defense attorneys, and other law enforcement and criminal justice agencies often request copies, which are provided on a separate medium such as a CD-ROM.

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<sup>28</sup> Officials from the Menlo Park Police Department: interview by the Grand Jury.  
<http://www.menlopark.org/DocumentCenter/View/7240>.

<sup>29</sup> Jay Stanley, *Police Body-Mounted Cameras: With Right Policies in Place, a Win for All* v.2, American Civil Liberties Union, March 2015. <https://www.aclu.org/police-body-mounted-cameras-right-policies-place-win-all>.

## Limitations

Body-worn cameras are not a panacea for all disputed encounters between citizens and law enforcement. They occasionally malfunction, the batteries discharge, or the internal storage capacity limits recording an encounter. Chest-mounted camera views may be partially obscured by the standard two-handed pistol grip used by many police officers. Cameras can be dislodged in physical altercations or the attachment clip may slip, rendering the camera an audio device only. Video images may be confusing or inconclusive when the wearer is in a physical altercation or in pursuit of a suspect or when used in very low-light situations. The camera shows only what is within its viewing angle and does not turn with the officer's eyes unless mounted on an officer's hat, helmet, or glasses. It only captures two out of the five senses—sight and sound. For example, the smell of alcohol or gunpowder is not detected. Notwithstanding these limitations, the information provided to the Grand Jury confirms that body-worn cameras often provide far more evidence of an incident than an audio device and certainly more than no recording device at all.

## Conclusions

Based on its investigation, the Grand Jury concludes that body-worn cameras would be advantageous for all San Mateo County law enforcement agencies as well as the individuals they encounter.

Although some local law enforcement agencies have expressed various concerns regarding the utilization of such body-worn devices, five police departments within San Mateo County have implemented body-worn camera systems and their experience provides tangible evidence that:

- Costs are containable.
- Many hardware, software, and storage options are available to accommodate individual agency requirements.
- Workable operational policies are readily available and easily modifiable to accommodate specific agency requirements.
- Training needs are minimal.
- Patrol staff rapidly accepted body-worn cameras.
- The behavior of *both* residents and police officers improves when their actions are being recorded on video.

As with all new technology, best practices are in the process of being developed as each of these five departments gains experience with its body-worn camera system. These departments can serve as role models for other police agencies as they implement their own camera systems, which many acknowledge as inevitable.

Finally and most importantly, body-worn cameras clearly state to the public that its police force has nothing to hide, that their encounters with the public are transparent, and that these encounters are subject to internal and, when appropriate, external scrutiny.

## **FINDINGS**

- F1. The Atherton, Belmont, Foster City, Hillsborough, and Menlo Park Police Departments have deployed body-worn camera systems.
- F2. The Sheriff's Office and five of the city police departments that have not deployed body-worn cameras all expressed similar concerns regarding the implementation of these systems, the cost of equipment, the cost of data retention, and policy development.
- F3. The Atherton, Belmont, Foster City, Hillsborough, and Menlo Park Police Departments have budgeted sufficient funds to manage the cost of equipment, data retention, and training.
- F4. The Atherton, Belmont, Foster City, and Menlo Park Police Departments have developed written policies regarding the operation and data retention of body-worn camera systems as well as the protection of the rights of the community and police officers. Hillsborough is in the process of developing a similar policy.
- F5. Many local law enforcement agencies that currently do not employ body-worn cameras acknowledge that these systems are beneficial and will likely be implemented in the future either voluntarily or by mandate.

## **RECOMMENDATIONS**

- R1. The Grand Jury recommends that the councils of those cities/towns that have not adopted body-worn cameras direct their respective chiefs of police to develop an appropriate body-worn camera implementation plan and advise the public of their plan by November 30, 2016.
- R2. The Grand Jury recommends that the San Mateo County Sheriff develop a plan to implement body-worn cameras and advise the public of his plan by November 30, 2016.
- R3. The Grand Jury recommends that the police departments of those cities, towns, and the Broadmoor Police Protection District that have not adopted body-worn cameras implement a body-worn camera system as soon as practicable but, in any event, no later than October 31, 2017.
- R4. The Grand Jury recommends that the San Mateo County Sheriff's Office implement a body-worn camera system as soon as practicable but, in any event, no later than October 31, 2017.

## REQUEST FOR RESPONSES

Pursuant to Penal Code Section 933.05, the Grand Jury requests responses as follows from the following governing bodies:

- R1 and R3—The City Councils of the following 10 cities and towns:
  - Brisbane
  - Burlingame
  - Colma
  - Daly City
  - East Palo Alto
  - Pacifica
  - Redwood City
  - San Bruno
  - San Mateo
  - South San Francisco
- R1 and R3---The Board of Police Commissioners of the Broadmoor Police Protection District

Pursuant to Penal Code Section 933.05, the Grand Jury requests responses as follows from the following elected official:

- R2 and R4—San Mateo County Sheriff

The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted subject to the notice, agenda, and open meeting requirements of the Brown Act.

## METHODOLOGY

### Interviews

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury.

The Grand Jury interviewed command staff at these law enforcement agencies:

- San Mateo County Sheriff's Office
- The Police Departments of:
  - Atherton
  - Belmont
  - Daly City
  - East Palo Alto
  - Foster City
  - Hillsborough
  - Menlo Park
  - Redwood City
  - San Mateo
  - South San Francisco

The Grand Jury interviewed representatives of the following local law enforcement associations:

- Hillsborough Police Officer Association
- Menlo Park Police Officers' Association
- San Mateo County Deputy Sheriff's Association
- San Mateo County Organization of Sheriff's Sergeants
- Redwood City Police Officers' Association
- Redwood City Police Sergeants' Association

The Grand Jury interviewed a senior official of Northern California Regional Intelligence Center (NCRIC).

The Grand Jury interviewed a member of the American Civil Liberties Union and Electronic Frontier who served on a citizens' committee to review and recommend body-worn camera use policies at the request of their city's police chief.

The Grand Jury interviewed senior members of the San Mateo County District Attorney's Office.

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## APPENDIX A BODY-WORN CAMERA POLICY—ATHERTON POLICE DEPARTMENT

Policy

**450**

Atherton Police Department  
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### Portable Audio/Video Recorders

#### 450.1 PURPOSE AND SCOPE

This Department procedure establishes guidelines for Department members using body worn cameras and procedures for preserving the digital media. This procedure applies to all Department members.

#### 450.2 BACKGROUND

Law enforcement's use of in-car cameras and body worn cameras has proven effective in reducing violent confrontations and complaints against officers. Cameras provide additional documentation of police/public encounters and may be an important tool for collecting evidence and maintaining public trust. There is also a learning curve that comes with using body-worn cameras. Video cannot always show the full story nor does it capture an entire scene. The use of cameras does not reduce the requirement to provide thorough written documentation. Persons reviewing recordings must also be cautious before conclusions are reached about what the video shows.

#### 450.3 DEFINITIONS

- (a) Body Worn Camera (BWC) - A camera worn on an individual officer's person that records and stores audio and video.
- (b) BWC Program Administrator - Police Department program administrator for BWC camera system with full access to user rights and sets user access and parameters.
- (c) Digital Evidence - BWC files, including photographs, audio recordings and video footage, captured by a BWC and stored digitally.
- (d) Metadata - Case numbers, Incident numbers, and other descriptors used to identify digital evidence.

#### 450.4 PROCEDURE

##### 450.4.1 OFFICER SAFETY

Officer Safety takes Precedence over Recording Events. Officers should follow existing officer safety policies when conducting enforcement stops as outlined in Department policies and procedures. Officer safety should be the primary consideration when contacting citizens or conducting vehicle stops, not the ability to record an event.

##### 450.4.2 GENERAL

- (a) Only authorized personnel should use or be in possession of a BWC device.
- (b) BWC equipment is for official use only and shall not be utilized for personal use.
- (c) Officers shall not tamper with or dismantle any hardware or software component of any BWC device.



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- (d) The use of any other personal recording device for the same purpose is not authorized without permission of the Chief of Police or designee.
- (e) All digital evidence collected using the BWC is considered a record of the Atherton Police Department and is for official use only.
- (f) Accessing, copying, forwarding or releasing any digital evidence for other than official law enforcement use and contrary to this procedure is strictly prohibited. Public release of digital evidence is prohibited unless approved by the Chief of Police or their designee.

**450.4.3 BWC MODES OF OPERATION**

- (a) The BWC system operates on rechargeable battery power. The user can view the recordings and add metadata to videos using a department provided software application. Viewing or adding metadata will not alter the video recording.
- (b) Recording Mode is when the switch is activated and the camera is recording both audio and video.

**450.4.4 STORAGE**

- (a) When not in use, the BWC devices shall be properly stored.

**450.4.5 PRE-SHIFT INSPECTION**

- (a) Officers should inspect their assigned BWC devices daily to ensure there is no visual damage and the device is in working order.
- (b) Visual damage shall be reported to a supervisor.
- (c) Inoperable equipment shall be tagged and returned to the BWC Administrator as soon as possible.

**450.4.6 CAMERA POSITION**

- (a) Officers should wear the BWC above the midline of their torso and in a position that provides for effective recording.

**450.4.7 REPAIR, REPLACEMENT, AND MAINTENANCE**

- (a) When a BWC malfunctions, the officer will notify his or her supervisor.
- (b) The inoperable equipment will be taken to the BWC Administrator for repair as soon as possible.
- (c) If the BWC Administrator cannot repair the unit, the manufacturer will be contacted to facilitate the repair. Repair and replacement of damaged or nonfunctional BWC equipment is coordinated through the BWC Administrator and performed through the manufacturer.
- (d) This procedure will be followed for all BWC related equipment and accessories.

**450.4.8 ADVISEMENTS ABOUT RECORDING**

- (a) Private citizens do not have a reasonable expectation of privacy when talking with police officers during the scope of an officer's official duties, even when the contact is in a private

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residence. Therefore, officers are not required to give notice they are recording. However, if asked, officers should advise citizens they are being recorded.

- (b) Officers are not required to initiate or cease recording an event, situation or circumstance solely at the demand of a citizen.
- (c) Officers and supervisors involved in the investigation of a complaint against a member of the police department must inform complainants and witnesses they are being recorded.

**450.4.9 SURREPTITIOUS USE OF THE BWC**

- (a) Members of the Department may surreptitiously record any conversation during the course of a criminal investigation in which the officer reasonably believes that such a recording will be beneficial to the investigation (Penal Code § 633).
- (b) Members shall not surreptitiously record another department member without a court order or unless lawfully authorized by the Chief of Police or the authorized designee.

**450.5 WHEN AND WHERE TO RECORD**

**450.5.1 ENFORCEMENT RELATED CONTACTS**

- (a) Officers should record enforcement related contacts. The camera should be activated prior to actual contact with the citizen, or as soon as safely possible thereafter, and continue recording until the contact is concluded.
- (b) Enforcement related contacts include the following: Traffic stops, field interviews, detentions, arrests, persons present at radio calls who are accused of crimes, and consensual encounters in which the officer is attempting to develop reasonable suspicion on the subject of the encounter.
- (c) Covering another city employee or law enforcement officer during an enforcement contact.
- (d) Officers working plain clothes assignments are exempt from this policy.

**450.5.2 ARRESTS**

- (a) Officers may stop recording when the arrestee is cooperative and safely secured inside a police car or law enforcement facility. If an arrestee becomes uncooperative, or if there is some evidentiary purpose, officers should resume recording in the event mode.
- (b) If an officer resumes recording, the camera should remain recording until the officer no longer has contact with the subject.

**450.5.3 SUSPECT INTERVIEWS**

- (a) Officers are encouraged to fully record suspect interviews. Officers should not stop and start the recording during a suspect interview.
- (b) When recording interviews, officers should ensure they record any admonishments prior to the start of an interview.

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**450.5.4 PRIVATE RESIDENCES**

- (a) Private Citizens have a reasonable expectation of privacy in their homes. However, when officers are lawfully present in a home (warrant, consent, or exigent circumstances) in the course of official duties, there is no reasonable expectation of privacy.

**450.5.5 SEARCHES**

- (a) During the execution of a search warrant, an arrest warrant, a Fourth Amendment waiver search, or a consent search in which the officer is looking for evidence or contraband.

**450.5.6 SPECIAL EVENTS**

- (a) Officer's use of BWCs at special events is at the discretion of the Lieutenant.

**450.5.7 VICTIM AND WITNESS INTERVIEWS**

- (a) Victim and witness interviews will generally be recorded.
- (b) Domestic violence victims often recant their statements as early as the following morning after a crime. Victims may also make their children unavailable for investigators or court to avoid their providing statements. For these reasons, domestic violence victims should be recorded if the victim is willing. Officers should also record the statements of children of domestic violence victims who are witnesses in these types of cases if the children are willing.
- (c) BWCs should be used during Sex Crimes or Child Abuse investigations to include statements of victims, witnesses, and interactions with parents of victims.

**450.5.8 DEMONSTRATIONS**

- (a) As a general policy, Department personnel should video record or photograph peaceful demonstrations.
- (b) When there is reason to believe that a planned event has the potential for unlawful activity, Commanding Officers should make the determination whether visual recording or photographing is appropriate.
- (c) During demonstrations, if officers witness crimes occurring among the demonstrators and/or believe an arrest is likely, they should begin recording.

**450.6 WHEN AND WHERE NOT TO RECORD**

- (a) BWCs shall not be used to record non-work related activity.
- (b) BWCs shall not be used to record in areas or activities such as pre-shift conferences, Department locker rooms, break rooms, or other activities not related to a criminal investigation.
- (c) BWCs shall not intentionally be activated in places where persons have a reasonable expectation of privacy, such as locker rooms, dressing rooms, or restrooms.
- (d) BWCs shall not be used during Department administrative investigations.

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- (e) When possible, officers should avoid recording exposed areas of the body that could cause embarrassment or humiliation, such as exposed breast, groin, etc.

**450.6.1 GENERAL RULE**

- (a) Generally, officers should not record informal or casual encounters with members of the public. Officers should consider that recording people in some circumstances may inhibit sharing neighborhood information or developing strong ties between members of the community and officers.

**450.7 DOCUMENTATION OF RECORDED EVENTS**

- (a) All recordings shall be documented in the incident / crime report.

**450.8 ENTERING METADATA**

- (a) If needed, metadata should be added at the conclusion of the event when the BWC is uploaded to the server.

**450.9 CHARGING PROCEDURES**

- (a) Officers should charge the BWC at the end of their shift. This will allow adequate time for the battery to recharge.

**450.10 ACCESSING UPLOADED DIGITAL EVIDENCE**

- (a) All those given permission associated with the BWC may review digital evidence.
- (b) Using a Department computer, go to the Atherton Police Department Intranet site.
- (c) Enter assigned user name and password. For help with problems, contact the BWC Administrator.
- (d) Digital evidence can be viewed and / or copied from this location.

**450.11 RETENTION OF DIGITAL EVIDENCE**

- (a) All recordings related to any criminal proceeding, claim filed, pending litigation, or a personnel complaint, shall be preserved until that matter is resolved and/or in accordance with the law.

**450.12 REVIEWING IMPOUNDED DIGITAL EVIDENCE**

- (a) Officers may review their own recordings.
- (b) Detectives are responsible for reviewing, updating and tracking digital evidence associated with their assigned cases.

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- (c) Digital evidence captured by the BWC is not all inclusive. The system captures a less broad and less detailed image than the totality of the human senses. An officer's recollection of specific details may be different than what is captured in digital evidence. Officers should review digital evidence prior to completing reports when necessary to ensure accuracy. Officers should review digital evidence prior to providing testimony at hearings, trial, or depositions.
- (d) It is NOT the intent of the Department to review digital evidence for the purpose of general performance review, for routine preparation of performance reports, or to discover policy violations.
- (e) Digital evidence may be viewed for administrative purposes limited to the following:
  - Any incident in which a member of the Department is injured or killed during the performance of their duties.
  - Any incident involving the use of force by a member of the Department, including canines, which results in injury or death.
  - Any in-custody death.
  - Any police pursuit.
  - When any member of the Department intentionally or unintentionally discharges a firearm at a person regardless whether an individual is struck.
  - When any member of the Department not involved in training intentionally or unintentionally discharges a Conductive Energy Weapon at a person, including the application of a drive stun.
  - Officer involved traffic collisions.
  - Prior to the release of recordings in response to a proper legal request (e.g., in response to a subpoena or other court order).
  - In preparation for a civil deposition or responding to an interrogatory where the incident arises from the employee's official duties.
  - When preparing to testify in a criminal, civil, or administrative proceeding arising from the employee's official duties.
  - For investigations undertaken by the Department, for the purpose of proving or disproving specific allegations of misconduct.
  - For administrative proceedings, when digital evidence is used by the Department for the purpose of proving or disproving allegations of misconduct, only digital evidence relevant to the investigative scope should be viewed and retained by investigators. Information relevant to the recordings viewed and seized as evidence by investigators should be documented as part of the chronological summary of any investigation undertaken by the Department.

450.12.1 LIEUTENANT APPROVAL

In situations where there is a need to review digital evidence not covered by this procedure, the Lieutenant must approve the request. Each situation will be evaluated on a case by case basis.

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**450.13 DISCOVERY OF MISCONDUCT**

- (a) Employees reviewing event recordings should remain focused on the incident or incidents in question and review only those recordings relevant to their investigative scope. If improper conduct is discovered during any review of digital evidence, the person who discovered the conduct in question should notify a supervisor. Nothing in this procedure prohibits addressing policy violations.

**450.14 COPYING AND RELEASING DIGITAL EVIDENCE**

- (a) Digital evidence captured by the BWC shall be treated as official records and handled pursuant to existing Department policies and procedures. The digital evidence will be reviewed by the Lieutenant or his / her designee before release.

**450.15 DIGITAL EVIDENCE FOR TRAINING**

- (a) Officers and supervisors may find it useful, and are encouraged, to review recordings of incidents of which they were involved when beneficial for the purpose of conducting a tactical debrief. When an incident is recorded which may be of value as a training aid for a broad section of the Department, the recording officer or that officer's supervisor should contact the Lieutenant who will review the digital evidence to determine the value of the incident for training.

**450.16 BWC ADMINISTRATOR RESPONSIBILITIES**

BWC Program Administrators should be sworn members. BWC Program Administrators are responsible for performing the following duties:

- (a) Maintain and troubleshoot the BWC units and server application.
- (b) Maintain a record of assigned BWC units and related equipment.
- (c) Be proactive and able to complete minor repairs.
- (d) Arrange for the warranty and non-warranty repair of the BWC units.
- (e) Repair or replace BWC components (cameras, docking stations, etc).
- (f) Maintain BWC equipment repair and maintenance records.
- (g) Update software and system settings as necessary.
- (h) Train officers on current policy and the proper use of BWC units.

## APPENDIX B BODY-WORN CAMERA POLICY— BELMONT POLICE DEPARTMENT

Policy  
**450**

Belmont Police Department  
Policy Manual

### 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 Belmont Police Department may provide members with access to portable recorders, either audio or video or both, for use during the performance of their duties. The use of recorders is intended to enhance the mission of the Department by accurately capturing contacts between members of the Department and the public.

#### 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.

#### 450.4 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.

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 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.

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Members shall download their portable recorders at the end of the period of use, or sooner if necessary. The members will make two copies of all recordings related to cases being sent to the District Attorney's office for prosecution. One copy will be booked into evidence and the other forwarded along with the report to the District Attorney's office.

Members shall document the existence of a recording in any report or other official record of the contact, including any instance where the recorder was not activated, malfunctioned or the member deactivated the recording. Members shall include the reason for deactivation.

**450.4.1 SUPERVISOR RESPONSIBILITIES**

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

**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 is contacting a citizen in an official capacity.

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.

At no time is a member expected to jeopardize his/her safety in order to activate a portable recorder. 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.



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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).

**450.5.2 EXPLOSIVE DEVICE**

Many portable recorders, including body-worn cameras 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.

**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.

Members are prohibited from using personally owned recording devices while on-duty without the express consent of the Watch Commander. Any member who uses a personally owned recorder for department-related activities shall comply with the provisions of this policy, including retention and release requirements.

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.

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.

**450.7.1 RETENTION REQUIREMENTS**

All recordings shall be retained for a period consistent with the requirements of the organization's records retention schedule.

Belmont Police Department  
Policy Manual

*Portable Audio/Video Recorders*

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**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.

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 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.

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.

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Adoption Date: 2015/12/01  
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## APPENDIX C BODY-WORN CAMERA POLICY—FOSTER CITY POLICE DEPARTMENT



### Foster City Police Department Policy Manual

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## Use of 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.

This policy does not apply to surreptitious interception of electronic communications for lawful authorized investigative purposes or to mobile audio video recordings (see the Mobile Audio Video Policy).

### 450.2 POLICY

The Foster City Police Department may provide members with access to portable recorders, either audio or video or both, for use during the performance of their duties. The use of recorders is intended to enhance the mission of the Department by accurately capturing contacts between members of the Department and the public.

### 450.3 PRIVACY

All recordings made by personnel acting in their official capacity as members of this department shall remain the property of the Department and should not be considered private, regardless of whether those recordings were made with department-issued or personally owned recorders.

### 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. Uniformed members should wear the recorder in a conspicuous manner.

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.

When using a recorder, the assigned member shall record his/her name, employee 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.

### 450.5 ACTIVATION OF THE AUDIO RECORDER

Members should consider activating the recorder during enforcement stops and field interrogation situations and any other time the member reasonably believes that a recording of an on-duty contact may be useful. Once started, recordings should continue without interruption until the contact ends, if feasible.

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

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# Foster City Police Department

## Policy Manual

### *Use of Audio/Video Recorders*

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

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

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

#### **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 are prohibited from using personally owned recording devices while on-duty without the express consent of the Watch Commander. Any member who uses a personally owned recorder for department-related activities shall comply with the provisions of this policy, including retention and release requirements.

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

Any member who may have questions regarding the application of this policy is encouraged to seek clarification from supervisory personnel.

#### **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 download the file in accordance with the Computers and Digital Evidence Policy and document the existence of the recording in the related case report.

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.

Members should upload the file, in accordance with current procedure for storing digital files, at the end of their shift and any time the storage capacity is nearing its limit.

#### **450.7.1 RETENTION REQUIREMENTS**

All downloaded recordings shall be retained for a period consistent with the requirements of the organization's records retention schedule but in no event for a period less than 180 days.

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

Recordings made using portable recording devices pursuant to this policy are department records and may only be released as provided in the Release of Records and Information Policy or for other authorized legitimate department business purposes.

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Use of Audio/Video Recorders - 279

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# Foster City Police Department

## Policy Manual

### *Use of Audio/Video Recorders*

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#### **450.9 REVIEW OF RECORDED MEDIA FILES**

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

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct, 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 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 Release of Records and Information Policy.

## APPENDIX D BODY-WORN CAMERA POLICY—HILLSBOROUGH POLICE DEPARTMENT



### Hillsborough Police Department Policy Manual

## Mobile Audio Video Procedure

### 446.1 PURPOSE AND SCOPE

The Hillsborough Police Department has equipped each marked patrol car with a Mobile Audio & Video (MAV) recording system. The MAV is designed to assist and compliment patrol officers in the performance of his/her duties. The MAV is used to record certain activities by providing a visual and/or audio record. Video recordings are intended to provide an unbiased visual/audio record of the incident and to supplement the officer's report.

### 446.2 ACTIVATION OF THE MAV

The MAV system is designed to turn on whenever the unit emergency lights are activated. The system remains on until turned off manually. The audio portion must be activated manually by each officer and is independent of the video; however when audio is being recorded the video will also record.

#### 446.2.1 REQUIRED ACTIVATION OF MAV

This policy is not intended to describe every possible situation where the system may be used however here are many situations where the use of the MAV system is appropriate. In addition to the required situations, officers may activate the system any time he/she believes its use would be appropriate and/or valuable to document an incident. In some circumstances it is not possible to capture images if the incident due to conditions or location of the camera however the audio portion can be valuable evidence and is subject to the same activation requirements as the MAV. The activation of the MAV system is required in any of the following situations:

- (a) All field contacts involving actual or potential criminal conduct, within video or audio range, which includes:
  - 1. Vehicular pursuits
  - 2. Suspicious vehicles
  - 3. Arrests
  - 4. Pedestrian checks
  - 5. DUI investigations including field sobriety tests
  - 6. Consensual encounters
  - 7. Responding to an in-progress call
- (b) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording
- (c) Any other circumstances where the officer believes that a recording of an incident would be appropriate

Once the MAV system is activated, it shall remain on and shall not be turned off until the incident has concluded. For purposes of this section, conclusion of an incident has occurred when all arrests have been made, arrestees have been transported, and all witnesses, victims, etc. have been interviewed. Recording may cease if an officer is simply waiting for a tow truck or a family member to arrive or other similar situations.

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# Hillsborough Police Department

## Policy Manual

### *Mobile Audio Video Procedure*

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#### **446.2.2 WHEN ACTIVATION NOT REQUIRED**

Activation of the MAV system is not required when exchanging information with other officers or during breaks, lunch periods, when not in service, or actively on patrol.

Absent legal cause or lawful order, no member of this department may surreptitiously record any other member of this department without the expressed knowledge and consent of all parties.

#### **446.3 REVIEW OF MAV RECORDINGS**

Recordings may be reviewed in any of the following situations:

- (a) By a supervisor investigating a specific act of officer conduct
- (b) By a department detective after approval of a supervisor who is participating in an official investigation, such as a personnel complaint, administrative inquiry or a criminal investigation
- (c) By department personnel who request to review their own recordings
- (d) By court personnel through proper process or with permission of the Chief of Police or his/her designee
- (e) By media personnel with permission of the Chief of Police or his/her designee
- (f) Recordings may be shown for the purposes of training value. If an involved officer objects to the showing of recording, his/her objection will be submitted to staff to determine if the training value outweighs the officer's objection for not showing the recording.

Employees desiring to view any MAV recording shall submit a request in writing to the Watch Commander.

In no event shall any recording be used or shown for the purpose of ridicule or embarrassing any employee.

#### **446.4 DOCUMENTING MAV USE**

Any incident that was recorded with either the video or audio system shall be documented in the officer's report. If a citation was issued, a notation shall be placed on the back of the records copy of the citation that the incident was recorded.

#### **446.5 VIDEO MEDIA STORAGE & INTEGRITY**

Once checked in, all video media will be labeled and placed in a designated secure storage area. All video media that is not booked in as evidence will be retained for a minimum of one year after which time they will be erased, destroyed, or recycled.

##### **446.5.1 COPIES OF VIDEO RECORDINGS**

Original video recording media shall not be used for any purpose other than for initial review by a supervisor. A copy of the original video recording will be made upon proper request for any person authorized in Policy Manual § 446.4.

Original video recording media may only be released in response to a valid court order or upon approval by the Chief of Police or his/her designee. In the event that an original recording is released to court, a copy shall be made and placed in storage until the original is returned.

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# Hillsborough Police Department

Policy Manual

## *Mobile Audio Video Procedure*

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### **446.5.2 MAV RECORDINGS AS EVIDENCE**

Only in exceptional circumstances will original video media be booked into evidence. The exceptions would include a major event such as a homicide or as directed by the Watch Commander or a member of staff. If a video media is booked into evidence, it shall be booked in the same manner as other property and referenced in the case report.

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Mobile Audio Video Procedure - 257

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## Use of 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.

This policy does not apply to surreptitious interception of electronic communications for lawful authorized investigative purposes (see the Investigation and Prosecution policy).

### 450.2 POLICY

The Menlo Park Police Department shall provide members with access to portable recorders, either audio or video or both, for use during the performance of their duties. The use of recorders is intended to enhance the mission of the Department by accurately capturing contacts between members of the Department and the public.

### 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.

### 450.4 MEMBER RESPONSIBILITIES

Prior to going into service, each uniformed member will be responsible for making sure that he/she is equipped with a portable video recorder, issued by the Department, and that the recorder is in good working order. Uniformed members shall wear the recorders in such a way as to have easy access to the function buttons and in a manner that renders the recorder secure.

Any member assigned to a non-uniformed position shall carry an approved portable recorder. The recorder shall be carried in a way that renders the recorder secure with the ability to record any contact with a citizen.

At the beginning of each shift, the member shall test the recorder to assure it is working properly.

Members shall document the existence of a recording in any report or other official record of the contact, including any instance where the recorder malfunctioned or was not turned on for any portion of the contact. The member shall include the reason for not activating the recorder.

### 450.5 ACTIVATION OF THE AUDIO/VIDEO RECORDER

Members shall activate the recorder during all on duty contacts with citizens other than a contact with another member, without their knowledge.

Members shall activate their recording devices prior to arriving to any in-progress or serious or high priority calls for service to preclude arriving on scene and being unable to activate the unit.

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#### Use of Audio/Video Recorders

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Members will have discretion to keep recording devices off during conversations with crime witnesses and members of the community who wish to report or discuss criminal activity. When determining whether to record interviews with witnesses and members of the community who wish to share information, members should always consider both the evidentiary value of the recording and the subject's comfort with speaking on camera. To better capture evidence, it is recommended that members record statements made by witnesses and people sharing information. However, if a person will not talk unless the recording device is turned off, members may decide that obtaining information is more important than recording.

At no time is a member expected to place his/her safety in jeopardy in order to activate a recorder or change the recording media. However, the recorder should be activated in all situations as soon as practical.

##### **450.5.1 SURREPTITIOUS USE OF THE AUDIO/VIDEO RECORDER**

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

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

##### **450.5.2 SURREPTITIOUS USE OF AUDIO/VIDEO RECORDER DURING INVESTIGATIONS OF PERSONNEL COMPLAINTS**

Members are prohibited from surreptitiously recording any conversation in which a person is making a personnel complaint or allegation of such. In these situations, the member taking the complaint shall advise the complainant that the conversation is being recorded. If the complainant refuses to be recorded, the member shall discontinue recording, and will indicate this fact in the documentation created regarding the complaint or allegation. It is recommended that a witness member be utilized in cases which a complainant refuses to be recorded.

##### **450.5.3 CESSATION OF RECORDING**

Once activated, the portable audio/video recorder should remain on continuously until the member's direct participation in the incident is complete. Recordings may be stopped during significant periods of inactivity such as report writing or other breaks from direct participation in the incident, or when speaking to other members outside the presence of involved parties to the incident. Officers shall reactivate the recording device upon reinitiating contact or a new contact with any citizen.

##### **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

# Menlo Park Police Department

## Policy Manual

### Use of Audio/Video Recorders

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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 are prohibited from using personally owned recording devices while on-duty.

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

Any member who may have questions regarding the application of this policy is encouraged to seek clarification from supervisory personnel.

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

Members shall upload all digital recorded files in accordance with current procedures for storing digital files, at the end of their shift and anytime the storage capacity is nearing its limit.

Any time a member uploads a digital file that will or may be used as evidence in a criminal or non-criminal case, the member shall mark the file with all pertinent information required by the department's digital recording software, and will cause that file to be marked as "evidence" in the system.

#### **450.8 RETENTION OF RECORDS**

Citizen contact recordings shall be retained for a minimum of (2.5) years. All recordings which are classified as evidence will be retained for a period of time determined by applicable laws and the City of Menlo Park's retention guidelines.

#### **450.9 RELEASE OF RECORDINGS**

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

#### **450.10 REVIEW OF RECORDED MEDIA FILES**

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

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct, 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 personnel who are otherwise authorized to review evidence in a related case.

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- (c) In compliance with a public records request, if permitted, and in accordance with the Release of Records and Information Policy.

## APPENDIX F BODY CAMERAS—MENLO PARK POLICE DEPARTMENT CITIZENS ADVISORY COMMITTEE REPORT

### Body Cameras - MPPD Citizens Advisory Committee Report

2015/05/07

The Citizens Advisory Committee (Committee) to the Menlo Park Police Department is comprised of residents of Menlo Park who have been invited by Chief Robert Jonsen to provide feedback to the Police Department about a range of issues concerning public safety, police department practices and proposals, and to bring issues of interest in the community to the attention of the Chief.

Over the course of its 18 months of existence, the Committee has reviewed the use of several surveillance technologies employed by the MPPD, such as license plate readers, fixed cameras, and both audio and video recorders worn by police officers among other issues.

*Policy 450, Use of Audio/Video Recorders* was reviewed by the Committee in January of 2015. Later that month, several members of the Menlo Park City Council expressed concerns about Policy 450, and asked Chief Jonsen to revisit Policy 450 with the Citizens Advisory Committee.

The Committee met on Tuesday, March 31, 2015. The sole topic of discussion was proposed revisions to *MPPD Policy 450, Use of Audio/Visual Recorders* (dated 2015/02/18). The proposed revisions were presented to the committee by Chief Robert Jonsen and Commander David Bertini.

The use of body cameras by law enforcement occurs within a rapidly changing legal and ethical landscape that includes such things as:

- a push from the highest levels of government to increase the use of body cameras by all U.S. police officers, due in part to the concern of alleged police brutality and the use of deadly force targeting minorities by white police officers,
- the illicit publication in social media of videos recorded by police officers,
- the increasing use of video recorders by the public of police activities and arrests,
- increased revelations of alleged government overreach in surveilling American citizens,
- the theft or illegal disclosures of private information thought to be secure in public and private computer networks,
- an evolving and highly nuanced set of opinions and guidelines regarding the use of body cameras from such as Lexipol, the Justice Department's Community Oriented Policing (COPS) office, the American Civil Liberties Union, and the Electronic Frontier Foundation,
- widely differing practices and policies between police jurisdictions and state laws across the country,
- concern regarding the widespread sharing of surveillance recordings between local, state, and federal agencies,
- new innovations within the camera technology from increased battery life and video quality to the introduction of new software features,

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- the need for training officers in the use of this equipment in the field, the processing of the information it gathers, the supervision of the performance of the officers in using the equipment, and the updating of police procedures to reflect changes in law, policies and best practices.

*On the whole, the Committee agrees with the recommended changes to Policy 450 presented to us.*

During the Committee's discussion about the proposed changes to Policy 450 we focused on several questions:

1. When should the recorder be turned on?
2. Under what circumstances should the recorder be turned off?
3. What recordings should be retained?
4. How long should recordings be retained?
5. How can policies and procedures remain current in such a rapidly changing environment?
6. How will the MPPD be able to keep up with the pace of technological innovation, data storage needs, network security, and backup/redundancy requirements?

*It is important to note that some of the suggestions discussed within the Committee may more properly be addressed in the area of MPPD Procedures rather than Policy 450 itself.*

#### **1. When should the recorder be turned on?**

The Committee agrees with the proposed language in 450.5, that the device be activated "prior to arriving at any in-progress or serious or high priority calls for service."

To turn cameras on and leave them on during the entire shift of the police officers presents logistical challenges and also presents significant privacy concerns for the officers as employees of the MPPD. The Committee sees no compelling reason to require cameras to always be on. However, cameras should remain on until such time as the officer is no longer involved with the "involved parties" in the incident.

As a best practice, the Committee recommends that the officer provide a voice narration or verbal note upon activating the recorder.

#### **2. When should the recorder be turned off?**

Policy 450.3 states that the recorder can be turned off during "significant periods of inactivity such as report writing or other breaks from direct participation in the incident, or when speaking to other members [police officers] outside the presence of involved parties to the incident." This seems reasonable to us.

As a best practice, we recommend that the officer provide a voice narration or verbal note upon turning off the recorder, noting why the recorder is being turned off.

There was discussion about when an officer can choose to turn off a recorder at the request of an individual who may wish to not be recorded and/or will refuse to speak with an officer if the recorder is not turned off.

Even though a person speaking with a police officer may not have an expectation of privacy, in some instances such a person may express concerns for their personal welfare or safety if they provide information to the police. The use of a body camera may heighten that concern and lead someone to “clam up.” We hope that such circumstances would be uncommon, and that officers should be provided with the discretion to turn off the recorder if, in their judgment, valuable information might otherwise not be forthcoming.

As a best practice, we recommend that the police officer record the request by the person being interviewed to “turn off the camera” to preclude any question as to why the device was turned off.

### **3. What recordings should be retained?**

When recordings are uploaded to the MPPD servers, video segments [portions between the activation of *start recording* and the activation of *stop recording* on the device] can be “flagged” by officers. Ordinary conversations between officers with citizens they encounter during the course of the day about the weather or sports should not be flagged. Care must be exercised to not allow the flagging of every encounter out of an abundance of caution about possible but improbable actions.

Police officers must, of course, flag anything that might be of evidentiary value. They must also use their own judgment, subject to review by their supervisor, of any interactions which may lead to a citizen complaint.

#### 4. How long should recordings should be retained?

State Law: California Government Code §34090.6<sup>1</sup> requires that all recordings be retained for one year, after which they may be destroyed.

Federal Law: The statute of limitations for bringing suit under a Federal Civil Rights complaint under §1983 is two years (in California), plus notifications.<sup>2</sup>

MPPD Policy: There is no statute of limitations within the policies of the MPPD for citizen complaints.

With various legal requirements and periods for citizens bringing suits or complaints ranging from one year to infinity, few people argue in favor of infinite storage of such records. So what is a reasonable compromise between a minimum of one year (as required by state law) and infinity?

The MPPD recommends a period of 2.5 years as a means of protecting both the City and individual police officers from significant financial liabilities should either or both be successfully sued. A clear majority of the Committee agrees with this recommendation. Experts in risk management would generally agree as well.<sup>3</sup>

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<sup>1</sup> 34090.6. (a) Notwithstanding the provisions of Section 34090, the head of a department of a city or city and county, after one year, may destroy recordings of routine video monitoring, and after 100 days may destroy recordings of telephone and radio communications maintained by the department. This destruction shall be approved by the legislative body and the written consent of the agency attorney shall be obtained. In the event that the recordings are evidence in any claim filed or any pending litigation, they shall be preserved until pending litigation is resolved.

(b) For purposes of this section, "recordings of telephone and radio communications" means the routine daily recording of telephone communications to and from a city, city and county, or department, and all radio communications relating to the operations of the departments.

(c) For purposes of this section, "routine video monitoring" means video recording by a video or electronic imaging system designed to record the regular and ongoing operations of the departments described in subdivision (a), including mobile in-car video systems,

jail observation and monitoring systems, and building security recording systems.

(d) For purposes of this section, "department" includes a public safety communications center operated by the city or city and county.

<sup>2</sup> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

<sup>3</sup> A minority of the Committee suggests that financial risk is not the only factor that should be considered in determining the length of data retention. The privacy rights of citizens, one could argue, are priceless. Sir William Blackstone famously wrote that "the law holds it better that ten guilty persons escape, than that one innocent party suffer." And while the amount of video data held by the MPPD on any individual citizen may be relatively small, the accumulated data held by other government bodies and corporations is huge. And it is the aggregate of such data that concerns many civil liberties advocates, and aggregation that can be completed surreptitiously without the knowledge or consent of the hundreds of entities that each hold a piece of it. The existence of such technology and parties willing to use it therefore argue that each piece of data be held for the absolute minimum of amount of time to mitigate against such risks.



While the statute of limitations for citizen complaints against a police officer is unlimited, the sole remedy available to citizens who make such complaints are limited to disciplinary action against an officer. Therefore, there is no financial risk to the City.

**5. How can policies and procedures remain current in such a rapidly changing environment?**

As stated in the outset of this document, the legal landscape, public opinion, and technology related to body cameras is rapidly evolving. The Committee believes that it is imperative that Policy 450 be subjected to regular review and scrutiny by the MPPD and the citizens for the foreseeable future.

The MPPD relies upon Lexipol for information concerning the changing legal landscape and best practices in many areas including Policy 450. We encourage them to continue this practice and to recommend policy and procedural changes as warranted.

Furthermore, the citizens of Menlo Park should be made aware of the information about Policy 450 that is available on the City's website and encouraged to voice their opinion through conversations with the MPPD and their elected officials.

**6. How will the MPPD be able to keep up with the pace of technological innovation, data storage needs, network security, and backup/redundancy requirements?**

Emerging technologies such as facial and voice recognition, background images, correlation of body camera data with other surveillance data sets, pressure to share data between jurisdictions, and cross mining practice (aka "big data") could create additional questions and dilemmas that will require deep conversation and consideration.

The MPPD will face an enormous challenge of storing all of this data, securing it internally and against outside threats, and protecting it from physical damage. Few systems can withstand an attack from determined hackers such as those that go by the name "anonymous." Criminals and government-based hacking programs are also able to penetrate most systems almost at will. Should a fire occur in the MPPD data center the results could be catastrophic. The department needs to take all practicable steps necessary in infrastructure and security systems to protect the data itself and, more importantly, the privacy and integrity of the information. The systems need to be future proofed so that evidence that is committed to a backup system in 2015 will still be readable by computers in 2040.

**Conclusion**

This is the first time the Committee has been asked by the City Council to weigh-in on issue of such public interest. The Committee is an unelected body and does not report to the Council. We are a non-political group, and we serve at the pleasure of the Chief of Police. We appreciate the opportunity to serve the Chief in the capacity of a citizen "sounding board" and to bring our own ideas to MPPD through our regular meetings. If the City Council concludes that there is a

need for a group focused on the MPPD an official Commission should be formed. We are not advocating for this but neither are we prepared to serve in a capacity beyond that for which we were originally formed.

Item B

# CITY OF BRISBANE POLICE DEPARTMENT

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ELIZABETH MACIAS  
CHIEF OF POLICE

July 14, 2016

Honorable Joseph C. Scott  
Judge of the Superior Court  
c/o Charlene Kresevich  
Hall of Justice  
400 Old County Road, 2nd  
Redwood City, CA 94063-1655

## **BODY CAMERAS – The Reel Truth**

Dear Honorable Joseph C. Scott:

This letter is in response to the 2015/2016 Grand Jury report of May 24, 2016, which contained findings that pertain to the City of Brisbane. Listed below are the Jury's findings and recommendations followed by the City of Brisbane response. The Brisbane City Council reviewed and approved the below recommendations at a public hearing on July 14, 2016. The City of Brisbane responds to the Grand Jury's findings, conclusions and recommendations as follows:

### **The San Mateo County 2015-2016 Grand Jury makes the following findings to the City Councils of the cities of San Mateo County:**

1. The Atherton, Belmont, Foster City, Hillsborough, and Menlo Park Police Departments have deployed body-worn camera systems.

**RESPONSE:** *The City of Brisbane Agrees with the finding. We have no reason to disagree with the information contained in the Grand Jury's report.*

2. The Sheriff's Office and five of the city police departments that have not deployed body worn cameras all expressed similar concerns regarding the implementation of these systems, the cost of the equipment, the cost of data retention, and policy development.

**RESPONSE:** *The City of Brisbane Agrees with the finding. We have no reason to disagree with the information contained in the Grand Jury's report.*

3. The Atherton, Belmont, Foster City, Hillsborough, and Menlo Park Police Departments have budgeted sufficient funds to manage the cost of equipment, data retention, and training.

**RESPONSE:** *The City of Brisbane Agrees with the finding. We have no reason to disagree with the information contained in the Grand Jury's report.*

4. Atherton, Belmont, Foster City, and Menlo Park Police Departments have developed written policies regarding the operation and data retention of body-worn camera systems as well as the protection of the rights of the community and police officers. Hillsborough is in the process of developing a similar policy.

**RESPONSE:** *The City of Brisbane Agrees with the finding. We have no reason to disagree with the information contained in the Grand Jury's report.*

5. Many local law enforcement agencies that currently do not employ body-worn camera acknowledge that these systems are beneficial and will likely be implemented in the future either voluntarily or by mandate.

**RESPONSE:** *The City of Brisbane Agrees with the finding. The Brisbane Police Department acknowledges the benefits of body-worn cameras and has made plans to implement them in the near future.*

**The San Mateo County 2015-2016 Grand Jury makes the following recommendations to the City Councils of the cities of San Mateo County:**

1. The Grand Jury recommends that the councils of those cities/towns that have not adopted body-worn camera direct their respective chiefs of police to develop an appropriate body-worn camera implementation plan and advise the public of their plan by November 30, 2016.

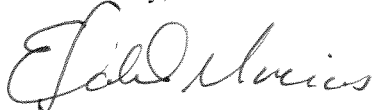
**RESPONSE:** *The recommendation has been implemented. Although not by direction from the City Council, the Brisbane Police Department has developed a plan to implement body worn cameras in or before the beginning of Fiscal Year, 2017/2018. We will advise the public of our plan prior to November 30, 2016.*

2. The Grand Jury recommends that the police departments of those cities, towns and the Broadmoor Police Protection District that have not adopted body-worn cameras implement a body-worn camera system as soon as practicable but, in any event, no later than October 31, 2017.

**RESPONSE:** *The recommendation has not yet been implemented, but will be implemented in the future. The Brisbane Police Department has developed a plan to implement body worn cameras on or before October 1, 2017.*

Thank you for the opportunity to comment on the recommendations made by the Grand Jury.

Sincerely,



Elizabeth Macias,  
Chief of Police