



## **POLICE ACCOUNTABILITY BOARD**

REGULAR MEETING

**Wednesday, March 15, 2023**

**6:30 P.M.**

Board Members:

JOHN MOORE III. (CHAIR)  
KITTY CALAVITA

REGINA HARRIS (VICE-CHAIR)  
JULIE LEFTWICH

CHERYL OWENS  
DEBORAH LEVINE

### **MEETING LOCATION**

Live Oak Community Center  
1301 Shattuck Ave,  
Berkeley, CA 94709

### **PUBLIC ADVISORY**

The PAB has resumed in-person meetings and encourages community members to attend in person. Community members attending in person should observe the “Health and Safety Protocols for In-person Meetings of Berkeley Boards and Commissions” as outlined by the City of Berkeley.

\*\*\*The PAB acknowledges that physical attendance may not be feasible for all community members. To this end, the Office of the Director of Police Accountability (ODPA) has been exploring the option of allowing for remote participation at the PAB meetings. Please note that the ODPA and PAB are in the early stages of implementing this hybrid meeting format so there is a possibility for technical glitches and errors. Your patience and understanding are greatly appreciated. \*\*\*

To access the meeting remotely: join from a PC, Mac, iPad, iPhone, or Android device using this URL: <https://us02web.zoom.us/j/82653396072>. If you do not wish for your

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name to appear on the screen, use the drop-down menu and click on “rename” to rename yourself to be anonymous. To request to speak, use the “raise hand” icon on the screen. To join by phone: Dial **1 669 900 6833** and enter Meeting ID **826 5359 6072**. If you wish to comment during the public comment portion of the agenda, press \*9 and wait to be recognized.

## **LAND ACKNOWLEDGEMENT**

The City of Berkeley recognizes that the community we live in was built on the territory of xučyun (Huchiun (Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Chochen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley’s residents have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley’s incorporation in 1878. As stewards of the laws regulating the City of Berkeley, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today.

## **AGENDA**

1. **INTRODUCTION TO IN-PERSON MEETINGS** (2 minutes)
2. **CALL TO ORDER & ROLL CALL** (2 minutes)
3. **APPROVAL OF AGENDA** (5 MINUTES)
4. **PUBLIC COMMENT** (TBD)  
*(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on any matter within the Board’s jurisdiction at this time.)*
5. **APPROVAL OF MINUTES** (5 MINUTES)  
Regular meeting of February 22, 2023  
Special meeting of March 8, 2023
6. **ODPA STAFF REPORT** (10 MINUTES)  
Announcements, updates, and other items.  
Introduction of Deputy City Manager Anne Cardwell

**7. CHAIR AND BOARD MEMBERS' REPORTS (5 MINUTES)**

Announcements, updates and other items.

**8. CHIEF OF POLICE'S REPORT (10 minutes)**

Crime/cases of interest, community engagement/department events, staffing, training, and other items of interest.

**9. SUBCOMMITTEE REPORTS (discussion and action) (10 min)**

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

- a. Policy and Practices relating to the Downtown Task Force and Bike Unit Allegations (Chair: Owens)
- b. Regulations Subcommittee (Chair: Calavita)

**10. NEW BUSINESS (discussion and action) (10 min)**

- a. Discussion on the proposal for a comprehensive review of BPD's body-worn camera policies (Board member Harris) – (10 minutes)

**11. PUBLIC COMMENT (TBD)**

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

**CLOSED SESSION**

*Pursuant to the Court's order in Berkeley Police Association v. City of Berkeley, et al., Alameda County Superior Court Case No. 2002 057569, the Board will recess into closed session to discuss and act on the following matter(s):*

**12. Presentation of Complaint Case No. 26 – (5 min)**

**13. Case updates – (5 min)**

**END OF CLOSED SESSION**

**14. ANNOUNCEMENT OF CLOSED SESSION ACTION (1 minute)**

**15. ADJOURNMENT (1 minute)**

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## **Health and Safety Protocols for In-Person Meetings of Berkeley Boards and Commissions February 2023**

The policy below applies to in-person meetings of Berkeley Boards and Commissioners held in accordance with the Government Code (Brown Act) after the end of the State-declared emergency on February 28, 2023.

**Issued By:** City Manager's Office

**Date:** February 14, 2023

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### **I. Vaccination Status**

All attendees are encouraged to be fully up to date on their vaccinations, including any boosters for which they are eligible.

### **II. Health Status Precautions**

For members of the public who are feeling sick, including but not limited to cough, shortness of breath or difficulty breathing, fever or chills, muscle or body aches, vomiting or diarrhea, or new loss of taste or smell, it is recommended that they do not attend the meeting in-person as a public health precaution. In these cases, the public may submit comments in writing in lieu of attending in-person.

If an in-person attendee has been in close contact, as defined below, with a person who has tested positive for COVID-19 in the past five days, they are advised to wear a well-fitting mask (N95s, KN95s, KF94s are best), test for COVID-19 3-5 days from last exposure, and consider submitting comments in writing in lieu of attending in-person.

Close contact is defined as someone sharing the same indoor airspace, e.g., home, clinic waiting room, airplane, etc., for a cumulative total of 15 minutes or more over a 24-hour period within 2 days before symptoms of the infected person appear (or before a positive test for asymptomatic individuals); or having contact with COVID-19 droplets (e.g., being coughed on while not wearing recommended personal protective equipment).

A voluntary sign-in sheet will be available at the meeting entry for in-person attendees. This will assist with contact tracing in case of COVID-19 contact resulting from the meeting.

Members of City Commissions are encouraged to take a rapid COVID-19 test on the day of the meeting.

# **Health and Safety Protocols for In-Person Meetings of Berkeley Boards and Commissions February 2023**

### **III. Face Coverings/Mask**

Face coverings or masks that cover both the nose and mouth are encouraged for all commissioners, staff, and attendees at an in-person City Commission meeting. Face coverings will be provided by the City and available for attendees to use at the meeting. Members of Commissions, city staff, and the public are encouraged to wear a mask at all times, except when speaking publicly from the dais or at the public comment podium, although masking is encouraged even when speaking.

### **IV. Physical Distancing**

Currently, there are no physical distancing requirements in place by the State of California or the Local Health Officer for an indoor event similar to a Commission meeting.

Audience seating capacity will be at regular allowable levels per the Fire Code. Capacity limits will be posted at the meeting location. However, all attendees are requested to be respectful of the personal space of other attendees. An area of the public seating area will be designated as “distanced seating” to accommodate persons that need to distance for personal health reasons.

Distancing will be implemented for the dais as space allows.

### **V. Protocols for Teleconference Participation by Commissioners**

Upon the repeal of the state-declared emergency, all standard Brown Act requirements will be in effect for Commissioners participating remotely due to an approved ADA accommodation. For Commissioners participating remotely, the agenda must be posted at the remote location, the remote location must be accessible to the public, and the public must be able to participate and give public comment from the remote location.

- A Commissioner at a remote location will follow the same health and safety protocols as in-person meetings.
- A Commissioner at a remote location may impose reasonable capacity limits at their location.

### **VI. Hand Washing/Sanitizing**

Hand sanitizing stations are available at the meeting locations. The bathrooms have soap and water for handwashing.

### **VII. Air Flow/Circulation/Sanitizing**

Air filtration devices are used at all meeting locations. Window ventilation may be used if weather conditions allow.



DRAFT

## POLICE ACCOUNTABILITY BOARD REGULAR MEETING

Minutes (*Draft*)

**Wednesday, February 22, 2023, 6:30 P.M.**

**No physical location; the meeting was held exclusively through videoconference and teleconference.**

### 1. **CALL TO ORDER & ROLL CALL** (2 minutes)

Present: Board Member John Moore (Chair)  
Board Member Regina Harris (Vice-Chair)  
Board Member Kitty Calavita  
Board Member Deborah Levine  
Board Member Cheryl Owens  
Board Member Ismail Ramsey

Absent: Board Member Kitty Calavita

ODPA Staff: Hansel Aguilar, Director of Police Accountability  
Beneba Thomas, ODPa Investigator  
Jose Murillo, ODPa Policy Analyst

BPD Staff: Captain Durbin

CAO Staff: James Chang, Deputy City Attorney

### 2. **APPROVAL OF AGENDA** (5 MINUTES)

#### **Motion to approve the Agenda**

Moved/Second (Calavita/Harris) Motion Carried.

Ayes: Harris, Calavita, Levine, Moore, Owens, and Ramsey.

Noes: None Abstain: None Absent: Leftwich.

### 3. **PUBLIC COMMENT** (1 Speaker)

The speaker expressed interest in learning more about the appointment process for PAB members. There was little to no information posted on the webpage.

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#### 4. APPROVAL OF MINUTES (5 MINUTES)

**Motion to approve Regular Meeting Minutes of February 8, 2023, with corrections to be made.**

Moved/Second (Harris/Owens) **Motion Carried.**

Ayes: Harris, Levine, Moore, Owens, and Ramsey.

Noes: None

Abstain: Calavita

Absent: Leftwich

Vice-Chair Harris identifies a mistake on the February 8<sup>th</sup>, 2023 minutes. She states that under the Q&A session with Interim Chief Louis, a question was marked as being asked by Board member Owens but that she was the one who had inquired about the auditing of Body Worn Camera footage.<sup>1</sup>

#### 5. ODPa STAFF REPORT (5 MINUTES)

Announcements, updates, and other items.

Director Aguilar reported the following:

- Staff is preparing for the return to in-person meetings. Staff visited the Live Oak Community Center on Friday, February 17<sup>th</sup> to decide on the arrangement to accommodate social distancing and other covid-19 precautions. Staff is also working on the technology for a hybrid platform.
- The staff has received the service agreement between the city and the private investigator hired to look into the BPD Downtown Taskforce and Bike Unit allegations.

Policy Analyst Murillo reported the following:

- The PAB has several upcoming timelines, including a pending review of the external fixed video surveillance camera policy with a deadline of March 10<sup>th</sup>, 2023, and a review of the Police Equipment and Community Safety Ordinance 2022 Annual Report by April 18<sup>th</sup>.
- The CAO has forwarded the redlined proposed permanent regulations to the PAB and ODPa for review. Board members are asked to review the redlines and prepare for discussion.
- ODPa staff attended a conference hosted by the California Civilian Oversight Alliance (CCOA) on Tuesday, February 21, 2023, and Wednesday, February 22, 2023, where they participated in presentations on Search and Seizure training, legislative updates, Sheriff Oversight, and Coordinated Response Training. It was a valuable networking event for the ODPa, providing opportunities to meet with counterparts from other oversight agencies across the state. More information

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<sup>1</sup> ODPa staff conducted a review of the recording of the regular meeting held on February 8<sup>th</sup>, 2023 to verify the error. Subsequently, it was determined that the minutes were accurate as presented. For reference, the relevant section can be found between minutes 36:44 and 39:51 of the meeting recording. The full recording of the February 8<sup>th</sup>, 2023 meeting can be accessed at:

<https://www.youtube.com/watch?v=bK7cGc9Ema4&t=939s>

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about the CCOA can be found here: <https://californiaccoa.wixsite.com/california-civilian>

#### Q&A with ODPa Staff:

**Q:** Board member Owens asks the ODPa for a status on the requested log of all of their questions to the BPD, CAO, ODPa, and any other relevant agencies. She also asks if the ODPa has a document that can be provided to the Board that summarizes pending complaint reviews and their status.

**A1:** Policy Analyst Murillo informs the Board that staff is still working on the log of questions and that the delay has been a result of recent time-sensitive deadlines. He notes that staff has reformatted meeting minutes to better track questions and/or requests. Staff will provide a preliminary log.

**A2:** Director Aguilar informs the PAB that there is a log with pending complaint reviews and their status. Staff will provide access to that log.

**Q:** Board member Calavita asks the ODPa for the status of filling the PAB's vacancies.

**A:** Director Aguilar informs the Board that the ODPa does not have a clear timeline at the moment but that he has been in contact on various occasions with the Mayor and City Council on the matter.

#### Other Comments:

- Board member Ramsey informs the ODPa that he is on the Senate's calendar for a floor vote on his appointment to be the U.S. attorney in the Northern District of California and may be appointed in the next few weeks.

### **6. CHAIR AND BOARD MEMBERS' REPORTS (5 MINUTES)**

Announcements, updates, and other items.

Chair Moore reported:

- He updates the Board on a few PAB-related items on his calendar. He announces that he will be speaking as the Chair of the PAB at the Wellstone Democratic Renewal Club on their panel titled "Police reform in Oakland and Berkeley: Is it working?" where he will present on the status of civilian oversight in Berkeley.
- He lets the Board know that he and Director Aguilar met with the CAO to talk about timelines and the status of other items moving forward. He invites Deputy City Attorney Chang to debrief the Board on the items of their meeting.
  - o Deputy City Attorney Chang provides the following updates:
    - DCA Chang informs the Board that the feedback on the proposed permanent regulations has been sent back to the Board with suggestions.
    - He informs the Board of the upcoming steps to approve the regulations, including that the regulations would be considered by the Board, sent to the City Council, and subject to a meet and confer process with the BPA as required by state labor law.

- He states that the CAO will be shepherding this process but will lean heavily on the DPA to present the Board in this process which could take months.
- He lets the Board know he has submitted a request for a memo issued by the city manager to all departments that informs them of the PAB's charter authorities in terms of requesting documents.
  - Board member Owens states that this is something that the CAO could have supported the Board with sooner and a lot of confusion could have been avoided.

Other comments:

- Board member Owens expresses her frustration with how long it takes for the CAO to respond to the PAB. She asks whether an independent counsel is needed due to the capacity constraints of the CAO so that the Board can receive answers promptly—especially since the Board is relatively new. She further notes that it is important for the Board and ODPa to have access to independent legal counsel to better represent their interest.
  - DCA Chang responds to Board member Owens. He states that, like much of the city, the CAO has been impacted by understaffing. The CAO is working towards recruiting and hiring more staff attorneys within the next few months. They hope to augment their capacity with these new staff members to better serve all of their internal clients, including the Board, by being able to turn things around more quickly.
- Vice-Chair Harris states that she feels the same way as Board member Owens. She states that given the capacity issues of the city, it would be great for the Board to have outside counsel so that the Board can move forward with its work and get things done. That the Board has been stagnant for too long and that the Board needs to move forward. She asks the CAO to consider their capacity when determining whether to allow for an independent counsel to support the Board.

**7. CHIEF OF POLICE'S REPORT (10 minutes)**

Crime/cases of interest, community engagement/department events, staffing, training, and other items of interest.

Captain Durbin reports the following on behalf of the Chief:

- Staffing levels remain the same. One officer resigned but one new officer was pulled out of the field training program, leaving staffing at 144. There are three officers in field training and three officers at the academy.
- The officer that resigned was due to personal reasons and not work-related conditions.

- He provides an update on the new recruitment and retention team and their activities.
- He provides a report on cases of interest. Notes that 2023 has seen a spike in stolen vehicles. He notes that detectives have expressed that license plate readers would help with solving these vehicle-related crimes.
- EWS audit findings will be sent over in the next couple of weeks for review.
- PAB's request for data and policies has been transmitted to the ODPA.

**Q&A with BPD:**

**Q:** Board member Ramsey ask what the methods or ways the BPD would have deployed license plate readers were.

**A:** The way other agencies use this technology is that they set up license plate readers on a fixed post and scan for reported license plates (stolen vehicles, plates from suspected vehicles used in crimes). Once the system detects their reported plates, officers are notified and can be deployed to search for these vehicles.

**Q:** Board member Ramsey clarifies whether it would mean they would need a series of license plate readers collecting large amounts of data on all cars traveling through the city.

**A:** Yes, they would need various license plate readers located across the city in fixed locations. The cameras would presumably read all of the plates from vehicles coming in and out of the city to be able to match it to a report plate number.

**Q:** Board member Calavita states that her understanding of this technology is that the readers are only effective so long as the plates are not changed. She wants to confirm if this is also the department's understanding.

**A:** Yes, that understanding is accurate.

**Q:** Board member Calavita asks if the Board will receive the BPD's Fair and Impartial policing report before it goes to the City Council.

**A:** The F&I report is included in the BPD's annual report. The specific section will be pulled and forwarded to the PAB.

**Q:** Vice-Chair Harris asks if the department has any policy for auditing officer performance.

**A:** The department conducts annual performance appraisals for officers and staff. The closest thing to an audit is the process done regarding the EWS policy.

**Q:** Vice-Chair Harris asks if it is known how much time supervisors spend with their subordinate officers in the field.

**A:** Most officers see their sergeants more frequently and their evaluations are performed by their sergeant and reviewed by the higher chain of command. The department does not know how much time is spent by sergeants in the field but the expectation is that they are out in the field as much as possible.

**Q:** Vice-Chair Harris inquires about the instances where body-worn camera footage can be inspected and asks if it's limited to only investigations and complaints. This question is a follow-up regarding the auditing of BWC footage discussed at the previous regular meeting.

**A:** Audits of BWC are not happening at the moment. BWC can be reviewed for other reasons other than investigations and complaints.

**8. SUBCOMMITTEE REPORTS (discussion and action) (10 min)**

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

- a. Policy and Practices relating to the Downtown Task Force and Bike Unit Allegations (Chair: Owens)
  - Board member Owens reports that the subcommittee continues to gather information. The subcommittee has encountered some roadblocks in obtaining information but they are making progress.

**9. NEW BUSINESS (discussion and action) (30 min)**

- a. Discussion on the in-person meeting protocols for future PAB regular meetings (ODPA Staff) – (10 min)
  - Policy Analyst Murillo provides an update on in-person meeting locations and meeting protocols. He states that ODPA staff is looking into how we can implement hybrid meetings.
  - Director Aguilar adds that staff is considering systems that would not be a heavy lift to implement. Notes that other jurisdictions have a dedicated staff person for this task but that is not available at the moment. So, the technology needs to be easy to use with the staff available.
- b. Discussion on the PAB's recommendations regarding BPD's proposed drone policies (ODPA Staff) – (15 min)
  - Board member Levine provides an overview of the considerations made by the subcommittee in reviewing this policy.

- Policy Analyst Murillo answers Board member questions regarding MOUs and the procedural history of the proposed policies. He provides the relevant context as it relates to the work of the PRC in these policies.

***Motion on the following page.***

**Motion to approve the drafted PAB’s recommendations regarding BPD’s proposed drone policies with the suggested adjustments and to send it to the BPD, Council, and City Manager.**

Moved/Second (Owens/Levine) **Motion Carried.**

Ayes: Harris, Calavita, Levine, Moore, Owens, and Ramsey.

Noes: None

Abstain: None

Absent: Leftwich

- c. Discussion regarding the appointment of subcommittee members for review of external fixed video surveillance camera policies – (5 min)
- Board member Calavita volunteers to join the subcommittee and assist with the review of the external fixed video surveillance camera policies.
- d. Consideration of Policy Complaint No. 2023-PR-0001, as amended. (ODPA Staff) – (5 min)

**Motion to accept Policy Complaint No. 2023-PR-0001, as amended.**

Moved/Second (Owens/Levine) **Motion Carried.**

Ayes: Harris, Calavita, Levine, Moore, Owens, and Ramsey.

Noes: None

Abstain: None

Absent: Leftwich

- e. Notice & Discussion regarding the Berkeley Law Police Review Project’s (PRP) memorandum regarding the regulations about the timeline for complaints (ODPA Staff) – (5 min).
- Board member Owens states that she understands the frustrations of the Berkeley Law Police Review Project members and the complainant but that the events behind this memorandum were out of the ordinary. That it is not a structural problem in the process but more of a rare occurrence.
- Board member Calavita concurs. She states this was a unique situation and tying staff to specific deadlines as suggested would be a mistake given that a reoccurrence of this event is unlikely in the future.
- Chair Moore agrees. He states that the circumstances surrounding this complaint were out of the ordinary for the PAB and that he also believes it is unlikely to occur. That adding these deadlines would take away the flexibility that the ODPA needs to conduct their work. He notes the importance of establishing better lines of communication with stakeholders so that we can better serve the community and each other.

- Director Aguilar notes that some of these conversations are a matter of raising more public education. That the policy complaint related to this memo is a good opportunity to provide more insight into the logistics of the complaint process.
- Board member Owens suggests that members of the public use public comment or direct communications to the ODPa ([dpa@cityofberkeley.info](mailto:dpa@cityofberkeley.info)) if they have any feedback for the Board in the future.

**10. PUBLIC COMMENT (2 Speakers)**

Speaker 1: Commented on BPD helicopter policy and made reference to City Council *Resolution 51408*. The speaker indicated that she has attempted to locate the policy but is unable to locate it on the City website and would like to bring that to the Board’s attention and suggest that the Board consider seeing if they can locate it for their records.

Speaker 2: Inquired about the procedural safeguards that can be put in place so that complainants are not negatively impacted by these issues. The speaker further commented on the scheduling of the hearings. Finally, the speaker stated that it was important to raise awareness about the public comment section.

**CLOSED SESSION**

*Under the Court’s order in Berkeley Police Association v. City of Berkeley, et al., Alameda County Superior Court Case No. 2002 057569, the Board will recess into closed session to discuss and act on the following matter(s):*

**11. Complaint case updates – (5 min)**

**END OF CLOSED SESSION**

**12. ANNOUNCEMENT OF CLOSED SESSION ACTION (1 minute)**

Chair Moore reports that the Board received case status updates and that a special meeting was tentatively scheduled for March 8, 2023.

**13. ADJOURNMENT (1 minute)**

**Motion to adjourn the meeting.**

Moved/Second (Owens, Leftwich) **By general consent, the meeting was adjourned at 9:30 p.m.**

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DRAFT

**POLICE ACCOUNTABILITY BOARD**  
SPECIAL MEETING  
MINUTES *(draft)*

**Wednesday, March 8, 2023, 5:30 P.M.**

**MEETING LOCATION**

Judge Henry Ramsey Jr. South Senior Center  
2939 Ellis Street  
Berkeley, CA 94709

**1. CALL TO ORDER & ROLL CALL BY VICE-CHAIR HARRIS AT 5:31 P.M.**

Present: Board Member Regina Harris (Vice-Chair)  
Board Member Kitty Calavita  
Board Member Juliet Leftwich  
Board Member Deborah Levine  
Board Member Cheryl Owens  
Absent: Board Member John Moore (Chair)  
Board Member Ismail Ramsey  
ODPA Staff: Hansel Aguilar, Director of Police Accountability  
Beneba Thomas, ODPa Investigator  
Jose Murillo, Policy Analyst  
BPD Staff: Sgt. LeDoux  
CAO Staff: Laura Iris Mattes, Deputy City Attorney

**2. APPROVAL OF AGENDA**

**Motion to approve the agenda.**

Moved/Second (Calavita/Owens) **Motion Carried by unanimous consent.**

**3. PUBLIC COMMENT (3 SPEAKERS)**

**SPEAKER 1:** Expressed gratitude for being able to be back in person.

**SPEAKER 2:** Expressed satisfaction for the Board's recommendations in the report. Requested that the Department review the draft policy again.



**SPEAKER 3:** Thanked the Board members for their analysis. Indicated that there are pending lawsuits against the City regarding some of the topics related to the policy.

**4. PRESENTATION OF THE POLICY REVIEW REPORT ON THE PROPOSED BPD POLICIES 351 AND 1304 RELATED TO THE USE OF FIXED CAMERA SURVEILLANCE TECHNOLOGY.**

- Board member Calavita presents the subcommittee’s analysis regarding the review of Policy 351 and 1304.
- Board members ask questions to Sgt. LeDoux regarding policy technicalities and his interpretation of the policy.

**Motion to allow public comment on item 4<sup>1</sup>.**

Moved/Second (Calavita/Owens) **Motion Carried by unanimous consent.**

- Three members of the public express their opinions on the proposed policies.

**Motion to send the proposed letter and report to the City Council and BPD, emphasizing the following four points:**

- 1. The need for clarification on why there are two policies for the same technology.**
- 2. The existence of inconsistencies between the proposed BPD policy and the Council's expressed intent.**
- 3. The existence of several ambiguous points in the policy that require further clarification.**
- 4. The importance of clarifying data retention periods.**

Moved/Second (Calavita/Leftwich) **Motion Carried.**

Ayes: Calavita, Harris, Leftwich, Levine, and Owens.

Nos: None

Abstain: None

Absent: Moore, Ramsey.

**5. PUBLIC COMMENT (2 SPEAKERS)**

**CLOSED SESSION**

*Pursuant to the Court’s order in Berkeley Police Association v. City of Berkeley, et al., Alameda County Superior Court Case No. 2002 057569, the Board will recess into closed session to discuss and act on the following matter(s):*

**6. PRESENTATION OF COMPLAINT CASE NO. 29**

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<sup>1</sup> Initially Board Member Calavita made a motion to vote on the proposed policy. There was an inquiry on the floor as to whether members could accept public comment outside of the designated public comment periods. ODP staff clarified that this could be allowed by way of motion. Board Member Calavita then made a motion to allow for public comment during the deliberation of the policy and thus removed here original motion. After the brief impromptu public comment period,

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**Motion to**

Moved/Second (Calavita/Owens) **Motion Carried.**

Ayes: Calavita, Harris, Leftwich, Levine, and Owens.

Noes: None

Abstain: None

Absent: Moore, Ramsey

**END OF CLOSED SESSION**

**7. ANNOUNCEMENT OF CLOSED-SESSION ACTION**

- Vice-Chair Harris announces the closed session action. A hearing panel will be convened for Complaint Case No. 29.

**8. ADJOURNMENT**

**Motion to adjourn the meeting.**

Moved/Second (Owens/Leftwich) **By general consent, the meeting was adjourned at 7:31 p.m.**

Minutes Approved on: \_\_\_\_\_

Hansel Aguilar, Commission Secretary: \_\_\_\_\_

**POLICE ACCOUNTABILITY BOARD  
SUBCOMMITTEES LIST  
3-9-2023**

<b>Subcommittee</b>	<b>Board Members</b>	<b>Chair</b>	<b>BPD Reps</b>
<b>Regulations</b> Formed 7-7-21 Renewed 6-22-22	Calavita Leftwich Owens  <u>Public:</u> Kitt Saginor		Lt. Dan Montgomery
<b>Fair &amp; Impartial Policing Implementation</b> Formed 8-4-21 Renewed 9-14-22	Calavita Moore Owens  <u>Public:</u> George Lippman Elliot Halpern	<b>Calavita</b>	Sgt. Peter Lee
<b>Mental Health Response</b> Formed 11-10-21 Scope expanded 3-9-22	Harris Levine  <u>Public:</u> Elena Auerbach		Sgt. Joe LeDoux
<b>Fixed Surveillance Cameras (Policy 351)</b> Formed 2-9-22	Calavita		
<b>Controlled Equipment Use &amp; Reporting</b> Formed 5-11-22	Moore	<b>Moore</b>	Sgt. Peter Lee Sgt. Joe LeDoux
<b>Chief of Police Process</b> Formed 9-30-22	Leftwich Levine Moore		

<b>Drone Use Policy</b> Formed 11-9-22	Requires Assignment		
<b>Policy and Practices relating to the Downtown Task Force and Bike Unit Allegations</b> Formed 11-15-22	Calavita Moore Owens	<b>Owens</b>	

## Body Worn Cameras

### 425.1 PURPOSE AND SCOPE

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

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

### 425.2 POLICY

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

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

### 425.3 CONFIDENTIALITY AND PROPER USE OF RECORDINGS

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

### 425.4 COORDINATOR

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

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

# Berkeley Police Department

## Law Enforcement Services Manual

### *Body Worn Cameras*

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

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

#### **425.5 MEMBER RESPONSIBILITIES**

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

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

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

Members are required to document the existence of a recording in any report or other official record of the contact, such as a CAD entry, including any instance where the member is aware that the BWC malfunctioned or the member deactivated the recording. In the event activity outlined in section 425.7 is not captured in whole or in part the member shall document this and explain in their report their understanding, if any, of why the footage was not captured in the recording.

#### **425.6 SUPERVISOR RESPONSIBILITIES**

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

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

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

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

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

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

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

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

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

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### *Body Worn Cameras*

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

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

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

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

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

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



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#### **425.9 ACTIVATION IN CROWD CONTROL SITUATIONS**

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

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

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

#### **425.10 SURREPTITIOUS USE OF THE BWC**

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

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

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

#### **425.11 CESSATION OF RECORDING**

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

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

Decisions regarding the reason for muting or BWC deactivation shall be noted on the recording, or otherwise documented.

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Members shall cease audio/video recording whenever necessary to ensure conversations are not recorded between a person in custody and the person's attorney, religious advisor or physician, unless there is explicit consent from all parties to the conversation. This does not apply to conversations with paramedics or EMTs during their response at a scene, and during transport.

#### **425.12 EXPLOSIVE DEVICE**

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

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

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

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

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

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

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

#### **425.14 PROCESSING AND HANDLING OF RECORDINGS**

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

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Members are prohibited from intentionally erasing, altering, reusing, modifying or tampering with original audio video recordings. Members may request restriction and subsequent deletion of an accidental recording as described under section 425.16 below.

#### **425.15 RETENTION REQUIREMENTS**

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

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

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

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

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

Members are authorized to review their own BWC video files at any time in furtherance of official business. Such official business includes, but is not limited to, preparing written reports, prior to or while providing testimony in a case or being deposed. Members may review recordings as an evidentiary resource, except as stated in subsection 425.17.1 below. Members shall not retain personal copies of recordings. Members shall not use the fact that a recording was made as a reason to write a less detailed report.

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

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

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the video files. It will be the responsibility of the investigation team's supervisor to coordinate with the involved member's supervisor to obtain footage of the incident on behalf of the member.

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

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

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

#### 425.17.2 SUPERVISORY REVIEW

With the exception of section 425.17.1 above, supervisors are authorized to review relevant recordings any time they are reviewing and approving case reports from their subordinates.

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#### 425.17.3 INVESTIGATORY REVIEW

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

Recorded files may also be reviewed:

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

Investigators conducting criminal or internal investigations shall:

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

#### 425.17.4 TEACHING OR LEARNING TOOL

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

#### 425.17.5 COB CIVIL CLAIMS AND LAWSUITS

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

### **425.18 RELEASE OF RECORDINGS**

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

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

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

#### 425.18.1 POLICE REVIEW COMMISSION (PRC)

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

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

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

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

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### 425.18.3 MEDIA

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

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

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

### **425.20 TRAINING REQUIRED**

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

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

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

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## Surveillance Use Policy - Body Worn Cameras

### 1300.1 PURPOSE

This Surveillance Use Policy is issued in compliance and fulfills the requirements of Berkeley Municipal Code (BMC) Chapter 2.99, and incorporates by reference language from the Berkeley Police Department Body Worn Camera Policy #425- Body Worn Cameras and adds elements as required by BMC Chapter 2.99. Guidelines, procedures, and practices for the use of Body Worn Cameras by members of the Berkeley Police Department while in performance of their duties are fully set forth in the Berkeley Police Department Law Enforcement Manual Policy 425- Body Worn Cameras.

The Berkeley Police Department recognizes that video recording of contacts between department personnel and the public provides an objective record of these events, and that the use of a recording system complements field personnel in the performance of their duties by providing a video record of enforcement and investigative field contacts, which can enhance criminal prosecutions, limit civil liability, increase transparency, and enhance professionalism in the delivery of police services to the community. A video recording of an event or contact also enables the delivery of timely, relevant, and appropriate training to maximize safety for both community members and BPD personnel. (Ref. policy 425.2)

### 1300.2 AUTHORIZED USE

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

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

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



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### *Surveillance Use Policy - Body Worn Cameras*

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- (f) Transporting any detained or arrested person and where a member facilitates entry into or out of a vehicle, or any time the member expects to have physical contact with that person.

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

Members should activate their BWC when conducting custodial interviews unless there are other recording devices being used. Members shall document and explain in their report the reason for not recording custodial interviews, should a BWC be de-activated while conducting a custodial interview or interrogation. (Ref. policy 425.7)

#### 1300.2.1 PROHIBITED USE

Members are prohibited from using a department-issued BWC for personal use and are prohibited from making personal copies of recordings.

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

Recordings shall not be used by any member for the purpose of embarrassment, intimidation or ridicule. (Ref. policy 425.13)

#### 1300.3 DATA COLLECTION

BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigation, and other proceedings protected by confidentiality laws and department policy. Improper use or release of BWC recordings may compromise ongoing criminal and administrative investigations or violate the privacy rights of those recorded and is prohibited. (Ref. policy 425.3)

#### 1300.4 DATA ACCESS

Members are authorized to review their own BWC video files at any time in furtherance of official business. Such official business includes, but is not limited to, preparing written reports, prior to or while providing testimony in a case or being deposed. Members may review recordings as an evidentiary resource, except as stated in subsection 1300.4.1 below. Pursuant to 1300.2.1, members shall not retain personal copies of recordings. Members shall not use the fact that a recording was made as a reason to write a less detailed report. (Ref. policy 425.17)

##### 1300.4.1 OFFICER INVOLVED INCIDENTS RESULTING IN GRAVE BODILY INJURY OR DEATH

- (a) In the event of a critical incident that results in grave bodily injury or death, including an officer-involved shooting or an in-custody death, the BWC of the involved member(s)

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shall be taken from them and secured by a supervisor, commander, or appropriate investigator, as necessary. The involved member(s) shall not access or obtain their footage of the incident until such time as the criminal investigator(s) have reviewed the video files. It will be the responsibility of the investigation team's supervisor to coordinate with the involved member's supervisor to obtain footage of the incident on behalf of the member.

- (b) Personnel uploading secured BWC video files shall not view the files unless authorized.
- (c) No member involved in a critical incident may view any video recordings prior to an interview by the appropriate criminal investigative unit, and receiving command approval.
- (d) Prior to the conclusion of the criminal interview process, the involved member and/or the member's representative will have an opportunity to review the member's recording(s). The involved member may choose to provide additional information to supplement his or her statement by providing a supplemental statement or separate supplemental document. In no case shall a member alter a report made prior to reviewing the recording. Where both an original statement and supplemental statement or document have been produced, both the original statement, without alteration, and the supplemental statement or document shall be included in the report.
- (e) The Department acknowledges that recordings taken during critical incidents obtained from BWCs do not necessarily reflect the full extent of the nature of the event or the experience, analysis, training, threat assessment or state of mind of the individual officers(s) in a given incident. Moreover, the recordings, especially video, have limitations and may depict events differently than the events recalled by the involved officer. Specifically, it is understood that the recording device will capture information that may not have been heard and/or observed by the involved officer and that officers may see and hear events that are not captured by the camera.

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

"In this case, there is video evidence that you will have an opportunity to view. Video evidence has limitations and may depict the events differently than you recall, and may not depict all of the events as seen or heard by you. Video has a limited field of view and may not capture events normally seen by the human eye. The "frame rate" of video may limit the camera's ability to capture movements normally seen by the human eye. Lighting as seen on the video may be different than what is seen by the human eye. Videos are a two-dimensional medium and may not capture depth, distance or positional orientation as well as the human eye. Remember, the video evidence is intended to assist your memory and ensure that your statement explains your state of mind at the time of the incident." (Ref. policy 425.17.1)

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#### 1300.4.2 SUPERVISORY REVIEW

With the exception of section 1300.4.1 above, supervisors are authorized to review relevant recordings any time they are reviewing and approving case reports from their subordinates. (Ref. policy 425.17.2)

#### 1300.4.3 INVESTIGATORY REVIEW

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct, or whenever such recordings support review of the member's performance. (Ref. policy 425.17.3)

(a) Recorded files may also be reviewed:

1. Upon approval by a supervisor, by any member of the Department who is participating in conduct of an official investigation, such as a personnel complaint, an administrative investigation or a criminal investigation.
2. Pursuant to lawful process or by court or District Attorney personnel who are otherwise authorized to review evidence in a related case.
3. By personnel assigned to investigatory units who are authorized to view any BWC video file associated to their active investigations, unless otherwise prohibited by policy.
4. Upon approval by the Chief of Police, Internal Affairs investigators may review BWC video with a complainant.
5. Pursuant to 1300.9, access to recordings will be granted to the Police Review Commission Officer and/or Investigator investigating a specific complaint where BWC evidence files are available, and are not part of any ongoing criminal investigation of an officer.

(b) Investigators conducting criminal or internal investigations shall:

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

#### 1300.4.4 TEACHING OR LEARNING TOOL

BWC files may also be reviewed by training staff regarding specific incidents where such files may serve as an internal learning or teaching tool. In the event that videos are intended to be used for training purposes, the involved officer(s) will first be consulted. If he/she objects to the use of the video, such objection shall be submitted to the person in charge of training who shall weigh the value of the video for training against the officer(s) objections and basis for the objection. Should the person in charge of training refuse to grant the request of the involved officer(s), the matter shall be heard by the Chief of Police, or his/her designee, prior to utilizing the video. (Ref. policy 425.17.4). Any member(s) of the public that appears in video footage used for outside training

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purposes (e.g. if video footage is shown by an authorized member of the Police Department for training purposes outside of the Berkeley Police Department such as at a conference or other training), to the extent feasible, will be blurred out or redacted in a manner to protect the privacy rights of those involved in the incident.

#### **1300.4.5 COB CIVIL CLAIMS AND LAWSUITS**

BWC recordings may be reviewed and used by City of Berkeley counsel for civil claims and lawsuits. (Ref. policy 425.17.5)

#### **1300.5 DATA PROTECTION**

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

Members are prohibited from intentionally erasing, altering, reusing, modifying or tampering with original audio video recordings.(Ref. policy 425.14)

#### **1300.6 CIVIL LIBERTIES AND RIGHTS PROTECTION**

The Berkeley Police Department's mission is to safeguard our diverse community through proactive law enforcement and problem solving, treating all people with dignity and respect. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law and City of Berkeley rules and regulations. The procedures described within this policy (Data Access, Data Protection, Data Retention, Public Access and Third Party Data Sharing) protect against the unauthorized use of BWC data. These policies will ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

#### **1300.7 DATA RETENTION**

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

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at which time it shall be deleted in line with the Department's evidence retention policy, and any applicable orders from the court.

Recordings created by equipment testing or accidental activation may be deleted after 60 days. (Ref. policy 425.15)

### **1300.8 PUBLIC ACCESS AND THIRD PARTY DATA SHARING**

All recordings should be reviewed by the Custodian of Records and the City Attorney's Office prior to public release, see General Order R-23 (Release of Public Records and Information). (Ref. policy 425.18) and Government Code § 6254(f).

General Order R-23 does not authorize release of investigative files or documents that would constitute an unwarranted invasion of privacy. Circumstances where this might arise in video include footage taken inside a home, a medical facility, the scene of a medical emergency, or where an individual recorded has a "reasonable expectation of privacy."

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

BPD may, without prior notice to involved officers, share video footage of specific incidents with law enforcement agencies outside of Berkeley, when there is reasonable suspicion that criminal activity has occurred or is about to occur. (Ref. policy 425.18). Pursuant to Berkeley Police Department Policy 415, video footage may not be shared with federal immigration enforcement officials.

Access to recorded files may be granted for the purposes of review to media personnel or the general public with permission of the Chief of Police, or his/her designee, subject to General Order R-23, privacy protections indicated in this policy, Government Code section 6254(f), other applicable law and policy governing the release of public records, and subject to the review of the City Attorney's Office. (Ref. policy 425.18)

### **1300.9 POLICE REVIEW COMMISSION**

Access to recorded files will be granted for the purposes of review to the Police Review Commission (PRC) Officer and/or Investigator investigating a specific complaint where BWC evidence files are available, and are not part of any ongoing criminal investigation of a complainant or an officer. (Ref. policy 425.18.1)

- (a) The PRC Officer and PRC Investigator will be provided user account access to evidence files through the evidence management system for their use during a complaint investigation and to facilitate viewing by Board of Inquiry members during a Board of Inquiry.

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

#### **1300.10 TRAINING**

Training for the operation of BWC's shall be provided by BPD personnel. All BPD personnel who use BWC's shall be provided a copy of this Surveillance Use Policy.

#### **1300.11 AUDITING AND OVERSIGHT**

Division Captains for divisions utilizing BWC's shall ensure compliance with this Surveillance Use Policy.

#### **1300.12 MAINTENANCE**

The BWC system will be maintained by the Applications Programmer Analyst and assigned Department of Information and Technology (IT) staff.

The Chief of Police, or his/her designee shall appoint a member of the Department to coordinate the use and maintenance of BWCs and the storage of recordings, including (Penal Code § 832.18) (Ref policy 425.4):

- (a) Establishing a system for uploading, storing and security of recordings.
- (b) Designating persons responsible for uploading recorded data.
- (c) Establishing a maintenance system to ensure availability of BWCs.
- (d) Establishing a system for tagging and categorizing data according to the type of incident captured.
- (e) Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.
- (f) Working with the City Attorney's office to ensure an appropriate retention schedule is being applied to recordings and associated documentation.

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- (g) Maintaining an audit trail record for all access to evidence files, wherein access information for each evidence file is logged through use of a secure log-in system. The Department's storage system associates an audit trail record with each evidence file, thereby logging the date, time, user name, activity and client IP address occurring during each evidence file access.
- (h) All recordings shall remain the property of the Department. Subject to the provisions of this Policy, members shall have no expectation of privacy or ownership interest in the content of these recordings.

### **1300.13 APPENDIX A**

See attachment: [1300 BWC APPENDIX A.pdf](#)