

## Martinez, Ruben

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**Sent:** Monday, December 13, 2021 1:17 PM  
**To:** PublicComment-AutoResponse; Bell, Cushon; Dyson, Darla; Porras, Susana; Sullivan, Noreen; Morales, Margo; Suzuki, Takako; Thyret, Pam; Gordo, Victor  
**Subject:** Dec. 13, 2021 Pasadena City Council Meeting – Public Comment – Agenda Item 13  
**Attachments:** [aclu\\_police\\_body\\_cameras\\_model\\_legislation\\_v3.1.pdf](#)

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Dear Pasadena City Council Members:

My name is Una Lee Jost, and I am a PUSD parent and long-time resident of Pasadena, District 4.

Thank you for the opportunity to comment on Agenda Item 13 regarding the proposed \$1.7 million dollar transaction with Axon Enterprise, Inc. for a new police body-worn camera system.

According to the ACLU, the nation's oldest defender of civil liberties:

"Police body cameras have the potential to serve as a much-needed police oversight tool at a time of a growing recognition that the United States has a real problem with police violence. But if the technology is to be effective at providing oversight, reducing police abuses, and increasing community trust, it is vital that they be deployed with good policies to ensure they accomplish those goals.

Without good policies, they risk becoming just another police surveillance device—and one with very real potential to invade privacy.

Especially important are policies governing when the cameras are turned on, and who has access to the footage and under what conditions."

So I urge the Council to ensure good policies are in place to ensure body-worn cameras live up to their potential as a tool for increased police transparency and accountability.

Importantly, I urge the Council to ensure such polices contain the following elements:

1.

First, BWCs should be activated whenever a police officer is responding to a call for service or at the initiation of any other investigative encounter between a police officer and a member of the public.

2.

Second, to ensure accountability, any officer who fails to adhere to the recording requirements should have appropriate disciplinary action taken against them — regardless of any contrary provisions in state open record laws, like California's Law Enforcement-Officers' Bill of Rights (LEOBOR).

3.

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Third, footage that captures police use of force or is the subject of a police complaint should be released to the public — regardless of any contrary provisions in state open record laws, like California’s Law Enforcement-Officers’ Bill of Rights (LEOBOR).

And it should not be withheld from the public on the basis that it is an investigatory record where the person under investigation is a police officer and the footage relates to on-the-job conduct.

\*\*\*Spending millions on technology because of its promise to build trust between communities and police, but not requiring departments to use this technology in ways that will actually build trust, would not only squander taxpayer money but also waste a valuable opportunity to change the dynamic of policing in Pasadena.\*\*\*

Further, I urge the Council to review and incorporate ACLU's recommendations for an ideal policy governing the use of body-worn cameras, by viewing ACLU’s model policy, attached herein for your reference.

Thank you for your time.



**A MODEL ACT FOR REGULATING THE USE OF  
BODY WORN CAMERAS BY LAW ENFORCEMENT**

Be it enacted by the [*NAME OF THE STATE LEGISLATIVE BODY*]:

SECTION 1.

- (a) Only law enforcement officers with the authority to conduct searches and make arrests shall be permitted to wear a body camera. Such body cameras shall be worn in a location and manner that maximizes the camera's ability to capture video footage of the officer's activities.
- (b) With respect to body camera activation and deactivation:
  - (1) Both the video and audio recording functions of the body camera shall be activated whenever a law enforcement officer is responding to a call for service or at the initiation of any other law enforcement or investigative encounter between a law enforcement officer and a member of the public, except that when an immediate threat to the officer's life or safety makes activating the camera impossible or dangerous, the officer shall activate the camera at the first reasonable opportunity to do so.
  - (2) The body camera shall not be deactivated until the encounter has fully concluded and the law enforcement officer leaves the scene.
  - (3) All body cameras shall be equipped with, and at all times have activated, a pre-event buffering mode that causes the body camera to continuously record and retain the most recent 30 seconds of video and audio prior to an officer's activation of their body camera. Such pre-event recordings shall attach to, and be considered a part of, any recording that result from an officer's activation of their body camera.

- (c) A law enforcement officer who is wearing a body camera shall notify the subject(s) of the recording that they are being recorded by a body camera as close to the inception of the encounter as is reasonably possible.
- (d) Notwithstanding the requirements of subsection (b):
  - (1) Prior to entering a private residence without a warrant or in non-exigent circumstances, a law enforcement officer shall ask the occupant if the occupant wants the officer to discontinue use of the officer's body camera. If the occupant responds affirmatively, the law enforcement officer shall immediately discontinue use of the body camera;
  - (2) When interacting with an apparent crime victim, a law enforcement officer shall, as soon as practicable, ask the apparent crime victim, if the apparent crime victim wants the officer to discontinue use of the officer's body camera. If the apparent crime victim responds affirmatively, the law enforcement officer shall immediately discontinue use of the body camera; and
  - (3) When interacting with a person seeking to anonymously report a crime or assist in an ongoing law enforcement investigation, a law enforcement officer shall, as soon as practicable, ask the person seeking to remain anonymous, if the person seeking to remain anonymous wants the officer to discontinue use of the officer's body camera. If the person seeking to remain anonymous responds affirmatively, the law enforcement officer shall immediately discontinue use of the body camera.
- (e) All law enforcement offers to discontinue the use of a body camera made pursuant to subsection (d), and the responses thereto, shall be recorded by the body camera prior to discontinuing use of the body camera.
- (f) Body cameras shall not be used surreptitiously.
- (g) Body cameras shall 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.

- (h) Law enforcement officers shall not activate a body camera while on the grounds of any public, private or parochial elementary or secondary school, except when responding to an imminent threat to life or health.
- (i) Body camera video footage shall be retained by the law enforcement agency that employs the officer whose camera captured the footage, or an authorized agent thereof, for six (6) months from the date it was recorded, after which time such footage shall be permanently deleted.
  - (1) During the six (6) month retention period, the following persons shall have the right to inspect the body camera footage:
    - (A) Any person who is a subject of body camera video footage, and/or their designated legal counsel;
    - (B) A parent of a minor subject of body camera video footage, and/or their designated legal counsel;
    - (C) The spouse, next of kin or legally authorized designee of a deceased subject of body camera video footage, and/or their designated legal counsel;
    - (D) A law enforcement officer whose body camera recorded the video footage, and/or their designated legal counsel, subject to the limitations and restrictions in this Act;
    - (E) The superior officer of a law enforcement officer whose body camera recorded the video footage, subject to the limitations and restrictions in this Act; and
    - (F) Any defense counsel who claims, pursuant to a written affidavit, to have a reasonable basis for believing a video may contain evidence that exculpates a client.
  - (2) The right to inspect subject to subsection (i)(1) shall not include the right to possess a copy of the body camera video footage, unless the release of the body camera footage is otherwise authorized by this Act or by another applicable law.

- (3) When a body camera fails to capture some or all of the audio or video of an incident due to malfunction, displacement of camera, or any other cause, any audio or video footage that is captured shall be treated the same as any other body camera audio or video footage under the law.
- (j) Notwithstanding the retention and deletion requirements in subsection (i):
  - (1) Video footage shall be automatically retained for no less than three (3) years if the video footage captures an interaction or event involving:
    - (A) Any use of force; or
    - (B) An encounter about which a complaint has been registered by a subject of the video footage.
  - (2) Body camera video footage shall also be retained for no less than three (3) years if a longer retention period is voluntarily requested by:
    - (A) The law enforcement officer whose body camera recorded the video footage, if that officer reasonably asserts the video footage has evidentiary or exculpatory value;
    - (B) Any law enforcement officer who is a subject of the video footage, if that officer reasonably asserts the video footage has evidentiary or exculpatory value;
    - (C) Any superior officer of a law enforcement officer whose body camera recorded the video footage or who is a subject of the video footage, if that superior officer reasonably asserts the video footage has evidentiary or exculpatory value;
    - (D) Any law enforcement officer, if the video footage is being retained solely and exclusively for police training purposes;
    - (E) Any member of the public who is a subject of the video footage;
    - (F) Any parent or legal guardian of a minor who is a subject of the video footage; or
    - (G) A deceased subject's spouse, next of kin, or legally authorized designee.
- (k) To effectuate subsections (j)(2)(E), (j)(2)(F) and (j)(2)(G), any member of the public who is a

subject of video footage, the parent or legal guardian of a minor who is a subject of the video footage, or a deceased subject's next of kin or legally authorized designee, shall be permitted to review the specific video footage in question in order to make a determination as to whether they will voluntarily request it be subjected to a three (3) year retention period.

- (1) All video footage of an interaction or event captured by a body camera, if that interaction or event is identified with reasonable specificity and requested by a member of the public, shall be provided to the person or entity making the request in accordance with the procedures for requesting and providing government records set forth in the *[NAME OF STATE OPEN RECORDS ACT/FOIA LAW]*.

- (1) Notwithstanding the public release requirements in subsection (1), the following categories of video footage shall not be released to the public in the absence of express written permission from the non-law enforcement subject(s) of the video footage:

- (A) Video footage not subject to a minimum three (3) year retention period pursuant to subsection (j); and

- (B) Video footage that is subject to a minimum three (3) year retention period solely and exclusively pursuant to subsection (j)(1)(B) or (j)(2).

- (2) Notwithstanding any time periods established for acknowledging and responding to records requests in *[NAME OF STATE OPEN RECORDS ACT/FOIA LAW]*, responses to requests for video footage that is subject to a minimum three (3) year retention period pursuant to subsection (j)(1)(A), where a subject of the video footage is recorded being killed, shot by a firearm, or grievously injured, shall be prioritized and the requested video footage shall be provided as expeditiously as possible, but in no circumstances later than five (5) days following receipt of the request.

- (3) Whenever doing so is necessary to protect personal privacy, the right to a fair trial, the identity of a confidential source or crime victim, or the life or physical safety of any

person appearing in video footage, redaction technology may be used to obscure the face and other personally identifying characteristics of that person, including the tone of the person's voice, provided the redaction does not interfere with a viewer's ability to fully, completely, and accurately comprehend the events captured on the video footage.

(A) When redaction is performed on video footage pursuant to subsection (1)(3), an unedited, original version of the video footage shall be retained pursuant to the requirements of subsection (i) and (j).

(B) Except pursuant to the rules for the redaction of video footage set forth in subsection (1)(3) or where it is otherwise expressly authorized by this Act, no other editing or alteration of video footage, including a reduction of the video footage's resolution, shall be permitted.

(4) The provisions governing the production of body camera video footage to the public in this Act shall take precedence over all other state and local laws, rules, and regulations to the contrary.

(m) Body camera video footage may not be withheld from the public on the basis that it is an investigatory record or was compiled for law enforcement purposes where any person under investigation or whose conduct is under review is a police officer or other law enforcement employee and the video footage relates to that person's on-the-job conduct.

(n) Any video footage retained beyond six (6) months solely and exclusively pursuant to subsection (j)(2)(D) shall not be admissible as evidence in any criminal or civil legal or administrative proceeding.

(o) No government agency or official, or law enforcement agency, officer, or official may publicly disclose, release, or share body camera video footage unless:

(1) Doing so is expressly authorized pursuant to this Act or another applicable law; or

(2) The video footage is subject to public release pursuant to subsection (1), and not



exempted from public release pursuant to subsection (l)(1).

- (p) No law enforcement officer shall review or receive an accounting of any body camera video footage that is subject to a minimum three (3) year retention period pursuant to subsection (j)(1) prior to completing any required initial reports, statements, and interviews regarding the recorded event, unless doing so is necessary, while in the field, to address an immediate threat to life or safety.
- (q) Video footage that is not subject to a minimum three (3) year retention period shall not be viewed by any superior officer of a law enforcement officer whose body camera recorded the footage absent a specific allegation of misconduct.
- (r) No body camera shall be equipped with, or have its video footage or other data subjected to, facial recognition or any other form of biometric analysis. No video footage or other body camera data shall be subjected to any other form of automated analysis or analytics unless:
  - (A) A judicial warrant providing authorization is obtained;
  - (B) The judicial warrant specifies the precise, previously-recorded video recording or body camera data to which the authorization applies;
  - (C) The authorizing court finds there is probable cause to believe the video footage or body camera data contains evidence that is relevant to an ongoing felony criminal investigation; and
  - (D) The judicial warrant is consistent with the prohibitions contained in Section 1(g) of this Act.
- (s) Video footage shall not be divulged or used by any law enforcement agency for any commercial or other non-law enforcement purpose.
- (t) Where a law enforcement agency authorizes a third-party to act as its agent in maintaining body camera footage, the agent shall not be permitted to independently access, view, or alter any video footage, except to delete videos as required by law or agency retention policies.

- (u) Should any law enforcement officer, employee, or agent fail to adhere to the recording or retention requirements contained in this chapter, intentionally interfere with a body camera's ability to accurately capture video footage, or otherwise manipulate the video footage captured by a body camera during or after its operation:
  - (1) Appropriate disciplinary action shall be taken against the individual officer, employee or agent;
  - (2) A rebuttable evidentiary presumption shall be adopted in favor of criminal defendants who reasonably assert that exculpatory evidence was destroyed or not captured; and
  - (3) A rebuttable evidentiary presumption shall be adopted on behalf of civil plaintiffs suing the government, a law enforcement agency and/or law enforcement officers for damages based on police misconduct who reasonably assert that evidence supporting their claim was destroyed or not captured.
- (v) The disciplinary action requirement and rebuttable presumptions in subsection (t) may be overcome by contrary evidence or proof of exigent circumstances that made compliance impossible.
- (w) Whenever a law enforcement officer equipped with a body camera is involved in, a witness to, or within viewable sight range of either a police use of force that results in a death, a police use of force where the discharge of a firearm results in an injury, or any law enforcement officer conduct that becomes the subject of a criminal investigation:
  - (1) Such officer's body camera shall be immediately seized by the officer's agency or department, or the agency or department conducting the related criminal investigation, and maintained in accordance with the rules governing the preservation of evidence;
  - (2) All data on the seized body camera shall be maintained in accordance with the

- rules governing the preservation of evidence; and
- (3) A copy of the data on the seized body camera shall be made in accordance with prevailing forensic standards for data collection and reproduction and shall be made available to the public where required pursuant to Section 1(l) of this Act.
  - (x) Any body camera video footage recorded in contravention of this Act or any other applicable law may not be offered as evidence by any government entity, agency, department, prosecutorial office, or any other subdivision thereof in any criminal or civil action or proceeding against any member of the public.
  - (y) Any law enforcement policy or other guidance regarding body cameras, their use, or the video footage therefrom that is adopted by a state, county, or local government entity or agency, including any police or sheriff's department, shall be made publicly available on that entity's or agency's website.
  - (z) Nothing in this chapter shall be read to contravene any laws governing the maintenance, production, and destruction of evidence in criminal investigations and prosecutions.
  - (aa) As used in this Act:
    - (1) "Law enforcement officer" shall mean any person authorized by law to conduct searches and effectuate arrests and who is employed by the state, by a state subsidiary, or by a county, municipal, or metropolitan form of government.
    - (2) "Subject of the video footage" shall mean any identifiable law enforcement officer or any identifiable suspect, victim, detainee, conversant, injured party, or other similarly situated person who appears on the body camera recording, and shall not include people who only incidentally appear on the recording.
    - (3) "Use of force" shall mean any action by a law enforcement officer that (A) results in death, injury, complaint of injury, or complaint of pain that persists beyond the

use of a physical control hold, or (B) involves the use of a weapon, including a personal body weapon, chemical agent, impact weapon, extended range impact weapon, sonic weapon, sensory weapon, conducted energy device, or firearm, against a member of the public, or (C) involves any intentional pointing of a firearm at a member of the public.

- (4) “Video footage” shall mean any images or audio recorded by a body camera.

SECTION 2. This Act shall take effect [DATE]