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## Body Worn Camera Policy

### 444.1 PURPOSE AND SCOPE

The Walnut Creek Police Department (WCPD) recognizes the use of Body Worn Cameras (BWCs) by its officers conveys a sense of law enforcement legitimacy, accountability, and transparency. The WCPD believes video and audio recordings from BWCs will serve as a tool to maintain and enhance the community's trust in the department. The recordings will capture interactions with the public and provide additional means of evidence collection for criminal investigations, administrative investigations, and civil litigation. In addition, BWCs will serve as a valuable training aid for officers.

While BWC recordings can provide an unbiased and objective account of a police contact, there are limitations to BWC video technology. Specifically, there are inherent differences between how human beings see and interpret their surroundings and how BWCs record video. In some cases, an officer may capture information not observed by a BWC just as a BWC may capture information not heard or seen by an officer. Therefore, it is critical to consider BWC footage as one piece of useful information regarding an incident, just as an officer's experience, state of mind, and input gleaned from his or her other senses would be considered useful information. When these varied sources of information are combined, a more complete picture of an incident can be obtained.

### 444.2 POLICY

The Walnut Creek Police Department will issue BWCs to Officers and Supervisors for use during the performance of their duties. This policy is intended to provide users with guidance on when and how to use BWCs so that users may accurately and reliably record their contacts with the public.

### 444.3 DEFINITIONS

**Body Worn Camera (BWC)** – A camera worn on the User's person that records and stores audio and video.

**Buffering Mode** – When the BWC is on but has not been activated to record both sound and video, the camera is in the "buffering" mode. While in the buffering mode, the BWC will continuously record only video (not audio) in 30 second loops.

**BWC Program Administrator** – The department employee responsible for implementing and managing the BWC program and providing training to Users. The BWC Program Administrator will have full access to user rights and sets user access and parameters.

**Digital Evidence** – BWC files, including photographs, audio and video recordings, captured by a BWC and stored digitally.

**Event Mode** – When the "Event" mode button on the BWC is activated, the camera records both audio and video. The buffered video (not audio) captured directly before the event (30 seconds prior to activation) will also be saved and attached to the event in permanent memory.

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**Metadata** – Case numbers, event numbers, and other descriptors used to identify digital evidence via the annotation process.

**Officer** – All regular full-time uniformed Sworn Officers and Reserve part-time volunteer Officers are considered officers for the purposes of this policy. Both Sworn Officers and Reserve Officers will be issued BWCs.

**Public Records Act** – The California Public Records Act gives the public the right to access records that are in the possession of public agencies, subject to certain statutory exemptions from disclosure.

**Supervisor** – Any Sworn department member at the rank of Sergeant or above.

**User** – Any Officer or Supervisor issued a BWC.

### **444.4 CAMERA ADMINISTRATION**

- (a) All WCPD Officers and Supervisors will be issued BWCs. While in uniform and performing duties which will place them in contact with the public, Officers and Supervisors shall wear their department issued BWC.
- (b) Any non-uniformed Officers or Supervisors may wear a department issued BWC if the User believes such a device is useful in the performance of their duties.
- (c) BWCs shall be worn above the midline of the torso.
- (d) When donning their BWC, Officers and Supervisors should utilize their smart phone Bluetooth BWC application to ensure their BWC is mounted in a position where the field of view is effective for recording.
- (e) The BWC equipment and all data, images, video, and metadata captured, recorded, or otherwise produced by the equipment is the sole property of WCPD.
- (f) BWC equipment is the responsibility of individual Users and shall be used with reasonable care to ensure proper functioning. Users shall inspect and test the BWC prior to each shift in order to verify proper functioning. Equipment malfunctions shall be brought to the attention of a Supervisor as soon as possible so that a replacement unit can be issued. Users will complete a maintenance request form (Form 302) for the malfunctioning BWC and deliver the unit and the form to the BWC Program Administrator.
- (g) Users shall not remove, dismantle, or tamper with any hardware or software component or part of the BWC.
- (h) Users should upload all video from their BWC with appropriate metadata annotation daily by the end of their shift. Officers shall obtain Supervisor approval if the BWC upload cannot take place by the end of an Officer's shift.
- (i) Users shall not edit, alter, or erase BWC recordings.

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#### **444.5 WHEN TO RECORD**

- (a) Users are not expected to jeopardize their own safety or the safety of the public simply to record an incident via BWC.
- (b) Users should activate their BWC any time they reasonably believe a recording would be of evidentiary value in a criminal investigation or other interaction with the public. This policy is not intended to describe every possible situation in which a BWC should be used, although there are many situations where its use is appropriate. Below are some examples of when a BWC should be activated:
  - 1. All enforcement and investigative contacts including stop and field interview situations.
  - 2. Traffic stops including, but not limited to, traffic violations, stranded motorist assistance, and all crime interdiction stops.
  - 3. Self-initiated activity in which a User would normally notify Dispatch via the radio.
  - 4. Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise warrant recording.

#### **444.6 HOW TO RECORD**

- (a) Users shall patrol with their BWC in “buffer” mode. While in buffer mode, the BWC will continuously record in 30 second loops. During that 30 second period, only video is being recorded, not audio.
- (b) When a User decides to activate their BWC, he or she will place the camera in “event” mode to record the incident. In this mode, both video and audio will be recorded.
- (c) When the incident is over or the User stops recording for any other reason set forth in this policy, he or she will return the BWC to “buffer” mode or turn off the BWC entirely.

#### **444.7 PROHIBITED RECORDINGS**

All recordings made by Users acting in their official capacity as employees of the department, are the property of WCPD and are not considered private. Due to privacy concerns, Users shall not utilize BWCs to record in the following situations (Note: Users should turn off their BWCs in these situations):

- (a) Strip searches of prisoners.
- (b) In correctional facilities in which audio or video recording is prohibited.
- (c) Conversations with any WCPD personnel without the recorded member’s knowledge or permission.
- (d) Places where a reasonable expectation of privacy exists, such as restrooms and locker rooms.
- (e) Conversations involving confidential informants and undercover officers.
- (f) When Users are on break or otherwise engaged in personal activities.

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### **444.8 OPTIONAL RECORDINGS**

Also due to privacy concerns, Users should not record using BWCs in the following situations (Note: Users should keep their BWCs in buffer mode or turn the BWCs off in these situations):

- (a) Obtaining victim and witness statements in Sexual Assault or Child Abuse cases.
- (b) In a facility whose primary purpose is to provide psychiatric or medical services, unless responding to a call involving a suspect, taking a suspect statement, or addressing an issue which requires police action.
- (c) In order to gain the cooperation of citizens who are reluctant to provide a statement while being recorded.
- (d) Conversations with agency personnel or members of personnel from another agency involving tactics and strategy.

### **444.9 PUBLIC'S EXPECTATION OF PRIVACY**

Users are not required to obtain consent from a private citizen to record an interaction when:

- (a) In a public place, or
- (b) In a location where there is no reasonable expectation of privacy (i.e., inside a building or dwelling where the officer is lawfully present and engaged in the performance of official duties).

Officers are encouraged to advise citizens they are recording if the advisement may assist in gaining compliance, assist in the investigation, and will not otherwise interfere with the investigation or officer safety.

### **444.10 UNINTENTIONAL RECORDINGS**

In the event of an unintentional or inadvertent activation of the BWC in which the resulting recording is not evidence in a criminal case or potential administrative investigation, or when the recording may unreasonably infringe on personal privacy rights, the User who recorded the video may request the recording be deleted. If the recording captured another member of the department, the User shall notify that member of the department of the existence of that video. Either the User or the member of the department who was captured on the BWC recording may submit a written request to his or her Supervisor for the video to be deleted. The request shall contain specific reasons for recommending the deletion of the recording. The Supervisor shall "flag" the video to be deleted and alert the Executive Lieutenant of the request. The Executive Lieutenant or his or her designee will review the video in a timely manner to ensure that it is appropriate for deletion. If the Executive Lieutenant determines the video should be deleted due to personal privacy rights concerns, the BWC Program Administrator will delete the file and document the deletion for audit purposes.

### **444.11 DOCUMENTATION**

- (a) When preparing written reports, Users should review their recordings as a resource.

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- (b) Users shall document in their police reports and citation notes when BWC video exists of a particular incident. However, BWC recordings are not a replacement for written reports and Users shall not substitute “refer to video” for a detailed and thorough report.
- (c) If BWC recordings are interrupted during an incident, Officers shall document in their police reports or CAD Event remarks why they stopped their BWC recording.
- (d) Users shall annotate video with specifics such as case number, event number, type of case, retention category, and other metadata. This information is useful for case retention schedules and for searching for specific video files.

### **444.12 RELEASE OF RECORDED FILES**

BWC files are generally considered to be evidence for investigative purposes and exempt from public disclosure under the Public Records Act. Notwithstanding the existence of such exemption, the Chief of Police reserves the right to release BWC video to the public in specific instances when it is determined that such release will best serve the public interest.

### **444.13 REVIEW OF RECORDED FILES**

Recorded BWC videos may be reviewed in any of the following situations:

- (a) By the User who originally recorded the incident for use in report preparation or courtroom testimony.
- (b) By an Officer or Supervisor directly involved in the incident for use in report preparation or courtroom testimony.
- (c) By a Detective assigned to conduct follow-up investigation related to the incident.
- (d) By a Field Training Officer reviewing the recordings made by their trainees.
- (e) By a Supervisor approving a report in which BWC video exists.
- (f) By a Supervisor ensuring that BWC Users utilize the cameras in accordance with this policy.
- (g) By a Supervisor reviewing a specific incident requiring an After Action report in accordance with Lexipol Policy 1006.
- (h) Any group or team within WCPD as recommended for review by an After Action report disposition, such as the Defensive Tactics or Drive Teams.
- (i) As part of department approved training. In these instances, permission to show the BWC video from the User who made the recording will be sought. However, the Chief of Police will have the ultimate authority in deciding whether the training benefits of the video outweigh the User’s desire for privacy. Note: Users are encouraged to inform their Supervisor of any recordings that may be valuable to other members of the department as a training aid.

### **444.14 REVIEW OF RECORDED FILES – LEIFI PROTOCOL**

In accordance with the Contra Costa County Police Chief’s Association Law Enforcement Involved Fatal Incident protocol (LEIFI), Users should provide an initial statement to investigators prior to

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reviewing BWC videos when the User was involved in a protocol incident. If an investigator shows a BWC recording to an involved User after the initial interview, the investigator should admonish the involved User of the limitations of BWC recordings. Below is an example of such an admonition:

- (a) *In this case, there is recorded evidence that you will have an opportunity to view after you have given your initial statement. Recorded evidence has limitations and may depict the events differently than you recall, and it may not depict all of the events that you saw or heard. Recordings have a limited field of view and may not capture events normally seen by the human eye. The “frame rate” of the recording may limit the camera’s ability to capture movements normally seen by the human eye. Lighting as seen on the recording may be different than that which is seen by the human eye. Recordings are two-dimensional 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 your ability to recall and describe the incident.*
- (b) In a LEIFI protocol case, the Supervisor shall take possession of the BWCs which recorded the incident to limit access to the video by involved Users.

#### **444.15 RETENTION OF BWC FILES**

BWC files shall be retained for twenty-six (26) months unless the files have evidentiary value, in which case they may be retained for a longer duration in accordance with the Police Department’s Property/Evidence file retention schedule. BWC files which become part of a citizen complaint or administrative investigation will follow the retention period identified for the complaint/investigation. Some BWC files that do not fall into the above categories may be retained longer than twenty-six (26) months for training purposes. The Executive Lieutenant will determine the retention length of these training videos based on their usefulness.

#### **444.16 TRAINING**

- (a) Users shall complete department training to ensure proper use and operation of BWCs. Additional training may be required at periodic intervals to ensure the continued effective use and operation of the equipment, proper calibration and performance, and to incorporate changes, updates, or other revisions in policy and BWC equipment.
- (b) The BWC Program Administrator is responsible for creating and maintaining a BWC training manual which will serve as an additional reference for Users.

#### **444.17 STORAGE**

- (a) All BWC recordings will be stored via a 3rd party BWC vendor’s cloud storage. The cloud storage service shall comply with Criminal Justice Information Systems (CJIS) requirements for law enforcement digital evidence storage.
- (b) All BWC recordings are considered official WCPD records and shall not be shared with any person not having authorization to access the files as part of his or her official duties.

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- (c) Only the BWC Program Administrator or a designee of the Chief of Police, in accordance with retention schedules and inadvertent recording protocol, shall have the authority and ability to delete BWC files.
- (d) The following WCPD employees are authorized to make duplicate copies of BWC recordings as required by their job responsibilities:
  - 1. BWC Program Administrator
  - 2. Any BWC User
  - 3. Any Investigations Bureau member
  - 4. Property/Evidence personnel

### **444.18 SUPERVISORY RESPONSIBILITIES**

- (a) Supervisors shall review BWC video to ensure that Users are utilizing BWCs in accordance with this policy.
- (b) Supervisors shall not arbitrarily review BWC recordings for the sole purpose of searching for violations of department policy not related to a specific complaint or incident.
- (c) Supervisors will provide Officers with a replacement BWC unit if their assigned BWC is damaged or malfunctioning.
- (d) Supervisors shall take possession of the BWCs of Users involved in a LEIFI protocol case immediately after the incident to limit access to the video by involved Users prior to the initial interview by investigators.

### **444.19 ANNUAL REVIEW OF POLICY**

This policy will be reviewed by the Executive Lieutenant, the Body Worn Camera Administrator, and the City Attorney on an annual basis to ensure its continued compliance with all applicable laws, including those pertaining to the retention of electronic and digital records and the California Public Records Act.