

# CITY OF MAPLEWOOD

## BODY-WORN CAMERAS POLICY

### Purpose

The use of body-worn cameras (BWCs) in law enforcement is relatively new. The primary purpose of using BWCs is to capture evidence arising from police-citizen encounters. While this technology allows for the collection of valuable information, it opens up many questions about how to balance public demands for accountability and transparency with the privacy concerns of those being recorded. In deciding what to record, this policy also reflects a balance between the desire to establish exacting and detailed requirements and the reality that officers must attend to their primary duties and the safety of all concerned, often in circumstances that are tense, uncertain, and rapidly evolving.

### Policy

It is the policy of this department to authorize and/or require the use of department-issued BWCs as set forth below as required by M.S. section 626.8473, subd.3.

### Scope

This policy governs the use of BWCs in the course of official duties. It does not apply to the use of surreptitious recording devices in undercover operations or the use of squad-based (dash-cam) video recorders. The chief or chief's designee may modify this policy by providing specific instructions for the use of BWCs to individual officers, or providing specific instructions for the use of BWCs pertaining to certain events or classes of events, including but not limited to political rallies and demonstrations. The chief or chief's designee may also provide specific instructions or standard operating procedures for BWC use to officers assigned to specialized details, such as carrying out duties in courts or guarding prisoners or patients in hospitals and mental health facilities. Officers deemed to be *Brady-Giglio* impaired must wear and utilize their BWC in all public contacts while serving in their official capacity.

### Definitions

The following phrases have special meanings as used in this policy:

- A. **MGDPA or Data Practices Act** refers to the Minnesota Government Data Practices Act, Minn. Stat. § 13.01, et seq.
- B. **Records Retention Schedule** refers to the General Records Retention Schedule for the city of Maplewood.
- C. **Body Worn Camera(s)** refers to a portable recording system as defined in M.S. 13.825, subd. 1(b)(1) as a device worn by a peace officer that is capable of video and audio recording of the officer's activities and interactions with other or collecting digital multimedia evidence as part of an investigation.

- D. **Law enforcement-related information** means information captured or available for capture by use of a BWC that has evidentiary value because it documents events with respect to a stop, arrest, search, citation, or charging decision.
- E. **Evidentiary value** means that the information may be useful as proof in a criminal prosecution, related civil or administrative proceeding, further investigation of an actual or suspected criminal act, or in considering an allegation against a law enforcement department or officer. Note: “[R]elated civil or administrative proceeding” refers, for example, to implied consent or forfeiture actions arising from an arrest or prosecution. Nothing in this policy obligates the department to collect or maintain BWC data solely for use in third-party tort litigation.
- F. **Incidental citizen contact** means an informal encounter with a citizen that is not and does not become law enforcement-related or adversarial, and a recording of the event would not yield information relevant to an ongoing investigation. Examples include, but are not limited to, assisting a motorist with directions, summoning a tow truck, or receiving generalized concerns from a citizen about crime trends in his or her neighborhood.
- G. **Adversarial** means a law enforcement encounter with a person that becomes confrontational, during which at least one person expresses anger, resentment, or hostility toward the other, or at least one person directs toward the other verbal conduct consisting of arguing, threatening, challenging, swearing, yelling, or shouting. Encounters in which a citizen demands to be recorded or initiates recording on his or her own are deemed adversarial.
- H. **Unintentionally recorded footage** is a video recording that result from an officer’s inadvertence or neglect in operating the officer’s BWC, provided that no portion of the resulting recording has evidentiary or administrative value. Examples of unintentionally recorded footage include, but are not limited to, recordings made in station house locker rooms, restrooms, and recordings made while officers were engaged in conversations of a non-business, personal nature with the expectation that the conversation was not being recorded.
- I. **Official duties/capacity**, for purposes of this policy, means that the officer is on duty and/or performing authorized law enforcement services on behalf of this department or while in uniform.

## **Use and Documentation**

- A. Officers may use only department-issued BWCs in the performance of official duties for this department or when otherwise performing authorized law enforcement services as an employee of this department. Note: This provision prohibits officers from using personally owned BWCs, or those provided by private entities that may be contracting for services, while performing department-authorized law enforcement activities. The use of

non-department equipment is inconsistent with the department's obligation to administer resulting video footage as government data.

- B. Officers who have been issued BWCs shall operate and use them consistent with this policy. Officers shall check their issued BWCs at the beginning of each shift to make sure the devices are functioning properly and shall promptly report any malfunctions to the officer's supervisor.
- C. Officers should wear their issued BWCs at the location on their body and in the manner specified in training or which maximizes viewable video images.
- D. Officers must document BWC use and nonuse as follows:
  - 1. Whenever an officer makes a recording, the existence of the recording shall be documented in an incident report or Computer-Aided Dispatch (CAD) record of the event.
  - 2. Whenever an officer fails to record an activity that is required to be recorded under this policy or captures only a part of the activity, the officer must document the circumstances and reasons for not recording in an incident report. Supervisors shall review these reports, initiate any corrective action deemed necessary, and notify their command-level supervisor.

## **General Guidelines for Recording**

- A. Officers shall activate their BWCs when responding to all calls for service and during all law enforcement-related encounters and activities, including but not limited to pursuits, investigative stops of motorists and pedestrians, arrests, searches, suspect interviews and interrogations, and during any police/citizen contacts that becomes adversarial. However, officers need not activate their cameras when it would be unsafe, impossible, or impractical to do so, but such instances of not recording when otherwise required must be thoroughly documented as specified in the Use and Documentation guidelines, part (D)(2) (above).
- B. Except as otherwise directed, officers have discretion to record or not record incidental citizen contacts (see *Brady-Giglio*).
- C. Officers have no affirmative duty to inform people that a BWC is being operated or that they are being recorded. Officers may elect to notify people they encounter that a BWC is being operated if it is felt that doing so may de-escalate an encounter. If asked, officers are required to provide a factual response about recording.
- D. Once activated, the BWC should continue recording until the conclusion of the incident or encounter, or until it becomes readily apparent that additional recording is unlikely to capture information having evidentiary value. In an incident where a sergeant or investigator has charge of a scene, he/she shall direct the discontinuance of recording when further recording is unlikely to capture additional information having evidentiary value. For purposes of

creating a complete record of use, officers are strongly encouraged to state the reasons for ceasing the recording on camera before deactivating their BWC. If circumstances change, officers shall reactivate their cameras as required by this policy to capture information having evidentiary value.

- E. All officers participating in the service of a search warrant shall wear and record the execution of the court approved warrant. Based on the circumstances, the case investigator or on scene sergeant may direct the discontinuance of recording when further recording is unlikely to capture additional information having evidentiary value.
- F. Officers shall not intentionally block the BWC's audio or visual recording functionality to defeat the purposes of this policy.
- G. Notwithstanding any other provision in this policy, officers shall not use their BWCs to record other department personnel during non-enforcement related activities, such as during pre- and post-shift time in locker rooms, during meal breaks, or during other private conversations. The chief of police may authorize the use of BWC's as part of an administrative or internal criminal investigation.
- H. No member of the department shall intentionally edit, alter, or erase any BWC recording unless otherwise expressly authorized by the chief or the chief's designee in writing.
- I. Officers assigned to a plain clothes, investigative assignment, undercover assignment, or uniformed administrative role shall not be required to wear a BWC during their day-to-day work unless working in a uniformed call response capacity or are otherwise required by this policy.

### **Special Guidelines for Recording**

Officers may, in the exercise of sound discretion, determine:

- A. To use their BWC to record any police-citizen contact if there is reason to believe the recording would potentially yield information having evidentiary value, unless such recording is otherwise expressly prohibited.
- B. To use their BWC to take recorded statements from persons believed to be victims and witnesses of crimes, and persons suspected of committing crimes, considering the needs of the investigation and the circumstances pertaining to the victim, witness, or suspect.
- C. Department personnel (sworn and non-sworn) shall use their BWCs and if so equipped squad-based audio/video systems to record the transportation and the physical transfer of persons in their custody to hospitals, detox and mental health care facilities, juvenile detention centers, and jails, but otherwise should not record in these facilities unless the officer anticipates witnessing a criminal event or being involved in or witnessing an adversarial encounter or use-of-force incident.

## Downloading and Labeling Data

- A. Each officer using a BWC is responsible for transferring or assuring the proper transfer of the data from his or her camera to the designated data storage location by the end of that officer's shift. However, if the officer is involved in a shooting, in-custody death, or other law enforcement activity resulting in death or great bodily harm, a supervisor or investigator shall take custody of the officer's BWC and assume responsibility for transferring the data from it. If the incident is being investigated by an outside authority, the involved officer's BWC shall be turned over to the investigating authority before the data is transferred from the camera device.
- B. Officers shall label the BWC data files at the time of video capture or transfer to storage, and should consult with a supervisor if in doubt as to the appropriate labeling. Officers should assign as many of the following labels as are applicable to each file:
1. **Arrest:** To be used whenever a custodial arrest is made – primary or assisting officers.
  2. **Traffic Citation (non-DWI):** To be used for traffic citations not involving a custodial arrest.
  3. **Use of Force – No arrest:** To be used anytime a use of force is involved even if you are the assisting officer and not directly involved in the use of force (i.e. mental health crisis).
  4. **Officer Injury:** To be used whenever there is injury to an officer.
  5. **Report call – no arrest:** To be used for all calls for service resulting in the preparation of a police report.
  6. **Assist/Advise/Warn:** To be used in response to incidents (i.e. traffic stop).
  7. **Administrative:** To be used when the officer believes a participant in the call may make a complaint regarding the involved officer(s).
  8. **Demonstration Only:** Strictly for use in training demonstration only.
  9. **Training:** To be used with supervisor approval when the video captured will be of value to department training efforts. See Department Use of Data, part C.
  10. **Unintentional recording:** See Definitions, part G. Officers labeling a file as such shall document the events or subject matter that was accidentally recorded on a form or in a manner specified by the department. These recordings may be purged by a command level staff member with proper administrative rights. The request to have unintentional footage purged shall be maintained to ensure the integrity of the records system.
  11. **Not evidence:** The recording does not contain any of the foregoing categories of information and has no apparent evidentiary value. Recordings of incidental citizen contacts are not evidence.
  12. **Restricted:** Command level access only. Reserved for possible use as part of or during an internal investigation.
  13. **Retention reclassification - permanent:** The recording was initially classified in a manner that would result in automatic destruction in accordance with the City's Retention Policy, however based on case type and extended statutes of limitation, the

data should be permanently retained (i.e. homicide). Note: Reclassification of the retention period to permanent is a function limited to Records Unit personnel only.

- C. Labeling and flagging designations may be corrected or amended based on additional information by a ranking officer or their non-sworn designee.

### **Access to BWC Data**

- A. Access to BWC data shall be limited to the employee who captured the video, supervisory personnel and command level personnel, along with others deemed by the chief of police to have “need to know” or “need to access,” such as case investigators and Records Unit personnel. In addition: BWC video shall be available to approved personnel within the offices of the Maplewood City Attorney and Ramsey County Attorney’s Office. Prosecutors or their designee may authorize protected access to specific cases with BWC video
- B. Access to BWC data from city or personally owned and approved devices shall be managed in accordance with established city policy.
- C. Officers may access and view stored BWC video only when there is a business need for doing so, including the need to defend against an allegation of misconduct or substandard performance. Officers may review video footage of an incident in which they were involved prior to preparing a report about the incident, giving a statement to an internal affairs investigator, or providing court testimony about an incident. Unless otherwise approved by the chief of police, the investigating authority, and the prosecuting authority, in the event of a critical incident resulting in great bodily harm, or death, officers are prohibited from reviewing BWC footage prior to giving a voluntary statement.
- D. With supervisor or command officer approval, officers may display limited portions of BWC footage to witnesses as necessary for purposes of investigation as allowed by Minn. Stat. § 13.82, subd. 15, as may be amended from time to time. Officers should limit these displays to protect against the incidental disclosure of individuals whose identities are not public.
- E. Department personnel shall document their reasons for accessing stored BWC data in the manner provided within the database at the time of each access. Department personnel are prohibited from accessing BWC data for non-business reasons and from sharing the data for non-law enforcement related purposes, including but not limited to uploading BWC data recorded or maintained by this department onto public and social media websites.
- F. Officers shall refer members of the media or public seeking access to BWC data to the City Clerk and/or chief of police, who will process the request in accordance with the

MGDPA and other governing laws. Employees seeking access to BWC data for non-business reasons may make a request for it in the same manner as any member of the public.

- G. Requests made by data subjects to receive BWC footage shall be provided upon request and proper determination of identity as a data subject. It shall be the policy of this department to freely provide BWC data to any individual, group, or entity representing the BWC data subject upon receipt of a notarized request from the data subject for the BWC footage.
- H. BWC data shall be made available to prosecutors, courts, and other criminal justice entities as provided by law.

### **Department Use of Data**

- A. At least two times per month, supervisors will randomly review BWC recordings made by each officer they supervise to ensure the equipment is operating properly and officers are using the devices appropriately in accordance with policy, and to identify any performance areas in which additional training or guidance is required. Supervisors shall document the date of their review and the name of each officer whose video footage was reviewed. Sergeants and commanders will submit documentation of their review to their respective command level supervisor. Any noted non-compliance with the departmental policy pertaining BWC use shall also be reported to the chief of police.
- B. At least quarterly or upon the request of an officer, patrol commanders will conduct a system audit to ensure that BWC video review is equitably and fairly distributed across personnel. It should be noted that supervisory access to the video may be for reasons other than random review and shall be documented as such.
- C. This department will conduct an annual audit to check for the occurrence of unauthorized access to BWC data. Randomized sampling may be utilized for this process, and statistical results of the audit shall be reported to the City Manager and annually reported to the City Council.
- D. Officers should contact their supervisors to discuss retaining and using BWC footage for training purposes. Officer objections to preserving or using certain footage for training will be considered on a case-by-case basis. Approval to utilize video footage for law enforcement training purposes must be approved by the chief of police. BWC footage used for law enforcement training purposes shall be redacted prior to use. Field training officers may review BWC data with trainees for the purpose of providing coaching and feedback on the trainee's performance.
- E. Any member of this department who is deemed to be non-compliant with or in violation of this policy may be subject to disciplinary action, up to and including, termination and criminal prosecution (see M.S. 13.09).

### **Data Retention**

- A. Evidentiary data shall be retained for the period specified in the General Records Retention Schedule for the city of Maplewood. When a particular recording is subject to multiple retention periods, it shall be maintained for the longest applicable retention period.
- B. Unintentionally recorded footage shall not be retained and is to be purged by a command-level staff member with administrative rights to take such action. Any data manually deleted from the system, excluding demonstration data, shall be communicated to chief of police, including the type of data and reason for deletion. A log shall be maintained of any and all administratively deleted video.
- C. BWC footage that is classified as non-evidentiary, or becomes classified as non-evidentiary, shall be retained for a minimum of 90 days following the date of capture. If information comes to light indicating that non-evidentiary data has evidentiary value or value for training, it may be reclassified and retained for a longer period.
- D. The department shall maintain an inventory of BWC recordings through its vendor – Taser’s Evidence.com storage platform.

## **Data Classification**

- A. Outside of active criminal investigations (where data is generally confidential or protected nonpublic), BWC data is private or nonpublic data. Private data is accessible to the data subject.
- B. In accordance with M.S. 13.825, subd. 2(2), BWC data are public in four situations:
  - 1. When a peace officer discharges a firearm in the course of duty (but not when discharged for training purposes or killing animals).
  - 2. When use of force by a peace officer results in “substantial bodily harm” as defined in M.S.609.02, subd. 7a, “great bodily harm” as defined in M.S. 609.02, subd. 8, or death.
  - 3. When a data subject requests that the data be made accessible to the public, after redacting undercover officers and those who have not consented to the release.
  - 4. When body camera data documenting the basis for discipline is part of personnel data in final disposition of discipline.
- C. With the approval of the chief of police, this department may make otherwise non-public data public data if that could aid the law enforcement process, promote public safety, or dispel widespread rumor or unrest, consistent with Minnesota Statutes, section 13.82, subdivision 15.

Version update: 8/29/16

DRAFT