

AGENDA
MAPLEWOOD CITY COUNCIL
MANAGER WORKSHOP
5:00 P.M. Monday, September 26, 2016
City Hall, Council Chambers

A. CALL TO ORDER

B. ROLL CALL

C. APPROVAL OF AGENDA

D. UNFINISHED BUSINESS

None

E. NEW BUSINESS

1. YMCA Contract Review/Discussion
2. Review and Discussion of Minnesota's Police Body Worn Camera (BWC) Law, the Police Department's Proposed BWC Policy, and Perspective Policy Considerations

F. ADJOURNMENT

RULES OF CIVILITY FOR THE CITY COUNCIL, BOARDS, COMMISSIONS AND OUR COMMUNITY

Following are rules of civility the City of Maplewood expects of everyone appearing at Council Meetings - elected officials, staff and citizens. It is hoped that by following these simple rules, everyone's opinions can be heard and understood in a reasonable manner. We appreciate the fact that when appearing at Council meetings, it is understood that everyone will follow these principles:

Speak only for yourself, not for other council members or citizens - unless specifically tasked by your colleagues to speak for the group or for citizens in the form of a petition.

Show respect during comments and/or discussions, listen actively and do not interrupt or talk amongst each other.

Be respectful of the process, keeping order and decorum. Do not be critical of council members, staff or others in public.

Be respectful of each other's time keeping remarks brief, to the point and non-repetitive.

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MEMORANDUM

TO: Melinda Coleman, City Manager
FROM: DuWayne Konewko, Parks and Recreation/EEDD Director
DATE: September 26, 2016
RE: YMCA Contract Review/Discussion

Introduction

The Maplewood Community Center (MCC) has long been an amenity for Maplewood residents and others who have enjoyed using this facility since it opened in October of 1994. The City's goal is to ensure that this facility remain a keystone amenity for the community. However, the City's ability to provide the type of facility and programming that is expected from a community center is becoming more of a challenge every year. In an effort to provide the type of facility the residents of Maplewood deserve, staff started the process of exploring partnerships with the idea of providing a first-class community center, but also allowing the City to focus on other important goals related to parks and recreation.

Discussion

In knowing the current operating standards are not sustainable, the City Council and staff have been discussing the long term viability of the MCC in light of concerns regarding the facility's operating budget and deferred capital improvement projects. The annual operating deficit has been between \$250,000 and \$460,000, The MCC operating loss for 2015 was \$457,000. In addition, the Asset Management Plan that was completed for the MCC in the fall of 2014 identified more than \$10,000,000 in needed capital improvements to the facility in the next ten years. These numbers present major budgetary challenges for the City and clearly are not sustainable going forward. With that in mind, council directed staff to explore creative and collaborative solutions to these long-term challenges for the MCC.

To that end, and building on the existing partnership between the City and the YMCA, staff from both parties have been working on an agreement that would further leverage this successful partnership. The existing partnership contract with the YMCA was approved by council in March of 2015 with an effective start date of April 1, 2015. Under this agreement, the YMCA is responsible for managing the MCC's Aquatic Center as well as working with staff on the day-to-day management of the facility. The City has received very positive feedback from our members and users of the facility. The number of swimming lesson participants has also risen which staff attributes to increased programming opportunities for swimming lessons offered by the YMCA. In the last almost 16 months, the YMCA has proved to be a beneficial partner and the users of the MCC's Aquatic Center and there is a willingness to bring these benefits to the rest of the facility.

To better understand the financial implications of this proposed contract with the YMCA, City Manager Coleman and Finance Director Paulseth brought on board Mr. Bruce Kimmel, Senior Municipal Advisor/Director, with Ehlers-Inc. to assist staff with the financial piece of this agreement. Mr. Kimmel will be present at the October 17, 2016 Special Council Meeting to address the City Council and present a detailed financial report to the council for their review

and discussion. Mr. Kimmel has been involved in recent meetings with the YMCA and has provided guidance in some areas of the contract.

Staff has summarized the major elements from the draft agreement and these are provided below:

1. YMCA will assume direct responsibility of all operations at the MCC facility. The existing lease agreement with Ashland Productions will remain in place. The City will not office, work or have any direct responsibility for the operations and maintenance of the MCC facility. However, the City will work with the YMCA with regard to capital improvements at the facility. The City will continue to own the MCC.
2. The agreement with the YMCA is for a ten-year period with two additional five year options. The effective start date of the agreement is November 1, 2016. The YMCA may terminate the agreement without cause by providing a twelve month written notice to the City. The agreement requires the YMCA to operate and maintain the facility for a minimum period of five-years. The YMCA will provide the City with an operational annual report, by March 31 of each year the agreement is in place, to update the City Council on the progress of the agreement.
3. Unless specified in the agreement, the YMCA will operate all programs at the MCC facility including but not limited to membership, admissions, banquet facilities, rentals, existing contracts, concessions, fitness, day camps, birthday parties, child care, senior programs, racquetball courts, gymnasium, and the aquatic center.
4. The City will have use of the banquet space for a period of four years, beginning November 1, 2016 until October 31, 2020, not to exceed thirty-four hours per week at no cost to the City. Reservations for use of the banquet space must be made at least five business days in advance and cannot displace reservations already "booked" by the YMCA. The City is responsible for all costs associated with catering and any special requests associated with an event.
5. Maplewood residents will retain their "special" pricing for use of the MCC facility for a period of three years with increases capped at three-percent per year. Maplewood residents will also have an opportunity to upgrade their membership to access all YMCAs in the metro area. Non-residents will be required to purchase memberships in-line with the YMCAs membership policies.
6. The YMCA will continue to offer daily admissions at the MCC facility for a minimum period of one-year.
7. The YMCA will be responsible for all existing contracts, vendors, and services with the exception of Dakota Electric (City's solar contract) and Electro Watchman (Fire alarm monitoring). This includes but is not limited to electricity, natural gas, fuel, water (basically all utilities) telephones, wifi, computer services, trash, recycling and organics, fitness equipment lease, and ensuring that all annual required inspections pursuant to the operation and maintenance of the facility are conducted. The YMCA is not required to work with any of the City's existing vendors and may choose to work directly with their own in-house teams or pursue other vendors for these services. The YMCA will be required to provide the City with an annual report no later than March 31 of each year the operational lease agreement is in force assuring the City that these required inspections are complete.

8. The City and the YMCA will establish a capital improvement fund (Fund) that will be used to pay for capital improvements at the MCC. The City will deposit \$1,000,000 into an escrow account no later than December 31, 2016. The City will also deposit \$542,000 in this escrow account no later than December 31, 2017. Beginning in 2019, the City and the YMCA will be contributing \$200,000 each into this Fund. The agreement also has a provision whereby the YMCA would contribute additional monies into this Fund based on gross operating revenue for the preceding year that conceivable could lower the City's contribution. The formula is based on 7.5% of the gross operating revenue for the MCC and requires the YMCA to contribute an amount equal to the greater of \$200,000 or 7.5% of the gross operating revenue with an annual maximum contribution capped at \$300,000.

In addition, the City will be responsible for any planned or emergency capital improvement projects that exceed \$500,000. The City will assume all responsibilities associated with repairing or replacing the roof at the MCC. The City and the YMCA will work together on the planning and implementation of all capital improvement projects at the MCC. The City and the YMCA will collaboratively develop an annual priority list of projects based on a five-year capital plan that utilizes the 2014 MCC Asset Management Plan as a resource.

The YMCA will be responsible for hiring contractors and vendors and making final decisions on budget allocations for these improvement projects at the MCC. The YMCA will be required to adhere to any and all applicable state laws regarding vendor choice and public bidding for these capital improvements. The YMCA will also be responsible for any improvements and operational costs that are less than \$7,500. The City will be responsible to fund all non-facility capital improvements including but not limited to sidewalks, MCC grounds, parking lots, and exterior improvements to the building.

9. The facility will continue operating as the Maplewood Community Center. However, the YMCA has the option of renaming the facility provided the Maplewood Community Center remains as part of the facility name.
10. The YMCA will take possession of the City-owned web-site and social media platforms related to the MCC. The YMCA will work directly with City communication staff to execute these actions.
11. The YMCA has a non-compete clause in the agreement whereby the YMCA would serve as the de facto City provider of services and the City agrees not to duplicate or compete with these program or services. The City and the YMCA are currently working out the details regarding this provision in the contract.
12. The City will continue to be responsible for the maintaining the MCC parking lots and building grounds. The YMCA will have access to use City-owned parking lots for customers and employees.
13. The City will work with the YMCA to reconcile all accounts associated with memberships, personal training sessions, future banquet events, and other cases involving pre-payment for services.

Summary

It is fair to say the expectations and needs of the city in terms of recreation have dramatically risen since the MCC was originally approved and built. Staff has worked diligently to develop a solution that can stabilize and improve the MCC facility while also figuring out ways to fund other recreation-related needs in the city. The City Council adopted the Parks Master Plan in January of 2015 and the plan identified approximately \$22,000,000 in improvements to our park system. The City has 36 parks and 15 preserves totaling more than 900 acres to maintain. In addition, the City has many miles of existing trails that require on-going maintenance. It is anticipated that future savings from this City/YMCA agreement will allow monies to be repurposed to make enhancements and improvements to the City's park system.

Recommendation

The YMCA contract review discussion is informational only, and no formal action is required by the City Council. However, staff is looking for direction from the City Council on the elements of the proposed contract with the YMCA.

MEMORANDUM

TO: Melinda Coleman, City Manager

FROM: Paul Schnell, Chief of Police

DATE: September 19, 2016

SUBJECT: Review and Discussion of Minnesota's Police Body Worn Camera (BWC) Law, the Police Department's Proposed BWC Policy, and Perspective Policy Considerations

Introduction

With a focus on transparency and meaningful discussion, this workshop will be a review of Minnesota's Police Body Worn Camera law and the police department's proposed BWC policy. To deepen the conversation and perspective, we've invited three distinguished guests to address the Council on this topic. Providing the perspective of their respective organizations, Matt Ehling from the Minnesota Coalition on Government Information, Yusef Mgeni from the St. Paul NAACP, and Ben Feist from the MN Chapter of the American Civil Liberties Union will each make a short presentation to the council.

Background

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.

Budget Impact

Information only.

Recommendation

Review only.

Attachments

1. Minnesota Statute Chapters 171, 13.825, and 626.8473
2. Maplewood Police Department BWC Policy Draft
3. BWC Overview and Key Policy Issues

CHAPTER 171--S.F.No. 498

An act relating to data practices; classifying portable recording system data; establishing requirements for the destruction of data; requiring written policies and procedures; imposing requirements on vendors; providing for damage awards; requiring a legislative auditor review; amending Minnesota Statutes 2014, section 13.82, subdivisions 6, 7, 15; Minnesota Statutes 2015 Supplement, section 13.82, subdivision 2; proposing coding for new law in Minnesota Statutes, chapters 13; 626.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2015 Supplement, section 13.82, subdivision 2, is amended to read:

Subd. 2. **Arrest data.** The following data created or collected by law enforcement agencies which document any actions taken by them to cite, arrest, incarcerate or otherwise substantially deprive an adult individual of liberty shall be public at all times in the originating agency:

- (a) time, date and place of the action;
- (b) any resistance encountered by the agency;
- (c) any pursuit engaged in by the agency;
- (d) whether any weapons were used by the agency or other individual;
- (e) the charge, arrest or search warrants, or other legal basis for the action;
- (f) the identities of the agencies, units within the agencies and individual persons taking the action;
- (g) whether and where the individual is being held in custody or is being incarcerated by the agency;
- (h) the date, time and legal basis for any transfer of custody and the identity of the agency or person who received custody;
- (i) the date, time and legal basis for any release from custody or incarceration;
- (j) the name, age, sex and last known address of an adult person or the age and sex of any juvenile person cited, arrested, incarcerated or otherwise substantially deprived of liberty;
- (k) whether the agency employed ~~an~~ a portable recording system, automated license plate reader, wiretaps or other eavesdropping techniques, unless the release of this specific data would jeopardize an ongoing investigation;
- (l) the manner in which the agencies received the information that led to the arrest and the names of individuals who supplied the information unless the identities of those individuals qualify for protection under subdivision 17; and
- (m) response or incident report number.

Sec. 2. Minnesota Statutes 2014, section 13.82, subdivision 6, is amended to read:

Subd. 6. **Response or incident data.** The following data created or collected by law enforcement agencies which document the agency's response to a request for service including, but not limited to, responses to traffic accidents, or which describe actions taken by the agency on its own initiative shall be public government data:

- (a) date, time and place of the action;
- (b) agencies, units of agencies and individual agency personnel participating in the action unless the identities of agency personnel qualify for protection under subdivision 17;
- (c) any resistance encountered by the agency;
- (d) any pursuit engaged in by the agency;
- (e) whether any weapons were used by the agency or other individuals;
- (f) a brief factual reconstruction of events associated with the action;
- (g) names and addresses of witnesses to the agency action or the incident unless the identity of any witness qualifies for protection under subdivision 17;
- (h) names and addresses of any victims or casualties unless the identities of those individuals qualify for protection under subdivision 17;
- (i) the name and location of the health care facility to which victims or casualties were taken;
- (j) response or incident report number;
- (k) dates of birth of the parties involved in a traffic accident;
- (l) whether the parties involved were wearing seat belts; ~~and~~
- (m) the alcohol concentration of each driver; and
- (n) whether the agency used a portable recording system to document the agency's response or actions.

Sec. 3. Minnesota Statutes 2014, section 13.82, subdivision 7, is amended to read:

Subd. 7. **Criminal investigative data.** Except for the data defined in subdivisions 2, 3, and 6, investigative data collected or created by a law enforcement agency in order to prepare a case against a person, whether known or unknown, for the commission of a crime or other offense for which the agency has primary investigative responsibility are confidential or protected nonpublic while the investigation is active. Inactive investigative data are public unless the release of the data would jeopardize another ongoing investigation or would reveal the identity of individuals protected under subdivision 17. Images and recordings, including photographs, video, and audio records, which are part of inactive investigative files and which are clearly offensive to common sensibilities are classified as private or nonpublic data, provided that the existence of the ~~photographs images and recordings~~ shall be disclosed to any person requesting access to the inactive investigative file. An investigation becomes inactive upon the occurrence of any of the following events:

- (a) a decision by the agency or appropriate prosecutorial authority not to pursue the case;

(b) expiration of the time to bring a charge or file a complaint under the applicable statute of limitations, or 30 years after the commission of the offense, whichever comes earliest; or

(c) exhaustion of or expiration of all rights of appeal by a person convicted on the basis of the investigative data.

Any investigative data presented as evidence in court shall be public. Data determined to be inactive under clause (a) may become active if the agency or appropriate prosecutorial authority decides to renew the investigation.

During the time when an investigation is active, any person may bring an action in the district court located in the county where the data are being maintained to authorize disclosure of investigative data. The court may order that all or part of the data relating to a particular investigation be released to the public or to the person bringing the action. In making the determination as to whether investigative data shall be disclosed, the court shall consider whether the benefit to the person bringing the action or to the public outweighs any harm to the public, to the agency or to any person identified in the data. The data in dispute shall be examined by the court in camera.

Sec. 4. Minnesota Statutes 2014, section 13.82, subdivision 15, is amended to read:

Subd. 15. **Public benefit data.** Any law enforcement agency may make any data classified as confidential or protected nonpublic pursuant to subdivision 7 or as private or nonpublic under section 13.825 accessible to any person, agency, or the public if the agency determines that the access will aid the law enforcement process, promote public safety, or dispel widespread rumor or unrest.

Sec. 5. **[13.825] PORTABLE RECORDING SYSTEMS.**

Subdivision 1. **Application; definition.** (a) This section applies to law enforcement agencies that maintain a portable recording system for use in investigations, or in response to emergencies, incidents, and requests for service.

(b) As used in this section:

(1) "portable recording system" means a device worn by a peace officer that is capable of both video and audio recording of the officer's activities and interactions with others or collecting digital multimedia evidence as part of an investigation;

(2) "portable recording system data" means audio or video data collected by a portable recording system; and

(3) "redact" means to blur video or distort audio so that the identity of the subject in a recording is obscured sufficiently to render the subject unidentifiable.

Subd. 2. **Data classification; court-authorized disclosure.** (a) Data collected by a portable recording system are private data on individuals or nonpublic data, subject to the following:

(1) data that document the discharge of a firearm by a peace officer in the course of duty, if a notice is required under section 626.553, subdivision 2, or the use of force by a peace officer that results in substantial bodily harm, as defined in section 609.02, subdivision 7a, are public;

(2) data are public if a subject of the data requests it be made accessible to the public, except that, if practicable, (i) data on a subject who is not a peace officer and who does not consent to the release must be redacted, and (ii) data on a peace officer whose identity is protected under section 13.82, subdivision 17, clause (a), must be redacted;

(3) portable recording system data that are active criminal investigative data are governed by section 13.82, subdivision 7, and portable recording system data that are inactive criminal investigative data are governed by this section;

(4) portable recording system data that are public personnel data under section 13.43, subdivision 2, clause (5), are public; and

(5) data that are not public data under other provisions of this chapter retain that classification.

(b) A law enforcement agency may redact or withhold access to portions of data that are public under this subdivision if those portions of data are clearly offensive to common sensibilities.

(c) Section 13.04, subdivision 2, does not apply to collection of data classified by this subdivision.

(d) Any person may bring an action in the district court located in the county where portable recording system data are being maintained to authorize disclosure of data that are private or nonpublic under this section or to challenge a determination under paragraph (b) to redact or withhold access to portions of data because the data are clearly offensive to common sensibilities. The person bringing the action must give notice of the action to the law enforcement agency and subjects of the data, if known. The law enforcement agency must give notice to other subjects of the data, if known, who did not receive the notice from the person bringing the action. The court may order that all or part of the data be released to the public or to the person bringing the action. In making this determination, the court shall consider whether the benefit to the person bringing the action or to the public outweighs any harm to the public, to the law enforcement agency, or to a subject of the data and, if the action is challenging a determination under paragraph (b), whether the data are clearly offensive to common sensibilities. The data in dispute must be examined by the court in camera. This paragraph does not affect the right of a defendant in a criminal proceeding to obtain access to portable recording system data under the Rules of Criminal Procedure.

Subd. 3. **Retention of data.** (a) Portable recording system data that are not active or inactive criminal investigative data and are not described in paragraph (b) must be maintained for at least 90 days and destroyed according to the agency's records retention schedule approved pursuant to section 138.17.

(b) Portable recording system data must be maintained for at least one year and destroyed according to the agency's records retention schedule approved pursuant to section 138.17 if:

(1) the data document (i) the discharge of a firearm by a peace officer in the course of duty if a notice is required under section 626.553, subdivision 2, or (ii) the use of force by a peace officer that results in substantial bodily harm; or

(2) a formal complaint is made against a peace officer related to the incident.

(c) If a subject of the data submits a written request to the law enforcement agency to retain the recording beyond the applicable retention period for possible evidentiary or exculpatory use related to the circumstances under which the data were collected, the law enforcement agency shall retain the recording for an additional time period requested by the subject of up to 180 days and notify

the requester that the recording will then be destroyed unless a new request is made under this paragraph.

(d) Notwithstanding paragraph (b) or (c), a government entity may retain a recording for as long as reasonably necessary for possible evidentiary or exculpatory use related to the incident with respect to which the data were collected.

Subd. 4. **Access by data subjects.** (a) For purposes of this chapter, a portable recording system data subject includes the peace officer who collected the data, and any other individual or entity, including any other peace officer, regardless of whether the officer is or can be identified by the recording, whose image or voice is documented in the data.

(b) An individual who is the subject of portable recording system data has access to the data, including data on other individuals who are the subject of the recording. If the individual requests a copy of the recording, data on other individuals who do not consent to its release must be redacted from the copy. The identity and activities of an on-duty peace officer engaged in an investigation or response to an emergency, incident, or request for service may not be redacted, unless the officer's identity is subject to protection under section 13.82, subdivision 17, clause (a).

Subd. 5. **Inventory of portable recording system technology.** A law enforcement agency that uses a portable recording system must maintain the following information, which is public data:

(1) the total number of recording devices owned or maintained by the agency;

(2) a daily record of the total number of recording devices actually deployed and used by officers and, if applicable, the precincts in which they were used;

(3) the policies and procedures for use of portable recording systems required by section 626.8473; and

(4) the total amount of recorded audio and video data collected by the portable recording system and maintained by the agency, the agency's retention schedule for the data, and the agency's procedures for destruction of the data.

Subd. 6. **Use of agency-issued portable recording systems.** While on duty, a peace officer may only use a portable recording system issued and maintained by the officer's agency in documenting the officer's activities.

Subd. 7. **Authorization to access data.** (a) A law enforcement agency must comply with sections 13.05, subdivision 5, and 13.055 in the operation of portable recording systems and in maintaining portable recording system data.

(b) The responsible authority for a law enforcement agency must establish written procedures to ensure that law enforcement personnel have access to the portable recording system data that are not public only if authorized in writing by the chief of police, sheriff, or head of the law enforcement agency, or their designee, to obtain access to the data for a legitimate, specified law enforcement purpose.

Subd. 8. **Sharing among agencies.** (a) Portable recording system data that are not public may only be shared with or disseminated to another law enforcement agency, a government entity, or a federal agency upon meeting the standards for requesting access to data as provided in subdivision 7.

(b) If data collected by a portable recording system are shared with another state or local law enforcement agency under this subdivision, the agency that receives the data must comply with all data classification, destruction, and security requirements of this section.

(c) Portable recording system data may not be shared with, disseminated to, sold to, or traded with any other individual or entity unless explicitly authorized by this section or other applicable law.

Subd. 9. **Biennial audit.** (a) A law enforcement agency must maintain records showing the date and time portable recording system data were collected and the applicable classification of the data. The law enforcement agency shall arrange for an independent, biennial audit of the data to determine whether data are appropriately classified according to this section, how the data are used, and whether the data are destroyed as required under this section, and to verify compliance with subdivisions 7 and 8. If the governing body with jurisdiction over the budget of the agency determines that the agency is not complying with this section or other applicable law, the governing body may order additional independent audits. Data in the records required under this paragraph are classified as provided in subdivision 2.

(b) The results of the audit are public, except for data that are otherwise classified under law. The governing body with jurisdiction over the budget of the law enforcement agency shall review the results of the audit. If the governing body determines that there is a pattern of substantial noncompliance with this section, the governing body must order that operation of all portable recording systems be suspended until the governing body has authorized the agency to reinstate their use. An order of suspension under this paragraph may only be made following review of the results of the audit and review of the applicable provisions of this chapter, and after providing the agency and members of the public a reasonable opportunity to respond to the audit's findings in a public meeting.

(c) A report summarizing the results of each audit must be provided to the governing body with jurisdiction over the budget of the law enforcement agency and to the Legislative Commission on Data Practices and Personal Data Privacy no later than 60 days following completion of the audit.

Subd. 10. **Notification to BCA.** Within ten days of obtaining new surveillance technology that expands the type or scope of surveillance capability of a portable recording system device beyond video or audio recording, a law enforcement agency must notify the Bureau of Criminal Apprehension that it has obtained the new surveillance technology. The notice must include a description of the technology and its surveillance capability and intended uses. The notices are accessible to the public and must be available on the bureau's Web site.

Subd. 11. **Portable recording system vendor.** (a) For purposes of this subdivision, "portable recording system vendor" means a person who is not a government entity and who provides services for the creation, collection, retention, maintenance, processing, or dissemination of portable recording system data for a law enforcement agency or other government entity. By providing these services to a government entity, a vendor is subject to all of the requirements of this chapter as if it were a government entity.

(b) A portable recording system vendor that stores portable recording system data in the cloud must protect the data in accordance with the security requirements of the United States Federal Bureau of Investigation Criminal Justice Information Services Division Security Policy 5.4 or its successor version.

(c) Subject to paragraph (d), in an action against a vendor under section 13.08 for a violation of this chapter, the vendor is liable for presumed damages of \$2,500 or actual damages, whichever is greater, and reasonable attorney fees.

(d) In an action against a vendor that improperly discloses data made not public by this chapter or any other statute classifying data as not public, the vendor is liable for presumed damages of \$10,000 or actual damages, whichever is greater, and reasonable attorney fees.

Subd. 12. **Penalties for violation.** In addition to any other remedies provided by law, in the case of a willful violation of this section a law enforcement agency is subject to exemplary damages of not less than twice the minimum, nor more than twice the maximum allowable for exemplary damages under section 13.08, subdivision 1.

EFFECTIVE DATE. This section is effective August 1, 2016. Data collected before the effective date of this section must be destroyed, if required by this section, no later than 15 days after the date this section becomes effective.

Sec. 6. [626.8473] PORTABLE RECORDING SYSTEMS ADOPTION; WRITTEN POLICY REQUIRED.

Subdivision 1. **Definition.** As used in this section, "portable recording system" has the meaning provided in section 13.825, subdivision 1.

Subd. 2. **Public comment.** A local law enforcement agency must provide an opportunity for public comment before it purchases or implements a portable recording system. At a minimum, the agency must accept public comments submitted electronically or by mail, and the governing body with jurisdiction over the budget of the law enforcement agency must provide an opportunity for public comment at a regularly-scheduled meeting.

Subd. 3. **Written policies and procedures required.** (a) The chief officer of every state and local law enforcement agency that uses or proposes to use a portable recording system must establish and enforce a written policy governing its use. In developing and adopting the policy, the law enforcement agency must provide for public comment and input as provided in subdivision 2. Use of a portable recording system without adoption of a written policy meeting the requirements of this section is prohibited. The written policy must be posted on the agency's Web site, if the agency has a Web site.

(b) At a minimum, the written policy must incorporate the following:

(1) the requirements of section 13.825 and other data classifications, access procedures, retention policies, and data security safeguards that, at a minimum, meet the requirements of chapter 13 and other applicable law;

(2) procedures for testing the portable recording system to ensure adequate functioning;

(3) procedures to address a system malfunction or failure, including requirements for documentation by the officer using the system at the time of a malfunction or failure;

(4) circumstances under which recording is mandatory, prohibited, or at the discretion of the officer using the system;

(5) circumstances under which a data subject must be given notice of a recording;

(6) circumstances under which a recording may be ended while an investigation, response, or incident is ongoing;

(7) procedures for the secure storage of portable recording system data and the creation of backup copies of the data; and

(8) procedures to ensure compliance and address violations of the policy, which must include, at a minimum, supervisory or internal audits and reviews, and the employee discipline standards for unauthorized access to data contained in section 13.09.

EFFECTIVE DATE. This section is effective August 1, 2016, provided that a law enforcement agency using a portable recording system on that date must adopt the policy required under this section no later than January 15, 2017.

Sec. 7. **LEGISLATIVE AUDITOR REVIEW.**

Beginning no earlier than January 1, 2019, the legislative auditor is requested to conduct a comprehensive review of compliance with the requirements of Minnesota Statutes, sections 13.825 and 626.8473. Data used for purposes of the review must include the results of the biennial audits required by Minnesota Statutes, section 13.825, subdivision 9, and may also include any other data that, in the judgment of the legislative auditor, assists in developing a complete understanding of any compliance or implementation issues resulting from enactment of those sections. The legislative auditor is requested to submit the results of the comprehensive review to the legislature no later than January 15, 2020.

Presented to the governor May 24, 2016

Signed by the governor May 31, 2016, 10:15 a.m.

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



Body Worn Camera (BWC) Background Information And Overview of Key Policy Provisions

General BWC Background Information

- Maplewood PD has had a three camera Body Worn Camera (BWC) demonstration project, which began in April of 2014.
- In February of 2015, Maplewood PD posted a short web-based BWC survey on its social media platforms, which resulted in more than 400 survey responses.
 - 97% of respondents said they were aware that an increasing number of law enforcement agencies across the US were or were planning to use body cameras to document police interactions with members of the public.
 - 66% of respondents said they believed use of body cameras could help improve police community relations, and 23% said body cameras would not make a difference.
 - 60% of respondents said they think police body camera footage from the inside of their home should be private, except to them (as the data subject), and 30% said the video should be available to anyone who asks to see it.
- Maplewood PD has requested a 2017 budget allocation of nearly \$130,000 to purchase and fully implement a BWC program.
- The cost to acquire the body worn cameras is approximately \$30,000.
- The annual cost of the 65 licenses (includes and non-sworn Records Unit and Evidence Management staff), cloud-based data storage, prosecutor access licenses, warranty, system access tracking, and data management application is about \$97,000 annually, over the next five years.
- The above cost includes unlimited BWC data storage, storage of the department's other digital evidence, including, squad video, still photography, and audio statements. The plan also includes the replacement of the department's 60 electronic incapacitation weapons (Tasers).

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Overview of Key Policy Provisions (as proposed)**

When will body cameras be used?

- 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.

Are officers required to obtain consent?

- 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.

When can an officer turn their BWC off?

- 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. If circumstances change, officers shall reactivate their cameras as required by this policy to capture information having evidentiary value.

When can officers access the BWC data they collect?

- 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.

Can officers review BWC footage when they are the subject of an internal investigation?

- 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.

Can an officer review the BWC footage to help them prepare their police reports?

- Officers may review video footage of an incident in which they were involved prior to or while preparing a police report, including an incident resulting in “substantial bodily harm” (1), or when preparing for court testimony about an incident.



Can officers watch BWC video prior to talking the investigators when they were involved in an incident that resulted in “great bodily harm” or Death to a person?

- 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 (2), or death, officers are prohibited from reviewing BWC footage prior to giving a voluntary statement.

Can a data subject give consent for another person, entity, or organization to obtain a copy of the video of an interaction they had with an officer?

- It shall be the policy of the 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.

Will supervisors or department administrators review officer’s BWC footage to ensure compliance with policy and to maintain quality control?

- 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 to BWC use shall also be reported to the chief of police.

How long will non-evidentiary BWC footage be held before it is deleted?

- 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.

What will happen if it is determined an officer is not in compliance with the department’s body worn camera policy?

- Any member of the Maplewood Police 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.

** Proposed policy provisions are subject to change before final adoption.

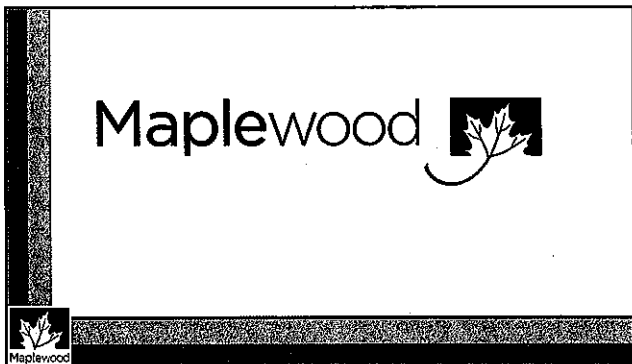
1. **Substantial bodily harm.** "Substantial bodily harm" means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or which causes a fracture of any bodily member (Minnesota Statute 602.02, Subd. 7a).
2. **Great bodily harm.** "Great bodily harm" means bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm (Minnesota Statute 609.02, Subd. 8).

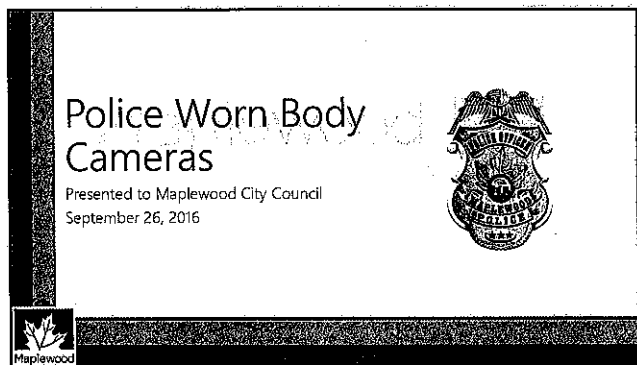


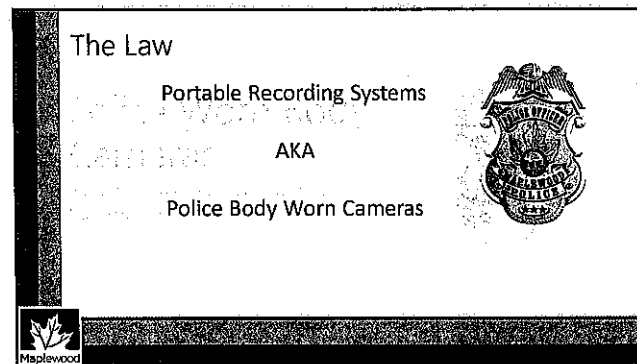
For the Permanent Record:

Meeting Date: 09/26/2016

Agenda Item: Workshop E2








For the Permanent Record:

Meeting Date: 09/26/2016


Agenda Item: Workshop E2

Portable Recording Systems




"Portable recording system" = device worn by a peace officer capable of both video and audio recording of the officer's activities and interactions with others or collecting digital multimedia evidence as part of an investigation
 Can only use agency-issued body cameras
 Effective date: August 1, 2015

Minn. Stat. § 13.02



Data Classification




Overarching
 Active criminal investigative data = confidential


Generally private data

Public data when:

- * Discharge of firearm in course of duty
- * Use of force resulting in substantial bodily harm
- * Subject of data makes data public
- * Part of data documenting final disposition of discipline
- * Court order




Written Policies



Must be addressed in written policies:

1. Data classifications, access procedures, retention policies, and data security safeguards
2. Testing of portable recording systems
3. System malfunction or failure, including documentation requirements
4. When recording is mandatory, prohibited, or at officer discretion
5. When a subject of the data must be given notice of a recording
6. When a recording may be ended while an investigation, response, or incident is ongoing
7. Secure storage and creation of backup copies of the data
8. Compliance and violations of the policy, which must include supervisory or internal audits and reviews and employee discipline standards for unauthorized access

Minn. Stat. § 13.02

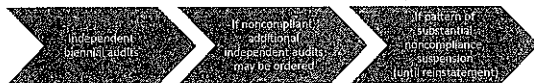


For the Permanent Record:

Meeting Date: 09/26/2016

Agenda Item: Workshop E2

Audit Requirements



- Suspension can only occur after law enforcement agency and public have a reasonable opportunity to respond to audit findings in a public meeting
- Summary report must be provided to Legislative Commission on Data Practices and Personal Data Privacy within 60 days following completion of audit



Miscellaneous Requirements

- Other public data: (1) use of portable recording system in arrest data and response/incident data in Minn. Stat. § 13.82 and (2) inventory in Minn. Stat. § 13.825
- Public benefit data: portable recording system data included in Minn. Stat. § 13.82, subd. 15
- Clearly offensive to common sensibilities: portable recording system data included in Minn. Stat. § 13.82, subd. 7, and portable recording system data can be redacted or withheld as well
- No Tennessean warning needed: portable recording system data not subject to Minn. Stat. § 13.04, subd. 2
- BCA notification of new surveillance tech: if portable recording system's surveillance capability is expanded beyond video or audio recording, need to notify Bureau of Criminal Apprehension with 10 days of procurement pursuant to Minn. Stat. § 13.825



Public Comment

- Before purchase or implementation**
- Law enforcement agencies must provide opportunity for public comment before it purchases or implements a portable recording system
 - Minimally must accept public comments by electronically or by mail
 - City council (governing body with jurisdiction over budget of law enforcement agency) must also provide have a public hearing at a regularly scheduled meeting
- Before written policy adoption**
- Law enforcement agencies must provide for public comment and input, minimally electronically or by mail
 - Law enforcement agencies are prohibited from using a system unless it has adopted a policy governing its use and operation
 - Written policy must be posted on the agency's website, if the agency has a website

BY PUBLIC RECORDS DIVISION



For the Permanent Record:

Meeting Date: 09/26/2016

Agenda Item: Workshop E2

Public Comment

Before purchase or implementation

- Law enforcement agencies must provide opportunity for public comment before it purchases or implements a portable recording system
- Minimally must accept public comments by electronically or by mail
- City council (governing body with jurisdiction over budget of law enforcement agency) must also provide have a public hearing at a regularly scheduled meeting

Before written policy adoption

- Law enforcement agencies must provide for public comment and input, minimally electronically or by mail
- Law enforcement agencies are prohibited from using a system unless it has adopted a policy governing its use and operation
- Written policy must be posted on the agency's website, if the agency has a website

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Cost

Implementation of Body Worn Camera program - (\$124,000)

- Year 2+ cost - \$97,000/year for four years thereafter

Includes:

- Purchase of 60 cameras + peripherals
- Unlimited data storage
- User licenses - all sworn personnel + Reserves/CSO
- Data management and auditing system
- Redaction technology



Maplewood: Key Policy Provisions

- When will body cameras be used?
- 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.



For the Permanent Record:

Meeting Date: 09/26/2016

Agenda Item: Workshop E2

Maplewood: Key Policy Provisions

- Will supervisors or department administrators review officer's BWC footage to ensure compliance with policy and to maintain quality control?
- 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 to BWC use shall also be reported to the chief of police.



Maplewood: Key Policy Provisions

- How long will non-evidentiary BWC footage be held before it is deleted?
- 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.



Maplewood: Key Policy Provisions

- What will happen if it is determined an officer is not in compliance with the department's body worn camera policy?
- Any member of the Maplewood Police 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.



TESTIMONY - MAPLEWOOD BODY CAMERA POLICY

Good evening. My name is Matt Ehling, and I am a board member of the Minnesota Coalition on Government Information. Thank you for the invitation to be here, and thanks in particular to Chief Schnell for arranging this forum to discuss Maplewood's body camera policy. Chief Schnell was a thoughtful participant in the two-year discussion of body camera regulation at the state legislature, and his attention to detail can be seen in the features of Maplewood's policy that is before you today.

I'd also like to acknowledge State Representative Peggy Scott who is here this evening. Representative Scott was a central player in the state-level discussion of body camera regulation, and she supported - along with several Minnesota senators, Senator Limmer in particular - a requirement that body camera policies receive a public hearing prior to adoption, which is the reason we are all here this evening.

In the interest of time, I will keep my comments brief. I've submitted written comments that cover several different data-related features of the draft body camera policy. Several of these are very positive, and should be models for other departments to follow, including provisions that govern the release of body camera data, and the logging of employee access to body camera video. These provisions help provide access to body camera data by data subjects who request it, and help with departmental audits of employee access to body camera footage, in order to check for unauthorized use. It is my hope that by adopting these provisions, Maplewood can encourage other cities to do the same.

Since Maplewood's body camera policy will take a prominent role as one of the first - if not the first - policy adopted under the state's new body camera regulations, there is one additional data-related feature we would encourage you to adopt. This relates to the question of when body cameras may be activated or deactivated. Maplewood's draft policy addresses this activation issue in general, but we would encourage the adoption of specific language regarding when cameras can be turned on or off in private homes.

Private domiciles are locations that enjoy some of the most robust protections

under American law. They are places protected against unreasonable searches or seizures under the Fourth Amendment to the United States Constitution, as well as Article I, Section 10 of the Minnesota Constitution. This legal protection governs when police officers, for instance, may enter private homes. Long-standing Supreme Court decisions state that police entry must be by the consent of an individual, or else when police have either a warrant, or when exigent circumstances exist. Exigent circumstances are emergency circumstances, such as if police are chasing a suspect into a building. A warrant, of course, is an arrest or search order produced by a judge. Without these things being present, police need consent from an individual to enter a private residence.

Since police entry into a home requires consent in many circumstances, it follows that police use of a body camera in a home also requires consent in those same circumstances.

In the course of police activities, there are many, many situations in which police enter private homes at the request of citizens. Police may be called to perform welfare checks of elderly relatives; they may accompany paramedics to respond to medical calls; they may enter homes to discuss citizen complaints or concerns. In those situations, citizens should be informed of the presence of body cameras, and they should also control whether body cameras are activated. In the absence of a warrant or exigent circumstances, it is the citizen who controls the terms of the encounter - including the decision to allow filming, or not.

We have drafted proposed language that would incorporate this change into the body camera policy, and have submitted it for your review. You'll note that our change only applies during consensual encounters inside homes, and excludes warrant service or exigent circumstances, when police would have discretion to use body cameras as needed.

If you adopt this change, but you will have good company elsewhere in the nation. For instance, Illinois state law requires police to notify citizens of body camera use in situations where they have a reasonable expectation of privacy, such as in a home. In Philadelphia, the municipal body camera policy requires officers to provide notice of recording when arriving at a domicile, and it also requires them to deactivate cameras if asked.

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For the Permanent Record:

Meeting Date: 09/26/2016

Agenda Item: Workshop E2

By adopting this kind of change, you will be striking the proper balance between citizen privacy, and police needs. Thank you for the opportunity to testify today, and I'm happy to take any questions.

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MINNESOTA COALITION ON GOVERNMENT INFORMATION (MNCOGI)

Written Testimony related to the Draft Maplewood Body-Worn Camera Policy

Matt Ehling - Chair, Legislative Issues Committee, MNCOGI

September 26, 2016

Background

MNCOGI is an all-volunteer, non-partisan, non-profit organization that focuses on government information policy issues. MNCOGI advocates for policies that foster government transparency and accountability.

MNCOGI was closely involved in the debate and discussion surrounding the body camera regulations passed by the Minnesota Legislature earlier this year.

Executive Summary

1) Maplewood's proposal to permit the release of body camera data to any person designated by a "data subject" complies with Minnesota law and serves a positive policy purpose; 2) a detailed data-labeling protocol will help to facilitate the timely retrieval and production of body camera video; 3) Maplewood's proposed documentation of employee access to body camera data is a "best practice"; 4) Maplewood's BWC policy should require notice of recording/consent to record during consensual encounters with police officers in private residences.

Data Issues

MNCOGI makes the following observations regarding Maplewood's draft BWC policy:

Access to data

Maplewood's draft policy would ensure that "private" body camera video is available to the subject of the data (the person whose image is present on a body camera recording), as well as to any other person or entity designated by the data subject. In the "Access to BWC Data" section of Maplewood's BWC policy, Part G states that:

"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."

MNCOGI notes that such language is consistent with the text of the Minnesota Government Data Practices Act (MGDPA). Minn. Stat. 13.05 Subd. 4(d) reads, in part:

MNCOGI makes the following observations regarding Maplewood's draft BWC policy:

Access to data

Maplewood's draft policy would ensure that "private" body camera video is available to the subject of the data (the person whose image is present on a body camera recording), as well as to any other person or entity designated by the data subject. In the "Access to

"Private data may be used by and disseminated to any person or entity if the individual subject or subjects of the data have given their informed consent."

Maplewood's draft BWC policy would provide for the dissemination of private data as required by law. Providing data in such a manner serves a positive policy purpose by granting citizens broad control over how to obtain and disseminate government data of which they are a subject.

Labeling of BWC data

Under Minn. Stat. 13.825, some body camera data is classified as "public" (available to anyone) while other data is classified as "private" (available only to the data subject(s) and to government actors).

In order to comply with the MGDPA, "private" body camera video must be provided to data subjects within 10 days of a request for the data. "Public" body camera data must be provided within a "reasonable" time. In either case, properly labeling body camera video will ensure that such data can be located and produced in an expeditious manner. When combined with officer, date, and name information, Maplewood's proposed labeling protocol should help to categorize and organize body camera footage for ready access. Over time, Maplewood may wish to further evaluate and refine its labeling process as it gauges whether it is able to retrieve body camera data within the time frames required by Minnesota law.

Logging employee access to BWC data

Due to past controversies over unauthorized access to private government data (including incidents involving the DNR and some local law enforcement agencies), the Minnesota Legislature has taken several steps to improve data access protocols and breach reporting requirements. For instance, in automated license plate reader (ALPR) legislation passed in 2015, the legislature required that access to ALPR data include a "data audit trail" to log "all actions in which data are entered, updated, access, shared, or disseminated."

While the body camera legislation passed earlier this year did not require such documentation, the creation of an audit log is a "best practice" to help detect patterns of unauthorized access. Maplewood's policy (see "Access to BWC Data" part F) requires departmental personnel to document "their reasons for accessing stored BWC data within the database at the time of each access." The requirement to create such documentation will help the department in its annual audit of whether unauthorized access may have occurred (see "Department Use of Data" part C). Other municipalities should include such measures to help guard against unauthorized data access.

For the Permanent Record:

Meeting Date: 09/26/2016

Agenda Item: Workshop E2

Recording/Notice Issues

Police-worn body cameras have transparency impacts (such as providing documentation of government conduct), as well as privacy impacts. The privacy impacts stem from the fact that the cameras are small, light, and can enter into situations that were generally not subject to recording prior to the advent of BWC technology.

The topic of BWC recordings in private residences was much discussed during the legislative debate over body camera regulation. Concerns were raised by legislators and members of the public alike about whether law enforcement officers should be limited in their ability to collect body camera footage inside domiciles - places that have traditionally been granted the highest level of privacy protection under the American legal system.

The legislature was unable to come to agreement on whether to regulate the use of body cameras in private domiciles. However, this issue was effectively deferred and left for review by municipal officials during the creation and approval of BWC policies. In its body camera legislation, the Minnesota Legislature required BWC policies to address "circumstances under which recording is mandatory, prohibited, or at the discretion of the officer using the system" as well as "circumstances under which a data subject must be given notice of a recording." Maplewood's policy addresses these categories in general, but does not provide specific guidance about recording in domiciles.

Maplewood's draft BWC policy could be improved by specifically addressing the question of when recording is permitted or barred in private residences, and when police need to provide notice of the use of body cameras in such circumstances.

MNCOGI has attached proposed language to modify the "General Guidelines for Recording" section of Maplewood's BWC policy. It recognizes circumstances in which officers may use body cameras in private homes on their own volition - such as during warrant service or emergency (exigent) circumstances. In all other situations inside private homes - such as during welfare checks, or when police are responding to citizen inquiries - police would need to provide notice of their use of body cameras when they arrive, and would need to deactivate the cameras upon request. Once inside, if police developed probable cause of criminal activity (such as seeing contraband in plain view) they could reactive body cameras.

Adding this language would protect citizen privacy while allowing police body camera use within traditional legal contexts (such as warrant service and exigent circumstances).

MNCOGI Proposal for amending the Maplewood Body-Worn Camera Policy

(Make the following changes to the text of the "General Guidelines for Recording" section.)

General Guidelines for Recording

A. Except as provided in part (C) (below), 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 encounters that become 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* and part (C) (below) for exceptions).

C. Except as provided in this section, 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.

During a consensual entry into a domicile, officers have an affirmative duty to disclose that a BWC is being operated, and must comply with requests to discontinue recording. A "consensual entry" is defined as officer entry into a domicile that does not involve warrant service or exigent circumstances. If probable cause develops during the course of a consensual entry, a BWC may be reactivated to capture information having evidentiary value.

Following are scenarios for consideration if an ordinance changing from odd to even year elections is approved:

- If an eligible petition is filed, the council would call a Special Election to see if the referendum changing from odd to even years passes.
- If the referendum passes the ordinance goes into effect and the next municipal election would be held in 2018.
- If the referendum fails the 2017 odd year municipal election will be conducted.
- If an eligible petition is filed, the council may reconsider its action adopting the ordinance and conduct the 2017 odd year municipal election.
- If no petition is filed the ordinance will go into effect after the adoption and 240 days after publication and the next municipal election will be held in 2018.

April 11	First reading of the ordinance
April 24	Second reading of the ordinance
May 4	Publication and start of 240 days and 180 days for petition to be filed
October 31	Deadline for petition to be filed
December 31	240th day if petition is not filed ordinance is in effect
January 4	First possible day of special election if petition is filed (56 days after a State election and at least 60 days after a petition is filed)

In order to meet all of the posting requirements and notices we would suggest February for a Special Election.



**Statement of the ACLU of Minnesota
Regarding the City of Maplewood Draft Body-Worn Cameras Policy
9/26/16**

Introduction

The ACLU of Minnesota is a nonpartisan, nonprofit organization dedicated to protecting the civil liberties of all Minnesotans under the United States and Minnesota constitutions. We have over 15,000 supporters throughout Minnesota, and promote our mission through litigation, public education and lobbying efforts.

The ACLU of Minnesota has supported the use of body cameras as a tool to reestablish public trust in the police. We believe that with good policies in place, recording of police-civilian encounters can promote police accountability, deter officer and civilian misconduct, and provide objective evidence to help resolve civilian complaints against officers without significantly infringing on privacy. At the same time, body cameras can do more harm than good if they are primarily used by the police as an evidence gathering and surveillance tool.

Minnesota's New Body Camera Law

The challenge with a body camera policy is finding a balance between the potential to invade privacy and the strong benefit in promoting police accountability. The ACLU-MN ultimately opposed the body camera bill that became law this session at the Minnesota Legislature (SF 498) because we believe it did not strike the appropriate balance between privacy and accountability.

Most significantly, the new law classifies nearly all body camera footage as private data, which will not be accessible to the broader community. This data classification undermines the value of body cameras to improve transparency and accountability. Rather than limiting public access to data subjects and incidents where an officer's use of force results in at least substantial bodily harm (an extremely high threshold), we argued that, at minimum, any recorded encounter should be classified as public if it (1) involves a use of force, (2) leads to arrest, or (3) involves an encounter about which a formal or informal complaint has been registered.

We do not support shielding large classes of body camera footage from disclosure under the pretext of protecting privacy. Allowing police to release footage when it is in their interest, but not allowing public access to those videos showing officers engaging in inappropriate and/or unlawful conduct has the potential to further erode the public trust in our peace officers.



Increased Importance of City and Department Policies

The ACLU-MN also opposed SF 498 because it focused almost exclusively on data classification and access while leaving officer use and operation of body cameras to the policy of each department. For this reason, public involvement in community listening sessions and input from city councils will be essential in holding police departments accountable.

The ACLU-MN suggests that statewide or department-based policies should be implemented based on the following standards and principles, including specific comments on the current Maplewood Draft Policy:

(1) Limiting officer discretion on when to activate and deactivate cameras:

Police should activate their body cameras at the inception of every law enforcement encounter with a member of the public, and turn them off only at the conclusion of the entire encounter. These police-civilian encounters include stops, frisks, searches, arrests, consensual interviews and searches, enforcement actions, and any encounter that becomes in any way hostile or confrontational. If police officers are given discretion over when to activate their body cameras, their value will be severely undermined.

The Maplewood Draft Policy includes a specific list of occasions when an officer is required to activate their body camera, and allows for discretionary use where the officer feels that a recording may "yield information having evidentiary value." We believe that while this list attempts to be comprehensive, it may allow for the exclusion of videos that would be rightfully captured under a policy that instructs officers to simply activate their cameras at the inception of every law enforcement encounter with a member of the public. For example, an officer may use his or her discretion to record an encounter that they believe could lead to evidence against a civilian, but would not be required to capture evidence of their own inappropriate and/or unlawful conduct.

The Draft Policy requires officers to "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." While we agree with the general requirement to wait until the conclusion of the event to deactivate the camera, it is problematic that the Draft Policy allows for officer discretion to deactivate earlier if they believe that they are unlikely to capture further evidence.

(2) Prohibition on recording generalized activity:

Police body cameras should only be used to capture specific police-citizen encounters and *not* generalized activity. Body cameras should not be used to gather intelligence information based on First Amendment protected speech, associations, or religion, or to record activity that is



unrelated to a response to a call for service or a law enforcement or investigative encounter between a law enforcement officer and a member of the public.

While the Maplewood Draft Policy does not specifically address this issue, it does give the chief or chief's designee authority to modify the policy by providing specific instructions for body camera use at events such as political rallies and demonstrations. We believe there should be a stated prohibition on recording generalized activity rather than leaving the issue to the chief, or any other officer's, discretion.

(3) Prohibition on recording in schools:

As a general policy, body cameras should not be used in elementary or secondary schools, except when responding to an imminent threat to life or health.

The Maplewood Draft Policy is silent on the issue of using a body camera to record in schools.

(4) Privacy considerations:

Body cameras have more of a potential to invade privacy than traditional video surveillance of public places. Police officers often enter individual's homes and encounter bystanders, suspects and victims in a wide variety of sometimes stressful and extreme situations. Accordingly, there should be exceptions to the recording policy for legitimate privacy concerns: A policy should contain specific sections to address: (1) giving individuals the option to discontinue recording in a private residence, and (2) providing the option to discontinue use with those who are reporting a crime, providing information about an ongoing criminal investigation, or an apparent crime victim.

The Maplewood Draft Policy addresses these issues by giving the officer discretion to deactivate their cameras in a range of circumstances. This approach leaves too much discretion and does not ensure that the officer will respect a request for deactivation under the privacy considerations listed above.

(5) Notification of recording:

Citizens must be provided with notification that the camera is recording the encounter. Without notice, citizens will not know that video of their police encounter, which may be of value to them, has been captured. Moreover, providing notice will increase the possibility that recording will deter bad behavior by both citizens and police. An officer should notify the subject(s) of the recording that they are being recorded by a body cameras as close to the inception of the encounter as is reasonably possible.

The Maplewood Draft Policy takes the opposite approach, stating that "[o]fficers have no duty to inform people that a BWC is being operated or that they are being recorded." We disagree with



this position and believe that while some officers may use their discretion to notify civilians in certain situations, this provision encourages officers to use body cameras for surreptitious surveillance over the promotion of transparency and accountability.

(6) Officer review of footage:

Officers should not be able to review or receive an accounting of body cameras footage prior to completing any required initial reports, statements, and interviews regarding the recorded event. Allowing officers to view body cameras footage before writing reports could undermine the legitimacy of their investigations. This is especially problematic when there are complaints of excessive use of force and in any officer-involved shootings.

The Maplewood Draft Policy explicitly allows for officer review prior to preparing a report, unless it is a critical incident resulting in great bodily harm or death. This issue was extremely controversial at the Legislature and similar language allowing officer review nearly led to a veto by Governor Dayton before the offending provision was removed.

(7) Disciplinary procedures for officers who violate body camera policies:

Three types of actions should be required when a police officer assigned to wear a body camera fails to record or otherwise interferes with camera video: (1) direct disciplinary action against the individual officer; (2) the adoption of rebuttable evidentiary presumptions in favor of criminal defendants who claim exculpatory evidence was not captured or destroyed; and (3) the adoption of rebuttable evidentiary presumptions on behalf of civil plaintiffs suing the government, police department and/or officers for damages based on police misconduct.

The Maplewood Draft Policy states that “[a]ny 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” (emphasis added). This language is problematic because it does not provide for any specific discipline for officers who violate the Policy.

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(8) Officer review of footage:

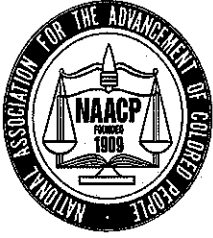
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Meeting Date: 09/26/2016

Agenda Item: Workshop E2

Remarks of Yusef Mgeni, 1st Vice President, Saint Paul NAACP and 2nd Vice President/Political Action Committee Chair, Minnesota/Dakotas Area Conference NAACP -- Regarding the City of Maplewood Draft Body-Worn Cameras Policy 9/26/16

I am here today speaking on behalf of the MN/Dakota Area Conference of the NAACP; the Saint Paul Chapter of the NAACP; the African American Leadership Council of Saint Paul; and the Saint Paul Interdenominational Black Ministerial Alliance.

Many recent incidents of law enforcement misconduct and of officer-involved killings of unarmed young men of color across our nation that would have gone unnoticed had they not been caught on cell phones, have created what Vice President Joe Biden calls a breach of trust between law enforcement and communities of color in America. It is out of this breach that community members—not law enforcement—have called for officer-worn body cameras and mutually beneficial legislative policies concerning their use and deployment.

Mobile cameras operated by law enforcement could play a valuable role in the present and future of policing. Whether they are worn by an officer or mounted on police equipment, cameras could help provide accountability, transparency and greater public trust in law enforcement practices, by providing first-hand evidence of public interactions. However, I implore you to ask—and answer honestly—the all-important question: "Who are the intended beneficiaries? The law enforcement community? (as intended by Rep Cornish and Sen Lätz in the legislative process) The public—who law enforcement personnel are sworn to serve and protect? Why not a mutually beneficial policy that is good for the citizenry and law enforcement?"

If a mutually beneficial Body Worn Camera Policy is your objective, the NAACP offers the following recommendations for your consideration:

Mobile cameras operated by law enforcement could play a valuable role in the present and future of policing. Whether they are worn by an officer or mounted on police equipment, cameras could help provide accountability, transparency and greater public trust in law enforcement practices, by providing first-hand evidence of public interactions. However, I implore you to ask—and answer honestly—the all-important question: "Who are the intended beneficiaries? The law enforcement community? (as intended by Rep Cornish and Sen Lätz in the legislative process) The public—who law enforcement personnel are sworn to serve and protect? Why not a mutually beneficial policy that is good for the citizenry and law enforcement?"

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For the Permanent Record:

Meeting Date: 09/26/2016

Agenda Item: Workshop E2

- With body cameras, officers will have far greater visibility in heavily policed, low-income and rental areas in Maplewood—than in other affluent parts of your community where cameras will be rare. This policy when implemented must ensure that you do not unintentionally amplify any existing (real or perceived) disparities in law enforcement practices within Maplewood.
- You must commit to a set of narrow and well-defined purposes for which cameras and their footage may be used. In particular, facial recognition and other biometric technologies must be carefully limited.
- Although Chief Schnell testified in the legislature that officers be allowed to have full and prior review of body-worn camera audio and video, we would strongly recommend—as the MN Bureau of Criminal Apprehension (BCA) did—that you must fully preserve the independent evidentiary value of officer reports by prohibiting officers from viewing footage before making an initial statement or prior to filing their reports. Because any audio or video footage of an event presents a partial—and sometimes misleading—perspective of how events unfolded. Pre-report viewing is not only preferential treatment of law enforcement officers, but could cause an officer to conform the written statement or recorded report to what the video appears to show, rather than what the officer(s) motivation was or what they actually thought, saw or did. Further, if law enforcement personnel are competent and adequately trained, their initial statement or report should bear no less weight or accuracy than those they have been filing without the benefit of body-worn cameras. Law enforcement personnel should also be able to review the footage/data when legally required and to amend their earlier reports or statements should it become necessary and permissible in the future.
- With regard to the retention of BWC audio and video footage (data), your storage contract allows for unlimited data storage, so there is no financial burden on the City of Maplewood for keeping such data for a period of 1 year—which is the statutory time limit in Minnesota for

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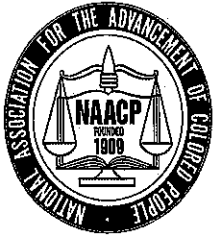
Meeting Date: 09/26/2016

Agenda Item: Workshop E2

citizens to file a Human Rights complaint. In fact, there is a financial benefit associated with keeping the footage for a year: Citizens who realize that there is a video/audio recording of their encounter with law enforcement, rarely if ever file a complaint, pursue charges or file a costly lawsuit when the evidence is likely to support the actions of law enforcement in the encounter.

- Finally, we are in full concurrence with MNCOGI regarding their comments and suggested language regarding recording without consent in private residences. As they pointed out in their testimony, "Maplewood's draft BWC policy could be improved by specifically addressing the question of when recording is permitted or barred in private residences, and when police need to provide notice of the use of body cameras in such circumstances. . . and recognizing when they may use recording devices in private homes on their own volition."

I would be happy to respond to any questions, clarification or concerns regarding my testimony. Thank you for the invitation to participate in this important public dialogue.



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Meeting Date: 09/26/2016

Agenda Item: Workshop E2

“Civil Rights Principles on Body Worn Cameras”

Mobile cameras operated by law enforcement may play a valuable role in the present and future of policing. Whether they're worn by an officer or mounted on police equipment, cameras could help provide transparency into law enforcement practices, by providing first-hand evidence of public interactions.

But police-operated cameras are no substitute for broader reforms of policing practices. In fact, cameras could be used to intensify disproportionate surveillance and enforcement in heavily policed communities of color. Without carefully crafted policy safeguards in place, there is a real risk that these new devices could become instruments of injustice, rather than tools for accountability.

To help ensure that police-operated cameras are used to enhance civil rights, departments must:

1. Develop camera policies in public with the input of civil rights advocates and the local community. Current policies must always be publicly available, and any policy changes must also be made in consultation with the community.
2. Commit to a set of narrow and well-defined purposes for which cameras and their footage may be used. In particular, facial recognition and other biometric technologies must be carefully limited: if they are used together with body cameras, officers will have far greater visibility into heavily policed communities—where cameras will be abundant—than into other communities where cameras will be rare. Such technologies could amplify existing disparities in law enforcement practices across communities.
3. Specify clear operational policies for recording, retention of tapes (of at least one year) and access, and enforce strict disciplinary protocols for policy violations. While some types of law enforcement interactions (e.g., when attending to victims of domestic violence) may happen off-camera, the vast majority of interactions with the public—including all that involve the use of force—should be captured on video. Departments must also adopt systems to monitor and audit access to recorded footage, and secure footage against unauthorized access and tampering.
4. Make footage available to promote accountability with appropriate privacy safeguards in place. At a minimum: (1) footage that captures police use of force should be made available to the public and press upon request, and (2) upon request, footage should be made available in a timely manner to any filmed subject seeking to file a complaint, to criminal defendants, and to the next-of-kin of anyone whose death is

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For the Permanent Record:

Meeting Date: 09/26/2016

Agenda Item: Workshop E2

related to the events captured on video. Departments must consider individual privacy concerns before making footage available to broad audiences and consider footage/audio of victims private in all instances.

5. Preserve the independent evidentiary value of officer reports by prohibiting officers from viewing footage before filing their reports. Footage of an event presents a partial—and sometimes misleading—perspective of how events unfolded. Pre-report viewing is not only preferential treatment of law enforcement officers, but could cause an officer to conform the written or recorded report to what the video appears to show, rather than what the officer(s) motivation was or what they actually saw or did.

Signed by:

Saint Paul Chapter NAACP; NAACP Minnesota/Dakotas Area Conference; Saint Paul African American Leadership Council; Saint Paul Interdenominational Black Ministerial Alliance; National NAACP; NAACP Legal Defense and Educational Fund, Inc.; American Civil Liberties Union; Asian Americans Advancing Justice | AAJC; Asian Americans Advancing Justice | Asian Law Caucus; Asian Americans Advancing Justice | Los Angeles; Asian Americans Advancing Justice | Chicago; Center for Democracy and Technology; Center for Media Justice; ColorOfChange.org; Data & Society; Demand Progress; Demos Electronic Frontier Foundation; Free Press; Hip Hop Caucus; The Lawyers' Committee for Civil Rights Under Law; The Leadership Conference on Civil and Human Rights; Martinez Street Women's Center; May First/People Link; Media Alliance; Media Literacy Project; Media Mobilizing Project; Million Hoodies Movement for Justice; National Association of Social Workers; National Council of La Raza; National Hispanic Media Coalition; National Urban League; New America's Open Technology Institute; Public Knowledge; Southwest Workers' Union; Urbana-Champaign Independent Media Center; Voices for Racial Justice; Working Narratives; Alvaro Bedoya, Executive Director, Center on Privacy and Technology at Georgetown Law* * Affiliation for Identification Purposes Only
<http://www.civilrights.org/press/2015/body-camera-principles.html>

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