



City of Somerville, Massachusetts

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Agenda Text

Conveying recommendations for an effective body worn camera Use Policy in Somerville.

Official Text

City of Somerville, Massachusetts

City Council

Ben Ewen-Campen

Ward 3 City Councilor

August 21, 2022

Communication: Recommendations for an effective body worn camera Use Policy in Somerville

*“...If [body worn cameras are] 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.”*

-ACLU of Massachusetts, [Body Worn Cameras: What’s At Stake?](#) (Emphasis mine.)

1. Summary: The purpose of this Communication is to outline the baseline changes to Somerville’s Police Body-Worn Camera (BWC) policy and associated contractual agreements that I believe are necessary to ensure BWCs are an effective tool for police accountability, oversight, and transparency in Somerville. The City Council controls the funding for BWCs, and therefore has an important role to play in establishing an effective policy, and I respectfully urge my colleagues to use our budgetary discretion to ensure that these best practices

are implemented. The policy planks that I believe are necessary are listed below in Section 3.

2. Background on BWC implementation in Somerville: In March of 2021, the Curtatone administration [announced](#) that, after several years of negotiation, they had reached an agreement with the Somerville Police Employee Association (SPEA) to implement body worn cameras.

As part of this agreement, the Curtatone Administration and SPEA agreed to a [Use Policy](#) governing BWCs, as well as a [salary increase](#) linked to their implementation. In June of 2022, the Ballantyne Administration included a funding request for BWC implementation as part of the proposed FY2023 budget.

In June of 2022, as part of the City Council’s review of the proposed FY2023 budget, the Council received many Public Comments regarding BWCs. During deliberations, Councilor Ewen-Campen and others [raised concerns about the existing BWC Use Policy](#), and the City Council subsequently voted to cut the proposed funding for their implementation, consisting of \$277,000 in proposed salary increases and \$127,833 in audio-visual supplies, until such time as a Use Policy could be devised that the City Council actively supported.

During this same budget hearing, Councilor Gomez-Moakad pointed to the ACLU of MA’s Model Policy as an important touchstone for future policy discussions, and Councilor Strezo emphasized the importance of establishing robust Civilian Oversight of the SPD in order to ensure that BWCs are an effective tool for public accountability. Both of these points are captured in the recommendations given below.

In parallel, Councilor Ewen-Campen [proposed an amendment](#) to the Somerville Surveillance Oversight Ordinance in order to remove the previous exemption for BWCs, so that the City Council would have a direct procedural mechanism to review and approve or disapprove of a Use Policy. This proposed amendment is currently awaiting legal review by Labor Counsel, but regardless of the procedural specifics, the fact that the City Council controls the purse strings for funding BWC implementation gives this body a valuable seat at the table to help craft a Use Policy that will ensure body worn cameras are effectively governed.

3. Creating an effective Use Policy for BWCs: There is an important ongoing debate about whether, in general, BWCs have proven to be an effective means for increasing police accountability, especially regarding use of force (see e.g. [Lum et al. 2020](#).) We do not attempt to answer this larger question here. Instead, we focus on the policy planks that we believe are necessary in Somerville to ensure that BWCs are an effective and fiscally defensible tool.

These policies draw heavily on two sources. First, the ACLU of Massachusetts’ June 2020 [model policy](#), which is “*based on four core principles: improving public safety, ensuring police accountability, enhancing community-police relations, and protecting privacy.*” Importantly, the ACLU-MA does not take a position on whether or not municipalities should implement BWCs, but rather offers best practices and guidance to municipalities which have decided to do so.

Second, we have drawn from the August 2022 [Recommendations of the Massachusetts Law Enforcement Body Camera Task Force](#) (“the statewide BWC Task Force”), which was created by an Act of the State Legislature as part of their 2020 criminal justice reform act (“An Act Relative to Justice, Equity, and Accountability in Law Enforcement in the Commonwealth.”)

Specifically, we believe that any BWC policy in Somerville must include at least the following provisions:

- I. **“Write, then review” policy.** The current Somerville BWC Use Policy states that officers may review footage prior to producing written reports. I believe this is an incorrect approach. Instead, SPD officers should be required to produce their written reports prior to reviewing any relevant footage. Then, if they review such footage, they should be allowed to produce a supplemental report. This would prevent police officers from accommodating their narrative to correspond with what a recording shows. Moreover, this position is supported by the ACLU of MA, the statewide BWC Task Force, and the legislature.
- II. **There should be a civilian oversight organization** to maintain footage, control access, and apply enforcement for failure to adhere to the policy. Enacting a Civilian Oversight body has been an explicitly shared goal of the City Council, Mayor’s Office, and many members of the public for years, and we believe it is essential to have such a body in place in order to ensure that BWC footage can be effectively used for investigations by a non-police body.

III. Footage from one encounter may not be used for an unrelated investigation, without a warrant.

Body-worn cameras should not be viewed as a general surveillance technology, and any footage captured in one context should only be used in that context, absent a warrant. This is consistent with the Massachusetts [caselaw](#), and should be stated explicitly.

IV. Far less discretion regarding activation and deactivation of BWCs:

1. Officers should be required to activate their cameras before initiating contact with an individual when responding to a call for service or “at the initiation of any other law enforcement or investigative encounter[.]”
2. Officers should be required to notify individuals that they are being recorded at the start of an encounter unless doing so is impossible considering the circumstances. In such case, the officer must provide an explanation in writing as to why they could not give such notice
3. Before deactivating their camera during an incident or encounter, officers should be required to make a verbal statement, recorded by the body-worn camera, clearly articulating their reason for deactivation.
4. Any failure to record an interaction where recording would be required must be documented, and those officers must provide written justification for their failure to record. Failure to record should include partial recordings that begin part-way through, or terminate prior to the end of, an encounter.
5. Officers should be forbidden from surreptitious use of their body-worn cameras and the cameras must always “be worn openly in a prominent location.

V. The policy should establish clear guidelines for retention of footage, with a maximum retention period of six months unless footage is flagged, and a retention period of 37 months for flagged footage. This 37 month figure was cited by the Task Force in relation to the typical Statute of Limitation, which is 36 months.

VI. The policy should clearly establish access rights for subjects of any recorded footage as well as for members of the public through public records requests.

VII. The policy should establish safeguards to prevent footage tampering and unauthorized access and require that a log of access be maintained.

VIII. The policy should clearly state that one of the purposes of BWCs is to serve as a basis for disciplinary action if misconduct is observed. The [current SPEA agreement](#) states “*It is further understood that disciplinary actions and excessive monitoring is not the intended purpose of GPS monitoring or BWCs.*” (Article II, Management Rights.) I believe that one of the primary purposes of BWCs is to reduce misconduct, and to serve as the basis for disciplinary action if necessary. The policy should clarify that BWC footage can be used as the basis for disciplinary action.

IX. The policy should prohibit the use of facial recognition or other remote biometric technologies for BWCs or any of the supporting systems and technologies which may handle the recordings. I believe this is already the case under Somerville’s ban on facial recognition and our Surveillance Oversight policy, but it should be explicitly stated in the agreement.

X. The policy, along with all oversight policies should be readily available to the public in easy-to-find manner.

4. Additional budgetary concerns. In addition to these policy changes, we wish to emphasize a point made by the Task Force: “*It is the belief of the Task Force that the financial impact of a body worn camera program on respective police departments is significant. While implementation of a program serves communities, it requires significant financial support to launch and maintain a program.*” This significant cost is demonstrated by the ~\$404,000 budgetary figure described above that would be necessary simply to establish the program, and does not include ongoing maintenance or salary costs. We strongly encourage the Administration to 1) provide more details to the Council about the ongoing costs to the city of implementing BWCs and 2) to seek outside funding opportunities to offset these significant costs.

I look forward to discussing these policy proposals in Committee. I respectfully urge our colleagues to support

these policy changes, and to use the City Council's budgetary discretion to ensure that BWCs are governed by a robust Use Policy that would ensure they are an effective tool for oversight and accountability.