

ORDINANCE O-4796

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO PUBLIC SAFETY TECHNOLOGY, ENACTING A NEW CHAPTER OF THE KIRKLAND MUNICIPAL CODE RESTRICTING USE OF FACIAL RECOGNITION TECHNOLOGY, ENACTING A NEW CHAPTER OF THE KIRKLAND MUNICIPAL CODE AUTHORIZING POLICE USE OF BODY WORN CAMERAS, AND APPROVING A SUMMARY ORDINANCE FOR PUBLICATION.

1           WHEREAS, the City Council, in Resolution R-5434, called for  
2 implementation of a body-worn camera pilot program; and  
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4           WHEREAS, to enhance transparency and accountability, the  
5 Kirkland Police Department seeks to have officers use body worn  
6 cameras in the course of official duties; and  
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8           WHEREAS, the City Council has determined that a body-worn  
9 camera program may increase both community and officer safety; and  
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11           WHEREAS, RCW 10.109.020 strongly encourages cities to  
12 adopt an ordinance or resolution authorizing the use of BWCs prior to  
13 their use by law enforcement; and  
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15           WHEREAS, the City has actively engaged the community  
16 through a robust public engagement process to solicit comment on the  
17 benefits, opportunities, costs, and concerns of a body-worn camera  
18 program and to obtain input into the development of operational policies  
19 governing body-worn cameras; and  
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21           WHEREAS, in evaluating the implementation of body-worn  
22 cameras, the City Council considered the importance of protecting  
23 privacy and civil rights and liberties in implementing advanced policing  
24 technologies; and  
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26           WHEREAS, the City Council finds that when policing technology  
27 includes an aspect of facial recognition it presents a risk of endangering  
28 civil rights and liberties to such an extent that it substantially outweighs  
29 the purported benefits; and  
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31           WHEREAS, the City Council recognizes that a growing number  
32 of local governments have adopted laws prohibiting the use of facial  
33 recognition technology, with appropriate exceptions, in order to protect  
34 individuals' privacy and civil rights.  
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36           NOW, THEREFORE, the City Council of the City of Kirkland do  
37 ordain as follows:  
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39           Section 1. A new chapter, entitled "Public Safety Technology,"  
40 shall be codified and added to Title 11 of the Kirkland Municipal Code  
41 as chapter 11.94. Within the new chapter, the following sections 2

42 through 3 shall be codified under a new Part 1, entitled “General  
43 Provisions”; the following sections 4 through 6 shall be codified under a  
44 new Part 2, entitled “Facial Recognition Technology”; and the following  
45 sections 7 through 10 shall be codified under a new Part 3, entitled  
46 “Body Worn Cameras.”

47  
48 Section 2. A new section shall be added to part 1 of chapter  
49 11.94 KMC, to be codified as KMC 11.94.010, to read as follows:

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51 **11.94.010 Definitions**

52  
53 For purposes of this chapter, the following definitions apply:

54 “Body-worn camera” or “BWC” means a small system that includes, at  
55 minimum, a camera, microphone, and recording device that captures  
56 audio and video signals and that is specifically designed to be worn on  
57 a person.

58 “Facial recognition” means an automated or semi-automated process  
59 that assists in identifying or verifying an individual based on the physical  
60 characteristics of their face.

61 “Facial recognition technology” means any computer software or  
62 application that performs facial recognition.

63  
64 Section 3. A new section shall be added to part 1 of chapter  
65 11.94 KMC, to be codified as KMC 11.94.020, to read as follows:

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67 **11.94.020 Violations**

68  
69 Violation of this chapter shall not be punishable under KMC  
70 11.04.010(m) unless expressly provided within a section. Instead, any  
71 City employee who violates a provision of this chapter may be subject  
72 to discipline in accordance with the City’s disciplinary policies and  
73 procedures and applicable collective bargaining agreements.

74  
75 Section 4. A new section shall be added to part 2 of chapter  
76 11.94 KMC, to be codified as KMC 11.94.050, to read as follows:

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78 **11.94.050 Facial Recognition Technology — Purpose**

79  
80 Facial recognition technology is increasingly prevalent, even on  
81 personal devices, and facial recognition systems are being developed  
82 for many public and private sector uses. Deployment of facial  
83 recognition technology presents ethical implications and can have broad  
84 social consequences, with concerns around the technology’s accuracy,  
85 potential for infringement on democratic freedoms, and potentially  
86 discriminatory impact. The purpose of this restriction on facial  
87 recognition technology is to protect the privacy and civil liberties of  
88 residents and visitors of the city of Kirkland.

89            Section 5. A new section shall be added to part 2 of chapter  
90 11.94 KMC, to be codified as KMC 11.94.060, to read as follows:

91  
92 **11.94.060      Facial Recognition Technology Prohibited**

93  
94 The City of Kirkland and any official or employee of the City shall not  
95 obtain, retain, possess, access, or use any facial recognition technology  
96 or enter into any agreement that authorizes any third party, on behalf of  
97 the City, to obtain, retain, posses, access, or use any facial recognition  
98 technology.  
99

100            Section 6. A new section shall be added to part 2 of chapter  
101 11.94 KMC, to be codified as KMC 11.94.070, to read as follows:

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103 **11.94.070      Exceptions.**

104  
105 Nothing in KMC 11.94.060 shall be construed to prohibit the City or City  
106 officials and employees from:

107

108        A) using an automated or semiautomated process for the purpose  
109        of redacting a recording for release or disclosure to protect the  
110        privacy of a subject depicted in the recording or to otherwise  
111        comply with chapter 42.56 RCW, provided the process does not  
112        generate or result in the retention of facial recognition  
113        information.

114        B) using facial recognition or similar biometric technique on  
115        privately-owned consumer devices for personal use or security.

116        C) using facial recognition or similar biometric technique in  
117        managing secure entry or access to restricted buildings, rooms,  
118        or other secure spaces, devices, or things, provided that:

119            1) any physical biometric identifiers derived from such a  
120            system is obtained, retained, stored, possessed,  
121            accessed, used, or collected only with the knowledge  
122            and consent of any person authorized for such entry or  
123            access and only for purposes arising from or related to  
124            such entry or access; and

125            2) any physical biometric identifiers derived from such a  
126            system about any persons who have not consented may  
127            be collected, captured, or stored for security purposes  
128            consistent with Chapter 19.375 RCW but only for  
129            purposes arising from or related to managing secure  
130            entry or access.

131        D) using software, applications, or systems that incorporate aspects  
132        of facial recognition technology but only if such use of the  
133        software, applications, or systems by the City or by City officials  
134        and employees does not include any affirmative or intentional  
135        use of facial recognition technology or facial recognition  
136        information.

137 Section 7. A new section shall be added to part 3 of chapter  
138 11.94 KMC, to be codified as KMC 11.94.100, to read as follows:  
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140 **11.94.100 Body Worn Cameras Authorized**

- 141
- 142 A) Law enforcement officers of the city of Kirkland and persons
- 143 commissioned by the Kirkland Police Department are authorized
- 144 to use Department-issued body worn cameras (BWCs), provided
- 145 such use is consistent with any collective bargaining
- 146 agreements, Kirkland Police Department policy, this ordinance,
- 147 chapter 10.109 RCW, and any other applicable state or federal
- 148 laws. The use of non-Department issued BWCs while on-duty is
- 149 prohibited.
- 150 B) The City Manager is authorized and directed to oversee this
- 151 BWC program in accordance with the City Manager’s general
- 152 authority under RCW 35A.13.080.
- 153 C) The Kirkland Police Department must ensure that personnel
- 154 assigned a BWC are properly trained in the use and deployment
- 155 of BWCs. This training must include instruction on mandatory,
- 156 permissible, and prohibited uses of BWCs; appropriate
- 157 management of BWC recordings and data; and instruction to
- 158 ensure proper placement of BWCs on officer uniforms.
- 159 D) This ordinance does not apply to any devices when used to
- 160 intercept conversations for lawfully authorized investigative
- 161 purposes under RCW 9.73.210 and RCW 9.73.230.

162 Section 8. A new section shall be added to part 3 of chapter  
163 11.94 KMC, to be codified as KMC 11.94.110, to read as follows:  
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165 **11.94.110 Body Worn Cameras Policy**

166 The Kirkland Police Department must adopt a BWC policy consistent  
167 with this ordinance and with chapter 10.109 RCW. In addition to the  
168 policy elements required by RCW 10.109.010, the policy must:  
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- 170
- 171
- 172 A) Incorporate and implement evolving best practices in data and
- 173 privacy security in order to protect recordings and associated
- 174 data.
- 175 B) Require that officers comply with applicable state and federal
- 176 laws in the use and operation of BWCs and recordings, and
- 177 ensure appropriate coaching and/or discipline when officers fail
- 178 to follow BWC procedures or otherwise improperly use BWCs or
- 179 recordings.
- 180 C) Incorporate adequate protections for privacy and civil liberties,
- 181 including restrictions on recording in medical facilities, in
- 182 schools, and during First Amendment gatherings and providing
- 183 appropriate discretion to limit recording during situations that
- 184 present sensitive matters, such as rape, sexual abuse, or nudity.

185 D) Ensure any recordings that unreasonably violate a person's  
186 privacy or sense of dignity not be publicly released, absent  
187 appropriate redaction, unless disclosure is required by law or  
188 order of the court.

189  
190 Section 9. A new section shall be added to part 3 of chapter  
191 11.94 KMC, to be codified as KMC 11.94.120, to read as follows:

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193 **11.94.120 Security of Body Worn Camera Data**

194  
195 A) To protect the integrity of the BWC recording and the privacy of  
196 recorded individuals, the Department shall ensure that BWC  
197 recordings and associated data are protected from unauthorized  
198 access, disclosure, or use. The viewing of recordings is  
199 restricted for official use only.

200 B) The Kirkland Police Department must utilize a digital evidence  
201 storage software system for digital evidence, including BWC  
202 recordings, that uses secured cloud or off-site storage. The  
203 selected software system must employ a robust security platform  
204 that ensures the following:

205 1) To prevent inadvertent or intentional deletion or  
206 modification, the software system must maintain all  
207 original recordings or raw footage regardless of whether  
208 redactions or edits are made to a copy of the recording.

209 2) Employees must not be able to alter, edit, or delete any  
210 recording except as authorized by Department policy.

211 3) An electronic log or audit trail must be created any time  
212 a recording is accessed, viewed, transmitted, redacted,  
213 shared, or deleted. The log must include the date, time,  
214 and reviewer.

215 4) Even after a recording is deleted, due to Washington  
216 State records retention requirements or as otherwise  
217 allowed by this policy, the audit trail must be retained.

218 C) Nothing in this section is intended to restrict or prevent the  
219 release of BWC recordings as public records, consistent with  
220 chapter 42.56 RCW.

221  
222 Section 10. A new section shall be added to part 3 of chapter  
223 11.94 KMC, to be codified as KMC 11.94.130, to read as follows:

224  
225 **11.94.130 Civilian Review of Body Worn Camera Recordings**

226  
227 A) The City Manager or his or her authorized designee(s), including,  
228 but not limited to, the City Ombud, the City Attorney's Office,  
229 the City Clerk's Office, and civilian investigators or advisory  
230 bodies authorized by the City, may conduct a review of body  
231 worn camera recordings when there is an articulable reason  
232 justifying such review. Articulate reasons for such review  
233 include, but are not limited to:

- 234 1) When a civil claim has been filed or threatened against  
235 the City involving a specific incident.
- 236 2) When a complaint has been made against an employee  
237 regarding a specific incident.
- 238 3) When an incident involves a serious injury or death as a  
239 result of use of force, a vehicular pursuit, or a vehicular  
240 collision.
- 241 4) As part of any general auditing function directed by the  
242 City Manager that ensures compliance with this  
243 ordinance or department policy, provided such audit is  
244 consistent with applicable law and collective bargaining  
245 agreements.
- 246 5) In connection with any incident that garners media or  
247 community interest.
- 248 B) The City Manager shall designate a civilian employee in the City  
249 Attorney’s Office to have access to the digital evidence storage  
250 software system independent from the Department. The civilian  
251 employee must have appropriate training and certifications to  
252 access the digital evidence storage software system and to  
253 handle potential evidence, such that any applicable state,  
254 federal, and Department security requirements are met. The City  
255 Manager shall develop and implement the process by which BWC  
256 footage or related data is reviewed or accessed by those  
257 authorized in this section.
- 258 C) This section is not a substitution for any other civilian oversight  
259 mechanisms or processes available under other law and shall not  
260 be construed to limit or restrict such other mechanisms or  
261 processes.

262  
263 Section 11. If any provision of this ordinance or its application to  
264 any person or circumstance is held invalid, the remainder of the  
265 ordinance or the application of the provision to other persons or  
266 circumstances is not affected.

267  
268 Section 12. This ordinance shall be in force and effect five days  
269 from and after its passage by the Kirkland City Council and publication  
270 pursuant to Section 1.08.017 of Kirkland Municipal Code in the summary  
271 form attached to the original of this ordinance and by this reference  
272 approved by the City Council.

273  
274  
275 Passed by majority vote of the Kirkland City Council in open  
276 meeting this \_\_\_\_ day of \_\_\_\_\_, 2022.

277  
278 Signed in authentication thereof this \_\_\_\_ day of  
279 \_\_\_\_\_, 2022.

\_\_\_\_\_  
Penny Sweet, Mayor

Attest:

\_\_\_\_\_  
Kathi Anderson, City Clerk

Approved as to Form:

\_\_\_\_\_  
Kevin Raymond, City Attorney

PUBLICATION SUMMARY  
OF ORDINANCE NO. O-4796

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO PUBLIC SAFETY AND POLICING TECHNOLOGY, ENACTING A NEW CHAPTER OF THE KIRKLAND MUNICIPAL CODE RESTRICTING USE OF FACIAL RECOGNITION TECHNOLOGY, ENACTING A NEW CHAPTER OF THE KIRKLAND MUNICIPAL CODE AUTHORIZING POLICE USE OF BODY WORN CAMERAS, AND APPROVING A SUMMARY ORDINANCE FOR PUBLICATION.

SECTION 1. Adds a new Kirkland Municipal Code ("KMC") chapter 11.94 entitled "Public Safety Technology," adding subparts related to "General Provisions," "Facial Recognition Technology," and "Body-Worn Cameras."

SECTION 2. Adds a new KMC 11.94.010 providing definitions for the terms "body-worn camera," "facial recognition," and "facial recognition technology."

SECTION 3. Adds a new KMC 11.94.020 related to violations of chapter 11.94 KMC.

SECTION 4. Adds a new KMC 11.94.050 providing a purpose section for restricting facial recognition technology.

SECTION 5. Adds a new KMC 11.94.060 prohibiting the City's use of facial recognition technology.

SECTION 6. Adds a new KMC 11.94.070 providing for exceptions for KMC 11.94.060.

SECTION 7. Adds a new KMC 11.94.100 authorizing body-worn cameras for law enforcement officers.

SECTION 8. Adds a new KMC 11.94.110 related to provisions for a body-worn camera policy.

SECTION 9. Adds a new KMC 11.94.120 related to the security of body-worn camera data.

SECTION 10. Adds a new KMC 11.94.130 providing civilian oversight of the body-worn camera program.

SECTION 11. Provides a severability clause for the ordinance.

SECTION 12. Authorizes publication of the ordinance by summary and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

I certify that the foregoing is a summary of Ordinance O-4796 approved by the Kirkland City Council for summary publication.

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Kathi Anderson, City Clerk