

**From:** [regrets-00.remakes@icloud.com](mailto:regrets-00.remakes@icloud.com)  
**To:** [Council Clerk – Testimony](#)  
**Subject:** Agenda 335  
**Date:** Wednesday, April 26, 2023 12:07:32 AM

---

YES to police cams!

**From:** [Portland Copwatch](#)  
**To:** [Wheeler, Mayor](#); [Commissioner Ryan Office](#); [Commissioner Rubio](#); [Commissioner Mapps](#); [Commissioner Gonzalez Office](#)  
**Cc:** [Council Clerk – Testimony](#)  
**Subject:** TESTIMONY on Body Worn Cameras policy (item 335)  
**Date:** Tuesday, April 25, 2023 4:37:02 PM  
**Attachments:** [pcw\\_bodycam\\_directive0323.pdf](#)

---

Below is Portland Copwatch's testimony for Council item 335. We have also attached the comments we made on the Bureau's proposed directives on March 30.

-----

#### Mayor Wheeler and Commissioners

Portland Copwatch applauds the City and Police Associations coming to an agreement about body cameras without going into arbitration. We're also generally optimistic that the police seem to have agreed that getting an officer's initial statement before they watch the footage is crucial to meet the constitutional standards laid out in *Graham v. Connor*: no 20/20 hindsight.

We're deeply concerned about potential loopholes which could make the new policy irrelevant, have questions about the substance of the policy around lower-level force, and are extremely disappointed in the process.

While it is true the involved officer won't be able to look at their own body camera footage before the interview, investigators won't be able to look at it either. Perhaps this is to prevent investigators from asking biased or leading questions. However, we understand that investigators usually talk to everyone but the involved officer first anyway.

The letter of agreement goes out of its way to assure officers they won't be disciplined if their statement doesn't match what's on the recording, because the City would have to prove they were lying as opposed to just mis-remembering. From a community standpoint perhaps if the footage reveals an officer violated policy, whether they lied about it is less important than the force violation. So maybe we can live with this.

We have heard speculation the officer might be able to look at \_witness\_ officer footage before giving their statement, but Section 11.2.2.2 says involved members "shall only view BWC recordings as provided for in this section." Regardless, this policy only addresses body worn cameras and there was a case in recent years where third party footage was shared with every officer on the Bureau during the investigation. Even if it's not directly related to body worn cameras, this policy should make clear the officer should not look at \_any\_ recordings before making their statement.

We are glad the Directive's restriction on pre-reviewing footage also applies to "Category II" force, which means force which leads to serious injury but not death. However, for levels III and IV– non-serious injury and no injury uses of force, supervisors are supposed to get a statement that's NOT recorded, but if they discover the force was

actually more serious they DO have to record it. Does this means Axon has added a time machine to their body cameras that allow the supervisor to start recording 2, 5, 10 or more minutes in the past? We know there's a pre-roll recording but that only lasts 30 seconds before the record button is pushed. This was a poorly written part of the policy. If a community member put their hands on someone, pointed a gun at someone, gently guided them to the sidewalk with a "control hold" or anything else considered category III or IV force, they could be charged with a crime from harassment to assault. Thus, the no pre-review needs to apply to all uses of force.

We appreciate that the DOJ has reserved their right to disapprove of the policy if it isn't working out in the 60 day test period. Excuse our language here but we hope to H-E-Double-Toothpicks there is not another officer involved shooting in the next sixty days to truly test the policy. So maybe it should last longer.

We're also very concerned that the City's efforts to carve out a small exception to the State's anti-spying law in SB 614, which has now passed the Senate but now the House, has made the law moot when officers use body cams.

-----

Regarding the process, PCW has been concerned all along that the negotiations with the Portland Police Association over a piece of equipment which can be used for surveillance and prosecution of community members have excluded the public.

Body Worn Cameras affect officers' working conditions in that they should be able to have private conversations with loved ones and use the restroom without being recorded. Those concepts are covered in this policy and are reasonable (assuming they're not abused to avoid recording actual police work). The rest of the policy should be up to our elected leadership and should follow the demands of the community.

The Bureau's procedure for taking public input on policies has been, for nine years, to put out a first draft for review, take that input, then put out a second draft. This policy, however, came with a warning that due to legal issues the public only had one chance to weigh in. Even worse, the PPB's automatic email system for Directives stopped working in January and we didn't find the posting until March 25, over three weeks into the review period and less than a week before comments were due.

PPB said there was a lot of previous public input into the policy. That's true, but none of it addressed the actual draft being proposed. For the section about pre-review you are considering today, this is the first time the public has had a chance to see it and make comments.

Not surprisingly, the Bureau made few tweaks to the policy which was posted in March, but didn't really address most of the substantive issues we raised in our three-page analysis.

What's good? They removed the term "muscle memory" about officers using the cameras in training and replaced it with "proficiency." There's now a clause allowing the Commissioner in Charge or Chief to release camera

footage before a grand jury is concluded in the public interest. We assume that won't happen before the officer makes their statement. The new policy requires officers to make on-scene statements, where those have been optional even though listed as a remedy in the DOJ Agreement. The policy makes it a little more clear not to record community members when there's no suspicion of criminal conduct by adding certain events "at which no law enforcement action is anticipated" to the exceptions list. It's also been changed so officers who deliberately violate the policy can be held accountable not only in their first 60 days but at any time.

But here are some of the outstanding issues Council should consider before finalizing this policy:

- 1) To protect the integrity of the criminal investigation, homicide detectives are not allowed to review interviews by administrative investigators involving compelled testimony. It should be made clear how that will be achieved.
- 2) The broad policy goals and other aspects of the Directive emphasize the use of footage for prosecuting community members. This should not be listed or prioritized if the body cameras are, as promised, accountability tools.
- 3) The Directive indicates there may be times it is appropriate for officers to record attorney-client conversations, but gives no example why that would be allowed... or legal.
- 4) It is extremely unclear why the Public Safety Division gets to decide whether or not footage which may or may not have been accidentally recorded can be deleted.

We want to leave you with this one, because it's really important:

- 5) The general policy contemplates that administrative investigators might not be from Internal affairs in the language of Section 11.5. But the new language explicitly names Internal Affairs over and over. This could hamper the ability of the Independent Police Review or the new oversight board conducting investigations.

Thank you for your time.

dan handelman and Marc Poris  
portland copwatch



## COMMENTS ON BODY WORN CAMERAS DIRECTIVE, MARCH 2023

To Chief Lovell, Inspector Buckley, Lieutenant Morgan, PPB Policy Analysts, Compliance Officer/Community Liaison Team, Portland Committee on Community Engaged Policing, Mayor/Police Commissioner Wheeler, US Dept. of Justice, Citizen Review Committee, Training Advisory Council and the Portland Police Bureau:

Below are Portland Copwatch's preliminary comments on the Body Worn Camera (BWC) Directive posted for review at <http://www.portland.gov/police/directives-overview>. We may comment on the three other Directives posted without advance notice separately, but it is with some urgency we send these comments to you:

- 1) Though Portland Copwatch is on an email list to get alerts when policies are posted, no such email was sent on March 1 when the BWC policy was placed online. In fact, the last email generated about Directives was on January 18 this year.
- 2) Though the PPB's process explicitly calls for posting a draft Directive, receiving feedback, then posting a second version for review, a highly unusual (and a little rude) cover sheet on this policy says that PPB has taken plenty of public input and there will be no second review. That doesn't account for the fact that this is the first time people have actually seen the PPB's proposed policy!
- 3) The cover sheet also warns that the policy has already been negotiated with the Police "Union,"\*-1 further explaining the shortcutting of the process. However, it's our understanding that those negotiations usually come after the public review of policies. In other words, \_\_\_\_in essence, the public has for the most part been cut out of the development process for this one particular Directive\_\_\_\_.

Rather than try to speak for broader swaths of the community whose input the PPB posted online, including the report from the Compliance Officer showing responses to a survey on body cams, in the interest of our now very limited time, PCW will mostly focus on the comments we made in 2015 regarding these potential surveillance tools.

Once again, PCW suggests that numbers or letters to be added to the Definitions, Policy and Procedure sections to make them easier to cite.

### DIRECTIVE 620.00 BODY-WORN CAMERA USE AND MANAGEMENT

Starting at the Basics: Our recommendation #14 is that "footage should primarily be used to hold police accountable for officer misconduct/criminal activity and, when the subject has given a release, to improve training and policy." Recommendation #15 is not to use the footage to prosecute people for innocuous criminal activity. The Policy section lays out that the PPB is only vaguely interested accountability as an issue. Policy Section 2 vaguely lists "collecting evidence and building and maintaining public trust," while Section 3 spells out the priorities: "Enhancing the accuracy of officer reports and testimony, gathering evidence for investigative and prosecutorial purpose, providing additional information for officer evaluation and training, and [LAST ITEM] conducting fair and thorough professional standards reviews in resolving complaints." So it's clear where the priorities lie. Also, there are provisions to share the footage with prosecutors (Procedure 13.1) but not complainants/ defendants/ defense or civil rights attorneys.

--The second part of our recommendation, about gaining permission from a subject for the video to be used for training, seems to have been applied only to police officers in Procedure Section 11.4.3. There is no contemplation of the community members' authorization.

Fourth Amendment/Oregon Anti-Spying Law: Portland Copwatch recommendation #7 affirms that state law requires officers to turn on the cameras when there is reasonable suspicion of criminal activity. We asked that there be no loopholes to turn the cameras off, but for the PPB to address privacy rights of crime victims. In Recommendation #12, we reminded the PPB that lawful activity (social, religious and political affiliation) are protected from being recorded by ORS 181A.250. Policy Section 3 implies all contacts will be recorded ("documentation of police-public contacts, encounters,\*-2 arrests and critical incidents"). Procedure Section 3 similarly asks that officers announce that recording is happening "when contacting a person." In Procedure 4.2 there is further clarification that if the cameras are not already on, officers must start recording when "self-dispatching" to a call, conducting traffic/pedestrian stops, conducting searches, for certain criminal interviews of minors, and when there is "reasonable suspicion or probable cause to believe that a crime or violation has occurred, is occurring, or will occur." That said, PCW also suggested that cameras be turned on when officers are trying to gather information, even when there is no reasonable suspicion of a crime (Recommendation #8), to avoid the PPB's habit of claiming they are engaging in "mere conversation" when they are really interrogating people.



--Exceptions listed in Procedure Section 6 include for officer privacy, when interviewing victims (survivors?) of sexual assault, trafficking or child abuse (unless the person asks to be recorded), when legally protected conversations are taking place, when officers are undercover, when officers deliver notification of a person's death, and inside mental health facilities, courthouses, and certain areas of police facilities.

---It's not clear why there's an exception allowing officers to record attorney-client privileged conversation if "activation is required under this directive" (6.1.2.1.4).

Holding Cops Accountable for Failure to Record: PCW's Recommendation #9 was that "there be increasing, structured disciplinary measures" depending whether officers fail to record interactions at all, turn the cameras off in the middle of a contact, or commit other violations. The only mention of discipline (that we can find) refers to officers who intentionally violate the policy during the first 60 days of using body cameras while they gain "muscle memory" to turn them on (Section 1.8.1).

Pre-Review Already Decided?: Procedure Section 8.3 calls for officers to upload footage after a non-deadly force incident before the end of the shift, but doesn't prohibit them from looking at the footage before writing their report. Does this mean the issue of pre-review for non-deadly force has already been decided? PCW stands by its Recommendation #10 that officers should not review footage before writing reports.

Your Rights and the Police: As noted above, officers must tell people that they are recording (Procedure 3.1). However, there is no mention of delivering further information to community members about their rights to remain silent, not to make incriminating statements or to walk away if they are not being detained (Recommendation #11). Since the PPB just spent several years creating a process to inform people of their right to refuse a search, it would seem prudent to do this for people whose statements "can and will be used against them in a court of law."

Record Now, Redact Later: The Directive allows officers to mute their cameras for "sensitive tactical discussions" which might create safety concerns if released (Procedure 6.2). It seems this is an invitation to help officers cover up making inappropriate decisions or comments. A better plan would be to allow an independent party to review the unmuted recording and redact any actual sensitive information later, rather than risk failing to record misconduct.

Fair Enough: Recommendation #13 from Portland Copwatch echoed state law that body camera footage not be used with facial recognition software; this is acknowledged in Procedure Section 9.1.

Close Enough?: PCW recommended that a third party who is not the manufacturer or the Police be the owner of the footage (#4). The Directive states that the footage belongs to the City, leaving open the possibility that other Portland agencies could run the program in the future, though the video will be stored with a "third-party vendor"\*-3 (Procedure 13.5).

Didn't Comment Because... How Would We Have Known?: The following concepts all cropped up in this draft Directive and they are not things PCW commented on before because, frankly, why would we have known these would be addressed?

--Re-enactments... Don't Try This at Home: One item prohibited by the Directive is that officers cannot "re-enact" scenarios if the cameras were not on at the time of the actual incident (Procedure 9.3). One wonders how this came up in conversation. Maybe it's a result of how many times the PPB was featured on the show "Cops."

---Haven't the Remotest Idea: Procedure 9.4 prohibits offices from remotely activating other members' cameras. First of all, this contradicts the premise that certain automatic activations will occur if officers are within 30 feet of each other (Procedure 4.1.2). Second of all, it would seem that supervisors who are trying to monitor certain police activity from a safe distance, rather than becoming ensnared in the tactical operation (as has been hammered home by the OIR Group for many years) might need to remotely activate cameras if officers are unable (or unwilling) to do so. At the US Dept. of Justice court hearing on February 28, the Police Association implied that they were hoping to, in short, get supervisors to stop sitting on their butts while the line officers are in harm's way. That does not seem to be a good idea, even if it does seem more equitable, as it could leave the patrol officers without backup if supervisors are required to be enmeshed in the action.

--This Provision is (Not) "The Bomb": For some reason officers are supposed to deactivate the cameras if there's a potential explosive device on scene (Procedure 7.1.2). If the concern is that the wireless signal might trigger the explosive, it's not clear that turning off the camera will solve that problem.



---Auto-link Reassurance: The automatic activation will apparently be tied to officers drawing their firearms or Tasers (Procedure 2.1.2), which in theory fits PCW's criteria because officers should not be unholstering the weapons without reasonable suspicion of criminal activity. They will also go on when officers turn on the flashing lights on the police car (4.1.1.1).

--Helpful Hint: PCW appreciates that Policy Section 4 warns that body cameras do not necessarily show the entire truth. While this paragraph could be interpreted to be saying "don't rush to judgment about it looking like the officers had no reason to kill this person," it also should act as a reminder that investigators are not seeing the face or body language of the cop behind the camera.

--Other Privacy Issues: The Directive does allow for recording inside of hospitals if there is a crime in progress, but rightfully reminds officers only to record people involved in the incident and not during medical procedures (Procedure 6.1.2.1.2)

--Flirting with Disaster: Homicide Detectives must be walled off from Internal Affairs interviews of officers when their testimony is compelled, or else risk tainting the criminal investigation. It's not clear how the Detectives are going to be prohibited from reviewing footage of those interviews as stated in Procedure 11.6.3.

--Who Died and Left You In Charge?: While PCW is encouraged by the idea of an entity outside the Police Bureau being involved in review and decision-making about BWC footage, it was a surprise to read that the Director of the Community Safety Division can approve of accidental recordings being deleted (Procedure 12.2).

---Back to the Future: Along those lines, the Directive is wisely written vaguely enough to incorporate the concept that investigators from the Independent Police Review or the new oversight system being designed can review BWC footage, with the Administrative Investigator Review section (Procedure 11.5) not specifying the Bureau as the investigators.

--Limit or Minimum?: In court, it sounded as if the Police Association felt the policy would limit supervisors to reviewing only three incidents when conducting performance evaluations. PCW agrees with those who think that is too limiting. The language of Procedure 11.3.2.1 is that the supervisors "shall review three BWC events," where two of the three could be force incidents they reviewed for investigative purposes. There is nothing raising the point that some officers use force more than twice a year, nor does it prohibit supervisors from reviewing more footage. PCW encourages the Bureau to leave the language as-is without setting a cap.

---Moreover, the three incidents being reviewed are supposed to be randomly chosen by the manufacturer's software,\*4 rather than the supervisor using their knowledge of the officer's activities to review specific incidents.

-----

## CONCLUSION

This policy has been brewing since at least 2016, and the PPB acknowledges there is a lot of community interest in it. There is no reasonable argument to be made that the specific language the community is seeing for the first time with this draft should be treated any differently than all other Directives. Therefore, we urge the Bureau to follow its own rules and put out a redline version of this Directive for Second Universal review. Perhaps that will give our group or others time to apply the analysis we did for our own comments to all of the comments received over these seven years.

--dan handelman and other members of  
--Portland Copwatch

\*1- The Portland Police Association should not be called a "union" as they are not part of a broad labor solidarity group like AFL-CIO and are the people called upon to break up strikes by working class folks who don't carry guns for a living.

\*2- we can't help but notice the word "encounter" is used by the City to describe police violence that leads to lawsuit settlements approved by City Council.

\*3- likely Axon, formerly Taser, International, which is named as the manufacturer of choice in Procedure 4.1.2 and 11.3.

\*4- PCW believes the manufacturer's name should not be included in the Directive in case the PPB decides to use another vendor.

**From:** [Kala Franklin](#)  
**To:** [Council Clerk – Testimony](#)  
**Subject:** Written Testimony for Agenda Item 335  
**Date:** Tuesday, April 25, 2023 4:49:41 PM

---

Hello !

I wanted to submit written testimony:

Dear City Council Members,

I am writing to you in regards to the Body Worn Cameras proposal that has been submitted for approval.

I hope that members of the Council will vote yes.

Body Worn Cameras are a modern tool used across various agencies in the United States. The public deserves to have officers equipped with Body Worn Cameras- the implementation of such technology will ensure better practices for overall public safety.

Thank you for taking the time to read my public testimony.

Sincerely,  
Kala Franklin



**From:** [Erica Gustavson](#)  
**To:** [Council Clerk – Testimony](#)  
**Subject:** Body camera testimony  
**Date:** Tuesday, April 25, 2023 7:47:48 PM

---

Dear Commisioners,

I am so disheartened that the right for a police officer to view their own video footage, a right given in almost every state, is being disputed in our city. We need our police officers desperately, yet we continue to be hostile and unwelcoming and this is only one more example. Police Officers deal with continuous fight or flight situations, they cannot be expected to remember every detail and should have the right to view footage to help aid their memory. The footage cannot be changed or altered, so where does the problem lie? If anything it only serves to make their recall more compelling as one cannot rely on memory alone, we are not robots. I find it deeply offensive this is ebeb being debated. The right to view video footage should be a given, and protects both the officer and the suspect. Thank you, Erica Gustavson

**From:** [Tom Fawell](#)  
**To:** [Council Clerk – Testimony](#)  
**Subject:** I support the body camera proposal  
**Date:** Wednesday, April 26, 2023 5:01:43 AM

---

Dear City Council:

I support the negotiated common sense police body camera proposal. Let's stop the police hate in Portland and get this done. Vote yes.

Sincerely,  
Thomas Fawell  
Portland, OR

**From:** [Jacquie Walton](#)  
**To:** [Council Clerk – Testimony](#)  
**Subject:** Please vote yes on Body Worn Camera Agenda Item 4/26  
**Date:** Wednesday, April 26, 2023 5:53:20 AM

---

The proposal for the body worn camera pilot program, which includes caveats for use of force incidents, is reasonable. Please vote yes to approve this pilot program.

Thanks,  
Jacquie Walton  
5034 NE Rodney Avenue

Sent from my iPad



**From:** [Corinne Frechette](#)  
**To:** [Council Clerk – Testimony](#)  
**Subject:** Body Worn Camera Agenda Item 4/26  
**Date:** Wednesday, April 26, 2023 6:12:05 AM

---

Greetings,

The current proposal for the body worn camera pilot program that includes caveats for use of force incidents sounds reasonable to me compared to programs in other cities, including those under DOJ administration or rulings. It aligns with other jurisdictions in Multnomah County as to not be confusing to jurors, prosecutors, judges, etc. when trying cases from all over the county in Multnomah County court system. Thank you for voting yes to approve this pilot program as currently written and agreed upon by all parties involved.

Thank you,

Corinne Frechette

**From:** [Brian Owendoff](#)  
**To:** [Council Clerk – Testimony](#)  
**Subject:** Support of body-worn cameras by PPB  
**Date:** Wednesday, April 26, 2023 6:12:34 AM

---

I have lived in Portland and worked downtown since 2008. I am writing in SUPPORT of the police body cams.

The current proposal for the body worn camera pilot program that includes caveats for use of force incidents sounds reasonable to me compared to programs in other cities, including those under DOJ administration or rulings. It aligns with other jurisdictions in Multnomah County as to not be confusing to jurors, prosecutors, judges, etc. when trying cases from all over the county in Multnomah County court system.

Thank you for voting yes to approve this pilot program as currently written and agreed upon by all parties involved.

Sincerely,

Brian M. Owendoff  
CEO & Principal  
BMO Commercial Real Estate L.L.C  
1925 NW Norfolk Court  
Portland, OR 97229  
[brian@bmocre.com](mailto:brian@bmocre.com)  
(503) 201-9590

Sent from my iPhone

**From:** [Donna Anderson](#)  
**To:** [Council Clerk – Testimony](#)  
**Subject:** Body Worn Camera Agenda Item 4/26  
**Date:** Wednesday, April 26, 2023 6:46:08 AM

---

By

Greetings,

The current proposal for the body worn camera pilot program that includes caveats for use of force incidents sounds reasonable to me compared to programs in other cities, including those under DOJ administration or rulings. It aligns with other jurisdictions in Multnomah County as to not be confusing to jurors, prosecutors, judges, etc. when trying cases from all over the county in Multnomah County court system. Thank you for voting yes to approve this pilot program as currently written and agreed upon by all parties involved.

Thank you,

Sent from my iPhone



**From:** [Angela Todd](#)  
**To:** [Council Clerk – Testimony](#)  
**Subject:** Body cameras  
**Date:** Wednesday, April 26, 2023 7:55:11 AM

---

I am messaging to show my support for body cameras for our police. It is a good move for Portland.

Sent from my iPhone... Please don't hold spelling and grammatical errors against me.

**From:** [jamespdx99](#)  
**To:** [Council Clerk – Testimony](#)  
**Cc:** [kristiokristi@gmail.com](mailto:kristiokristi@gmail.com)  
**Subject:** APPRoVE THE USE OF BODY CAMERAS in PDx and associated jurisdictions.  
**Date:** Wednesday, April 26, 2023 8:12:13 AM

---

Approve the use of body cameras in portland. It will only expose truth of circumstances and corrupt police.

What other protections does our city offer to protect the integrity of our police and public from active undermining of their authority...? We certainly don't rush to prosecute the crime that does.

It removes the incorrect and false testimonies criminal actors and agendas.

James Johnson  
503-278-2506

Sent from my Verizon, Samsung Galaxy smartphone

**From:** [Jason Renaud](#)  
**To:** [Wheeler, Mayor](#); [Commissioner Mapps](#); [Rubio, Carmen](#); [Gonzalez, Rene](#); [Ryan, Dan](#)  
**Cc:** [Council Clerk](#); [Council Clerk – Testimony](#); [Lee, Bobby](#); [Schoene, Jillian](#); [Jones, Darion](#); [Commissioner Gonzalez](#)  
**Subject:** Letter from the Mental Health Alliance - re item 335 for April 26  
**Date:** Wednesday, April 26, 2023 8:22:08 AM  
**Attachments:** [Letter from Mental Health Alliance - re item 335 for April 26.pdf](#)

---

Members of Portland City Council.

Since the idea of police officers using body-worn cameras was introduced by the City in 2018, the Mental Health Alliance has asked there be a policy in place to guide both purchase and implementation, and the policy be informed by community engagement. Members of the Alliance appreciate the city providing the proposed preliminary body-worn camera policy negotiated with the Portland Police Association, as well as the [Department of Justice's preliminary approval of the policy](#). We thank the parties for their work to find a compromise solution that avoids further delays.

But this is a first draft - not a completed document. More the result of a tedious labor negotiation than durable policy. It focuses on one aspect of a policy; how police officers may view camera footage after hurting someone, and other mechanisms to protect officers from exposure and public accountability. Protecting officers from unwarranted exposure is a vital, worthy goal and pre-report viewing has been a sticking point. But fairness to officers is just one goal among many.

**Our request is that your decision on this agenda item be postponed.**

A complete body-worn camera policy for Portland should promote many other benefits, including verification of police reports and data, improvement of the tens of thousands of contacts that occur for every lethal use of force, support of police supervision and training, education of citizens about the real challenges that police face and the good work they do, support for existing and planned police review mechanisms, and transparency through independent research and journalism.

The City is about to start collecting hundreds of thousands of hours of video every year. But it has written a policy that worries mostly about just tens of hours of this vast resource. The police union is just one of many organizations and voices who have legitimate stakes in body-worn camera policy and ideas to contribute. The City's policy-making job is not completed if only the police union is consulted and satisfied.

With respect to the accountability aspects that the current policy does address, as [we have made clear](#) elsewhere, the Mental Health Alliance opposes ANY pre-review of body camera footage of use of force incidents by officers before writing their reports. This is the best practice to ensure reports of use of force are based on examination of the reasonableness



of the use of force at the time the force was used, as required by *Graham v. Connor*, rather than an effort by the officer to fit their narrative to evidence reviewed after the fact.

Because the policy agreed upon by the City and the Portland Police Association diverges from this core value of police accountability, we cannot support it. However, in light of the fact the Department of Justice agreed to the policy pending the outcome of the City's 60-day test, and in the interest of being constructive partners to the Court and the Department of Justice, here are specific questions and concerns we hope the Department of Justice considers when analyzing the effectiveness of the new policy in remedying the City's long-time noncompliance with the settlement agreement.

1. There are scant details as to how the Bureau, the City, or the Department of Justice will judge the effectiveness of the new body-worn cameras policies after the 60 day test. What will happen after 60 days? Will there be a pause to evaluate the test? Or will cameras continue to be used without any real evaluation or community input? What data will be collected, and what key performance measures will be evaluated? Will there be an opportunity for public feedback as to the effectiveness of the policies? Will there be any mechanism for extending the test period if any of the parties determine that sixty days has been insufficient to make a determination regarding the effectiveness of the new policies? By what measure will this test be determined a success - or failure? Who will be the judge of these factors? These are all questions that we think it would be appropriate for this Council to ask and the city attorneys and have answered prior to accepting this proposal.
2. Per this agreement, the most serious category of force usage has the least clear guidance for officers who are witnesses to it. Under 11.2.1.1 after a sub-lethal Category II force incident, involved and witness officers are required to provide an account to their supervisors which is recorded on body-worn cameras. However, under 11.2.2.1, an officer who is witness to a lethal Category I use of force event is not required to provide a verbal statement OR write a report before reviewing their body camera footage. This can be overruled by the officer's supervisor, although there is no guidance provided in the agreement as to what criteria the supervisor should use to evaluate the decision whether or not to compel such a statement. There is also no guidance provided in the agreement as to whether or not such a statement will be recorded.
3. Many of these policies rely upon police supervisors to make determinations regarding the level of force used and to make judgment calls regarding the necessity for a recorded statement to be taken. If it later turns out a supervisor has made an incorrect determination as to what level of force occurred and whether a recorded statement was required, there will be no way to "un-ring

the bell” and go back to record the officer’s statement; any record of their objective judgment of the necessity for force will simply be lost for investigative purposes.

Both the Department of Justice and the Compliance Officer/Community Liaison have repeatedly found the City of Portland out of compliance with the settlement agreement specifically due to the failure of supervisors within the Bureau to understand and enforce directives around use of force (see paragraphs 70, 73, 84, 116, 129, 169). Leaving supervisors whose work has repeatedly been found inadequate with complete, unreviewed discretion over when officers are and are not required to make recorded statements following a use of force is unlikely to be effective.

4.

There seems to have been little to no effort by the City or the Department of Justice to involve the actual people of Portland or their various partner organizations in the drafting or approval of this policy. As written, it runs directly contrary to the recommendations of the Compliance Officer/Community Liaison, the Albina Ministerial Alliance, and the Mental Health Alliance (and the Department of Justice itself), as well as the overwhelming consensus of the feedback received by the city in public meetings.

Additionally, the Portland Police Accountability Commission, which is currently tasked with designing the settlement-mandated civilian oversight system which will ultimately make disciplinary decisions involving alleged officer misconduct, was not consulted at any stage of this discussion as to how the new body-worn camera policy would fit into the system that they are designing. Other councils organized by the city to inform the police bureau about community concerns, such as the Training Advisory Council, the Portland Committee on Community-Engaged Policing, the Focused Intervention Team Community Oversight Group, the Behavioral Health Unit Advisory Committee, or the Police Bureauwide Advisory Committee, also were not consulted.

We could continue the list, and others will, so **our suggestion is that this proposal not proceed today or until these and other questions are fully answered.**

It is our hope the Department of Justice will keep a close and critical eye on their roll-out, and that with further input from Judge Simon, the department, the amici, and the community, we can move towards a durable body-worn camera policy that legitimately improves public safety and trust.

Sincerely,

## Members of the Mental Health Alliance

Amanda J Marshall, JD  
Patrick Nolen  
Meredith Mathis  
Mark Schorr, LPC, CADCI  
Jason Renaud  
Michael Hopcroft  
Rochelle Silver, PhD  
Mary-Margaret Wheeler-Weber, MA  
Mark Chasse, JD  
Javonnie Shearn  
KC Lewis, JD  
Jonathan Brown, MPP, PhD  
Eben Hoffer, MFA  
Sandra Chisholm, MPA  
Rabbi Ariel Stone  
Jane Remfert  
Beatrix Li  
Dave Boyer, MS, JD  
Aimee Sukol, JD MA MS Ed  
Brett Foster

Representatives in court - Juan Chavez, JD, Franz Bruggemeier, JD, Amanda Lamb, JD

## Mental Health Alliance - on the record

[Amicus Mental Health Alliance's Body-Worn Camera Policy Position](#) - United States v. City of Portland, October 2021

[Mental Health Alliance review of body-worn camera policies in other comparable US cities](#), February 2023

[Say 'no' to pre-review of body-worn camera footage](#), March 2023

[Letter to City Council on body-worn cameras](#), February 2022

[Town hall focuses on Portland police body cameras](#), December 2021

[Portland needs policies for body-worn cameras before purchasing](#), November 2021

## About the Mental Health Alliance



The Mental Health Alliance amplifies the voices of people with mental illness, trauma, addiction, and alcoholism in legal and legislative public policy discussions. The Mental Health Alliance was formed in 2018 to join the continuing Federal lawsuit, *United States v. City of Portland* as an amicus curiae or “friend of the court.”

Organizations which represent the interests of people with mental illness and have long participated in efforts to reduce police use of force used against people with mental illness – Disability Rights Oregon, the Oregon Justice Resource Center, the Portland Interfaith Clergy Resistance, and the Mental Health Association of Portland, joined together to form the Alliance.

More about the Alliance can be found on our website at <http://www.mentalhealthalliance.org> or contact us at [info@mentalhealthalliance.org](mailto:info@mentalhealthalliance.org).

# Mental Health Alliance

April 26, 2023

**RE: agenda item 335 for April 26, 2023**

Members of Portland City Council.

Since the idea of police officers using body-worn cameras was introduced by the City in 2018, the Mental Health Alliance has asked there be a policy in place to guide both purchase and implementation, and the policy be informed by community engagement. Members of the Alliance appreciate the city providing the proposed preliminary body-worn camera policy negotiated with the Portland Police Association, as well as the [Department of Justice's preliminary approval of the policy](#). We thank the parties for their work to find a compromise solution that avoids further delays.

But this is a first draft - not a completed document. More the result of a tedious labor negotiation than durable policy. It focuses on one aspect of a policy; how police officers may view camera footage after hurting someone, and other mechanisms to protect officers from exposure and public accountability. Protecting officers from unwarranted exposure is a vital, worthy goal and pre-report viewing has been a sticking point. But fairness to officers is just one goal among many.

**Our request is that your decision on this agenda item be postponed.**

A complete body-worn camera policy for Portland should promote many other benefits, including verification of police reports and data, improvement of the tens of thousands of contacts that occur for every lethal use of force, support of police supervision and training, education of citizens about the real challenges that police face and the good work they do, support for existing and planned police review mechanisms, and transparency through independent research and journalism.

The City is about to start collecting hundreds of thousands of hours of video every year. But it has written a policy that worries mostly about just tens of hours of this vast resource. The police union is just one of many organizations and voices who have legitimate stakes in body-worn camera policy and ideas to contribute. The City's policy-making job is not completed if only the police union is consulted and satisfied.

With respect to the accountability aspects that the current policy does address, as [we have made clear](#) elsewhere, the Mental Health Alliance opposes ANY pre-review of body camera footage of use of force incidents by officers before writing their reports. This is the best practice to ensure reports of use of force are based on examination of the reasonableness of the use of force at the time the force was used, as required by *Graham v. Connor*, rather than an effort by the officer to fit their narrative to evidence reviewed after the fact.

Because the policy agreed upon by the City and the Portland Police Association diverges from this core value of police accountability, we cannot support it. However, in light of the fact the Department of Justice agreed to the policy pending the outcome of the City's 60-day test, and in the interest of being constructive partners to the Court and the Department of Justice, here are specific questions and concerns we hope the Department of Justice considers when analyzing the effectiveness of the new policy in remedying the City's long-time noncompliance with the settlement agreement.

1. There are scant details as to how the Bureau, the City, or the Department of Justice will judge the effectiveness of the new body-worn cameras policies after the 60 day test. What will happen after 60 days? Will there be a pause to evaluate the test? Or will cameras continue to be used without any real evaluation or community input? What data will be collected, and what key performance measures will be evaluated? Will there be an opportunity for public feedback as to the effectiveness of the policies? Will there be any mechanism for extending the test period if any of the parties determine that sixty days has been insufficient to make a determination regarding the effectiveness of the new policies? By what measure will this test be determined a success - or failure? Who will be the judge of these factors? These are all questions that we think it would be appropriate for this Council to ask and the city attorneys and have answered prior to accepting this proposal.
2. Per this agreement, the most serious category of force usage has the least clear guidance for officers who are witnesses to it. Under 11.2.1.1 after a sub-lethal Category II force incident, involved and witness officers are required to provide an account to their supervisors which is recorded on body-worn cameras. However, under 11.2.2.1, an officer who is witness to a lethal Category I use of force event is not required to provide a verbal statement OR write a report before reviewing their body camera footage. This can be overruled by the officer's supervisor, although there is no guidance provided in the agreement as to what criteria the supervisor should use to evaluate the decision whether or not to compel such a statement. There is also no guidance provided in the agreement as to whether or not such a statement will be recorded.
3. Many of these policies rely upon police supervisors to make determinations regarding the level of force used and to make judgment calls regarding the necessity for a recorded statement to be taken. If it later turns out a supervisor has made an incorrect determination as to what level of force occurred and whether a recorded statement was required, there will be no way to "un-ring the bell" and go back to record the officer's statement; any record of their objective judgment of the necessity for force will simply be lost for investigative purposes.

Both the Department of Justice and the Compliance Officer/Community Liaison have repeatedly found the City of Portland out of compliance with the settlement agreement specifically due to the failure of supervisors within the Bureau to understand and enforce directives around use of force (see paragraphs 70, 73,

84, 116, 129, 169). Leaving supervisors whose work has repeatedly been found inadequate with complete, unreviewed discretion over when officers are and are not required to make recorded statements following a use of force is unlikely to be effective.

4. There seems to have been little to no effort by the City or the Department of Justice to involve the actual people of Portland or their various partner organizations in the drafting or approval of this policy. As written, it runs directly contrary to the recommendations of the Compliance Officer/Community Liaison, the Albina Ministerial Alliance, and the Mental Health Alliance (and the Department of Justice itself), as well as the overwhelming consensus of the feedback received by the city in public meetings.

Additionally, the Portland Police Accountability Commission, which is currently tasked with designing the settlement-mandated civilian oversight system which will ultimately make disciplinary decisions involving alleged officer misconduct, was not consulted at any stage of this discussion as to how the new body-worn camera policy would fit into the system that they are designing. Other councils organized by the city to inform the police bureau about community concerns, such as the Training Advisory Council, the Portland Committee on Community-Engaged Policing, the Focused Intervention Team Community Oversight Group, the Behavioral Health Unit Advisory Committee, or the Police Bureauwide Advisory Committee, also were not consulted.

We could continue the list, and others will, so **our suggestion is that this proposal not proceed today or until these and other questions are fully answered.**

It is our hope the Department of Justice will keep a close and critical eye on their roll-out, and that with further input from Judge Simon, the department, the amici, and the community, we can move towards a body-worn camera policy that legitimately improves public safety and trust.

Sincerely,  
Members of the Mental Health Alliance

Amanda J Marshall, JD  
Patrick Nolen  
Meredith Mathis  
Mark Schorr, LPC, CADCI  
Jason Renaud  
Michael Hopcroft  
Rochelle Silver, PhD  
Mary-Margaret Wheeler-Weber, MA  
Mark Chasse, JD  
Javonnie Shearn  
KC Lewis, JD  
Jonathan Brown, MPP, PhD



Eben Hoffer, MFA  
Sandra Chisholm, MPA  
Rabbi Ariel Stone  
Jane Remfert  
Beatrix Li  
Dave Boyer, MS, JD  
Aimee Sukol, JD MA MS Ed  
Brett Foster

Representatives in court - Juan Chavez, JD, Franz Bruggemeier, JD, Amanda Lamb, JD

### **Mental Health Alliance - on the record**

[Amicus Mental Health Alliance's Body-Worn Camera Policy Position](#) - United States v. City of Portland, October 2021

[Mental Health Alliance review of body-worn camera policies in other comparable US cities](#), February 2023

[Say 'no' to pre-review of body-worn camera footage](#), March 2023

[Letter to City Council on body-worn cameras](#), February 2022

[Town hall focuses on Portland police body cameras](#), December 2021

[Portland needs policies for body-worn cameras before purchasing](#), November 2021

### **About the Mental Health Alliance**

The Mental Health Alliance amplifies the voices of people with mental illness, trauma, addiction, and alcoholism in legal and legislative public policy discussions.

The Mental Health Alliance was formed in 2018 to join the continuing Federal lawsuit, *United States v. City of Portland* as an amicus curiae or "friend of the court."

Organizations which represent the interests of people with mental illness and have long participated in efforts to reduce police use of force used against people with mental illness – Disability Rights Oregon, the Oregon Justice Resource Center, the Portland Interfaith Clergy Resistance, and the Mental Health Association of Portland, joined together to form the Alliance.

More about the Alliance can be found on our website at <http://www.mentalhealthalliance.org> or contact us at [info@mentalhealthalliance.org](mailto:info@mentalhealthalliance.org).



**From:** [Inga Fisher Williams](#)  
**To:** [Council Clerk – Testimony](#)  
**Subject:** Body Worn Camera Agenda Item 4/26/2023  
**Date:** Wednesday, April 26, 2023 8:28:35 AM

---

Thank you for holding a public hearing on the bodycam proposal. We all know that being a police officer is a tough job. It requires instant decisions in highly charged situations. Second guessing those decisions would be minimized when camera footage is available.

The proposal to implement body worn cameras by police officers is way overdue. Portland is behind most if not all cities of similar size in doing so. Regrettably past city councils were cowed by police union leadership which has succeeded in opposing this, stalling past efforts.

Kudos to those police officers who support this tool as one more step to add information on fast moving, contentious interactions of citizens with members of the police especially in use of force situations. The perception of a lack of accountability will be minimized. It will contribute to calming community relations to have this system operational.

I fully support implementing a bodycam system as soon as feasible. Starting it as a pilot will allow fine tuning its provisions. There should be provisions for a) officers NOT be permitted to preview the camera record before writing their reports and b) it ought not be permitted for officers to turn the cameras off, especially in use of force cases.

This pilot must align with progressive police administration and community policing principles or Portland will miss an opportunity to breathe new life into a police force that has not kept pace with exemplary departments around the nation.

Some of us are eager to see Portland in the national news as a bright example of an urban policing turnaround.

Thank you for moving forward with police body cameras in Portland.  
Inga Fisher Williams  
Johns Landing, Portland

**From:** [Chris Gottshall](#)  
**To:** [Council Clerk – Testimony](#)  
**Subject:** Body Worn Camera Agenda Item 4/26  
**Date:** Wednesday, April 26, 2023 9:33:30 AM

---

Greetings,

I strongly support body cameras for our police force. The current proposal for the body worn camera pilot program that includes caveats for use of force incidents sounds reasonable to me compared to programs in other cities, including those under DOJ administration or rulings. It aligns with other jurisdictions in Multnomah County as to not be confusing to jurors, prosecutors, judges, etc. when trying cases from all over the county in Multnomah County court system. Thank you for voting yes to approve this pilot program as currently written and agreed upon by all parties involved.

Thank you,  
Chris Gottshall  
Portland, OR 97209

**From:** [Margo Howell](#)  
**To:** [Council Clerk – Testimony](#)  
**Subject:** Body Worn Camera Agenda Item  
**Date:** Wednesday, April 26, 2023 10:23:41 AM

---

Greetings,

The current proposal for the body worn camera pilot program that includes caveats for use of force incidents sounds reasonable to me compared to programs in other cities, including those under DOJ administration or rulings. It aligns with other jurisdictions in Multnomah County as to not be confusing to jurors, prosecutors, judges, etc. when trying cases from all over the county in Multnomah County court system. Thank you for voting "yes" to this pilot program as currently written and agreed upon by all parties involved.

Thanks!

Margo Howell

**From:** [Levi Frechette](#)  
**To:** [Council Clerk – Testimony](#)  
**Subject:** Body Worn Camera Agenda Item 4/26  
**Date:** Wednesday, April 26, 2023 10:41:06 AM

---

Greetings,

The current proposal for the body worn camera pilot program that includes caveats for use of force incidents sounds reasonable to me compared to programs in other cities, including those under DOJ administration or rulings. It aligns with other jurisdictions in Multnomah County as to not be confusing to jurors, prosecutors, judges, etc. when trying cases from all over the county in Multnomah County court system. Thank you for voting yes to approve this pilot program as currently written and agreed upon by all parties involved.

Thank you,  
Levi F

**From:** [Eduardo Vasquez](#)  
**To:** [Council Clerk – Testimony](#)  
**Subject:** Body Worn Camera Agenda Item 4/26  
**Date:** Wednesday, April 26, 2023 11:41:31 AM

---

To the members of the Portland City Council,

This message is in support of the proposed body-worn camera pilot program for the Portland Police Bureau. The proposed pilot includes reasonable provisions for use of force incidents that are aligned with successful programs in place in other cities, including those with DOJ administration or rulings. The proposal also aligns with current practices in other jurisdictions that work with the Multnomah County court system. This ensures equitable treatment while avoiding confusion among prosecutors, jurors, judges, etc. who are dealing with cases throughout the county.

As leaders, I urge you to be skeptical of the motivations of opponents to this program as proposed. There is a vocal/violent minority that seeks to avoid being identified while committing acts of intimidation, violence, and property destruction in order to suppress those they disagree with and impose their own ideologies on the general public. Body worn cameras by the police is a tool that these agitators do not want to see come into use because it could make them be seen.

Thank you for voting to approve this pilot program as currently written and agreed upon by all parties involved.

EV



**From:** [kelly.lanspa](#)  
**To:** [Council Clerk – Testimony](#)  
**Subject:** Body Worn Camera Agenda Item 4/26  
**Date:** Wednesday, April 26, 2023 12:06:51 PM

---

Greetings, The current proposal for the body worn camera pilot program that includes caveats for use of force incidents sounds reasonable to me compared to programs in other cities, including those under DOJ administration or rulings. It aligns with other jurisdictions in Multnomah County as to not be confusing to jurors, prosecutors, judges, etc. when trying cases from all over the county in Multnomah County court system. Thank you for voting yes to approve this pilot program as currently written and agreed upon by all parties involved. Thank you,

**From:** [Vikki Payne](#)  
**To:** [Council Clerk – Testimony](#)  
**Subject:** TESTIMONY AGENDA ITEM 335 POLICE BODY CAMERA PILOT PROGRAM  
**Date:** Wednesday, April 26, 2023 1:36:43 PM

---

Greetings,

The current proposal for the body worn camera pilot program that includes caveats for use of force incidents sounds reasonable to me compared to programs in other cities, including those under DOJ administration or rulings. It aligns with other jurisdictions in Multnomah County as to not be confusing to jurors, prosecutors, judges, etc. when trying cases from all over the county in the Multnomah County court system.

Thank you for voting yes to approve this pilot program as currently written and agreed upon by all parties involved.

Thank you,

Vikki Payne

**From:** [Rachel Roberts](#)  
**To:** [Council Clerk](#)  
**Subject:** City council agenda item #335 body cameras for police  
**Date:** Wednesday, April 26, 2023 1:40:39 PM

---

Hi:

To City Council: The current proposal for the body worn camera pilot program that includes caveats for use of force incidents sounds reasonable to me compared to programs in other cities, including those under DOJ administration or rulings. It aligns with other jurisdictions in Multnomah County as to not be confusing to jurors, prosecutors, judges, etc. when trying cases from all over the county in Multnomah County court system. Thank you for voting yes to approve this pilot program as currently written and agreed upon by all parties involved.

-Rachel Roberts, NE 46th Ave, Portland

**From:** [Bob Weinstein](#)  
**To:** [Council Clerk – Testimony](#)  
**Subject:** Item 335: Body camera policy  
**Date:** Wednesday, April 26, 2023 1:59:53 PM

---

I write in support of the proposed body camera policy for the Portland Police Bureau.

1. It is a good compromise. Both the city and the PPA negotiated in good faith, and the result is a fair and sensible policy.
2. Most major cities with body cameras in use have body camera policies which allow for the review by officers prior to writing reports, with exceptions often made when deadly force was used.
3. The U.S. Justice Department's own law enforcement agencies, including both the Federal Bureau of Investigation and the U.S. Marshals Service, allow for law enforcement agents to review camera footage prior to making written reports, again, I believe, with different procedures when deadly force has been used.
4. Having body cameras implemented in Portland will both increase accountability of, and public confidence in, the Portland police. For example, there was a recent shooting near Salem on I-5 involving an Oregon State Police officer. The body camera footage of that officer clearly showed that the officer was first fired upon by a violent individual, and only then did the officer return the fire and kill the person. Without such footage, some people might have questioned the facts of the matter. With the footage available, there is no question as to whether the use of deadly force was justified.

Bob Weinstein  
Portland



**From:** [Sandy Chung](#)  
**To:** [Council Clerk – Testimony](#)  
**Cc:** [Sandy Chung](#)  
**Subject:** ACLUOR - PPB Body Camera Policy Testimony (4.26.23).pdf  
**Date:** Wednesday, April 26, 2023 2:21:39 PM  
**Attachments:** [image003.png](#)  
[ACLUOR - PPB Body Camera Policy Testimony \(4.26.23\).pdf](#)  
**Importance:** High

---

Hello, attached is written testimony from the ACLU of Oregon on Agenda Item 335 – “Authorize a Letter of Agreement with the Portland Police Association and the Portland Police Command Officers Association to adopt a Body Worn Camera Policy for the Portland Police Bureau (Emergency Ordinance)” – on this afternoon’s City Council agenda.

Thank you,  
Sandy Chung

**Sandy Chung**  
Pronouns: she, her

**Executive Director**  
American Civil Liberties Union of Oregon  
P.O. Box 40585 Portland, OR 97240  
(971) 358-2017 | [schung@aclu-or.org](mailto:schung@aclu-or.org)  
[aclu-or.org](http://aclu-or.org)  



*Oregon’s legislative session is here! Make an impact with us. Support our policy agenda and get connected by visiting our [2023 Legislative Session hub](#).*





April 26, 2023

City of Portland  
1221 SW 4th Ave.  
Portland, OR 97204

**RE: ACLU of Oregon Testimony about Letter of Agreement between the Portland Police Association and the Portland Police Command Officers Association to Adopt a Body Worn Camera Policy**

Mayor Wheeler and Commissioners Gonzalez, Mapps, Rubio, and Ryan:

My name is Sandy Chung. I am the Executive Director of the American Civil Liberties Union (ACLU) of Oregon. With over 27,000 members statewide, we are a nonpartisan, nonprofit organization dedicated to defending and advancing civil rights and liberties.

Thank you for the opportunity to provide testimony about Agenda Item 335.

- **The reality of body-worn cameras is complicated, and the implementation of body-worn camera policies must reflect this reality.**

We appreciate that the City of Portland, Portland Police Association (PPA), and Portland Police Command Officers Association (PPCOA) have come to an agreement regarding the body-worn camera (BWC) policy for the Portland Police Bureau (PPB). We also appreciate that the U.S. Department of Justice has only granted the policy tentative approval so that all parties involved can evaluate the pilot program's performance and make any necessary changes before implementing a permanent policy.

Upholding our civil rights and liberties necessarily requires government transparency, particularly regarding law enforcement. Both nationally and in Portland, unacceptable reports of police misconduct and violence continue to come to light. Understandably, many advocates have called for BWC mandates to increase police accountability. While we share their desire

for accountability and transparency, we also recognize the complicated nature of body cameras.

On their face, BWCs appear to aid both law enforcement and members of the public, providing what appears to be an objective record of police interactions. However, the reality is more complicated. BWCs can heighten privacy risks for civilians and even have a chilling effect on the very constitutional rights they're designed to protect.<sup>1</sup> Furthermore, the evidence does not strongly indicate that they actually improve community safety.<sup>2 3</sup>

Nonetheless, we understand BWCs' appeal and potential benefits — provided that they're implemented properly.

What is required for proper implementation requires a BWC policy that fully and accurately reflects the complicated reality of BWCs, as well as the potential negative impacts of BWCs on our communities.<sup>4</sup>

Also required is for government bodies to engage in the full landscape of actions needed to create appropriate accountability when a police officer engages in misconduct or violence. Such governmental actions at the city level include, but are not limited to: minimal police discretion over recordings; effective processes by which the public can file complaints or concerns and have them heard and reviewed without retaliation; effective investigatory processes; and meaningful and effective disciplinary mechanisms.

- **The ACLU of Oregon has the following concerns about the City's proposed policy.**

The following are the ACLU of Oregon's concerns about the City of Portland's proposed BWC policy, listed as Exhibit B on the City's website:

- **Section 4.2.1.6: Specify the parameters around how and when police officers determine that a crime will occur for video recording purposes, and establish accountability and disciplinary measures to ensure that officers do not record more**

---

<sup>1</sup> Lee, Jennifer. "Will body cameras help end police violence?" ACLU Washington. June 7, 2021. <https://www.aclu-wa.org/story/%C2%A0will-body-cameras-help-end-police-violence%C2%A0>.

<sup>2</sup> "Research on Body-Worn Cameras and Law Enforcement." National Institute of Justice. United States Department of Justice, January 7, 2022. <https://nij.ojp.gov/topics/articles/research-body-worn-cameras-and-law-enforcement>.

<sup>3</sup> McLaughlin, Eliot C. "After Eric Garner: What's point of police body cameras?" CNN. December 8, 2014. <https://www.cnn.com/2014/12/04/us/eric-garner-ferguson-body-cameras-debate/index.html>.

<sup>4</sup> Stanley, Jay. "POLICE BODY-MOUNTED CAMERAS: WITH RIGHT POLICIES IN PLACE, A WIN FOR ALL." American Civil Liberties Union (ACLU). March, 2015. <https://www.aclu.org/other/police-body-mounted-cameras-right-policies-place-win-all>.

**than is absolutely necessary at peaceful protests and other situations when community members are exercising their legal rights.**

One of the problems that BWC policies frequently pose is the discretion that police officers have over what, who, and when they record. We appreciate that this policy generally attempts to establish clear guidelines about when officers must begin recording. However, we're troubled by the lack of clarity regarding Section 4.2.1.6, which allows law enforcement officers to begin recording if they "[develop] reasonable suspicion or probable cause to believe that a crime or violation has occurred, is occurring, or will occur and [those officers begin] to make contact with the person suspected of committing the offense." [Bolding and underlining added for emphasis.]

As witnessed during the 2020 Black Lives Matter protests, police officers reacted to law-abiding civilians with seemingly preemptive correctional measures on numerous occasions, such as when they deployed tear gas and use of force on Portlanders who were attempting to comply with officers' orders.<sup>5</sup> Based on the police officers' punitive reaction, it appears that they construed the protesters' actions as illegal, which raises the question of when, in a similar situation, they would be allowed to record under this policy. Without clear parameters defining what constitutes a crime that likely "will occur" in the future, officers may have too much authority to film significant portions of protests that are still law-abiding at the time of preemptive filming. This could have harmful and negative impacts on Portlanders' right to assembly, creating a chilling effect that deters community members from lawful protests for fear of the privacy and doxxing risks that accompany unnecessary BWC surveillance.

Similarly, the ambiguity and breadth of this type of guidance may have harmful and negative effects in other contexts where members of the public may be precluded from engaging in legally-protected activities when police officers are present – for example, members of the public may wish to record video of potential police misconduct or violence – because officers may utilize their body-worn cameras in ways that raise concerns about law enforcement targeting as well as privacy and doxxing risks.

Here, we recommend that the City change the phrase "or will occur" to one that is less ambiguous and broad.

---

<sup>5</sup> Levinson, Jonathan. "Officers' testimony indicates Portland police still have an aggressive understanding of use-of-force law." Oregon Public Broadcast. October 23, 2022.  
<https://www.opb.org/article/2022/10/03/portland-police-testimony-aggressive-use-of-force-protesters/>.

- **Section 6: Establish accountability and disciplinary measures for officers who repeatedly leave their BWCs deactivated for extended periods, a significant number of times, or for certain types of situations that show a negative pattern or trend.**

Section 6 grants officers a great deal of autonomy about when they are able to deactivate or mute their BWCs. While we understand that there are times when it is appropriate to have the device not recording, this section opens a loophole that many officers could intentionally use so that the device doesn't fully capture a situation. If officers felt so inclined, they could "forget" to fully reactivate their BWCs on a regular basis, thereby negating the purpose of implementing BWCs in the first place. As well, this type of provision may result in officers actually forgetting to fully reactivate their BWCs before they need to record an incident, without specific negative intent.

If an officer mutes their BWC for a sensitive conversation and then leaves it on mute – intentionally or not – when they begin recording an encounter involving misconduct or violence, the evidence of that incident may be severely weakened because the officer or civilian could be saying something contextually necessary that the audio-less recording does not convey.

Indeed, research has shown that BWC compliance rates can be as debilitatingly low as 30%.<sup>6</sup> Portland's BWC policy should have features to address this.

Accordingly, we urge the City to add an accountability mechanism to ensure that officers consistently reactivate their BWCs and are disciplined if they fail to do so for extended periods, a significant number of times, or for certain types of situations that show a negative pattern or trend.

- **11.2.2.1: Remove the exception that allows witness members to review the footage of a Category I force incident before they provide a statement or report.**

Section 11.2.2.1.1 sets out supervisory discretion over whether witness members – i.e., police officers and others – share their viewpoint about a deadly-force event before or after reviewing BWC footage. We strongly disagree with this section, and we urge you to adopt a policy where witness members are allowed to review BWC footage after providing a statement or report.

---

<sup>6</sup> "POLICE BODY-MOUNTED CAMERAS: WITH RIGHT POLICIES IN PLACE, A WIN FOR ALL." American Civil Liberties Union (ACLU).  
<https://www.aclu.org/other/police-body-mounted-cameras-right-policies-place-win-all>.



The policy defines witness members as they are defined by Directive 1010.10: “A witness member is a Bureau member who observes or has firsthand knowledge of the events surrounding an in-custody death or the use of deadly physical force by another member, and other than observing the incident, did not use deadly physical force. Additionally, [a witness member is] a member who observes or has firsthand knowledge of the events surrounding a member’s direction to another to use deadly force.”

Due to witness members’ first-hand proximity to deadly-force events, they play a critical role in the investigation and adjudication of incidents that involve in-custody death or deadly force. Courts and other accountability mechanisms often rely on testimony from witness members to determine if an officer should be held accountable when there is an in-custody death or deadly physical force. As such, it is vitally important that witness members record their viewpoint of an in-custody death or deadly physical force incident before reviewing BWC or any other footage.

Indeed, the case *Graham v. Connor*, which is acknowledged by the Letter of Agreement, held that officers’ conduct could not be judged based on the 20/20 hindsight that BWC footage provides but instead must be determined by the officers’ perspective at the scene. The City should apply this case’s reasoning to all witness members involved in a deadly-force incident — whether their involvement was direct or indirect.

A process that requires witness members to provide viewpoints before reviewing footage does not preclude the Bureau from obtaining their viewpoints again after they have reviewed footage; in this situation, if a viewpoint changes, the Bureau can engage in further information gathering to understand why this occurred. In any situation involving in-custody death or deadly force, it is critical that the Bureau collects as much information as possible before those involved have reviewed the footage.

- **Section 11.3.2: Supervisors should choose three BWC events at random for officer review without counting previously reviewed footage towards the total three reviewed events.**

We wholeheartedly support the policy’s plan to subject random footage to supervisory review, but we believe that the randomness of the selection is what makes this accountability mechanism valuable.

While supervisors should certainly review the footage from reported incidents and use-of-force incidents, the footage from moments that officers choose not to file incidents about can also reveal important information about their conduct. By randomly selecting three pieces of

footage for review, supervisors can monitor officers' behavior during moments that they don't necessarily expect others to review. Effectively, we urge you to remove Section 11.3.2.1.1.

- **Section 11.4: The Bureau should render civilians' faces unidentifiable in copies of BWC footage distributed for training purposes.**

Although BWCs and other state surveillance technologies pose inherent risks to civilian privacy, there are ways to limit the potential harm. Just as the policy requires the Bureau to "render the faces of all persons within the recording unidentifiable" when BWC footage is shared for public records requests, the Bureau should similarly conceal the faces of civilians when BWC footage is distributed internally for training purposes.

Civilians who are captured in BWC footage have a right to privacy and the reasonable expectation PPB members won't watch the recording of their interaction with an officer when the civilian's identification is not necessary. So the Bureau should take appropriate steps to conceal the identity of the civilians involved before sharing any videos with trainers and trainees.

\* \* \*

We ask that the City Council integrate these suggestions into the City's BWC policy to help protect community members' civil liberties and rights, privacy, and safety.

Navigating new citywide technology always poses challenges, but we urge you to continue to listen to community input and revise this policy based on community input before authorizing it.

If you have any further questions about this matter, please contact me at [schung@aclu-or.org](mailto:schung@aclu-or.org).

Regards,  
**Sandy Chung**

*She/Her/Hers*  
**Executive Director**  
**ACLU of Oregon**

**City Council Meeting - Wednesday, April 26, 2023 2:00 p.m.**

<b>Agenda No.</b>	<b>First Name</b>	<b>Last Name</b>
335-01	Dan Handelman	Portland Copwatch
335-02	Marc	Poris
335-03	Eben	Hoffer
335-04	Sandy	Chung
335-05	Patrick	Nolen
335-06	Dr. LeRoy	Haynes, Jr.
335-07	Kristin	Olson
335-08	Kimberly	Eng
335-09	Monica	Cory
335-10	Corrine	Frechette
335-11	Kelly	Lanspa
335-12	Meg	Robinson
335-13	Amanda	Lamb
335-14	Lightning	Super emergent karma lab