



## CITY OF KIRKLAND

### Police Department

11750 NE 118<sup>th</sup> Street, Kirkland, WA 98034-7114 425.587.3400

[www.kirklandwa.gov](http://www.kirklandwa.gov)

---

## MEMORANDUM

**To:** Kurt Triplett, City Manager

**From:** Cherie Harris, Chief of Police  
Melissa Petrichor, Administrative Commander  
Michel St Jean, Deputy Chief  
Todd Aksdal, Deputy Chief  
Darcey Eilers, Assistant City Attorney

**Date:** June 27, 2022

**Subject:** Police Body Worn Cameras

### **Recommendation:**

City Council reviews the revised draft O-4796, the City of Kirkland ordinance on public safety technology including the implementation of an Officer Body Worn Camera (BWC) program, and that Council approves Ordinance O-4796 after deliberation on the changes.

### **Background:**

The 2021-2022 Community Safety Initiative budget includes a place holder for a BWC pilot program in 2022, including the funding for the initial set up of equipment and two full time employees to manage the digital information and the public records requests.

The topic of BWC was included as part of the R-5434 community engagement process of late 2020 and early 2021. As directed in R-5434, that process included conversations with formal and informal Black-led community groups, Black community leaders, youth, and community members, and other people of color in a series of focus groups. Although not discussed by all groups, a BWC program, if done correctly, generally received support from the groups that did prioritize discussing it.

On February 1, 2022, staff provided an update on Officer BWCs that included information on a grant award from the U.S. Department of Justice in the amount of \$220,000 to purchase the initial equipment needed to implement a program. The staff report included how the grant award would be incorporated into the 2021-2022 Community Safety Initiative budget, a timeline for implementation, an overview of the three-phased project and oversight that will occur from the City Manager's Office.

Prior to the Council's decision on how to proceed with a BWC program, staff conducted community conversations on the topic in March and April 2022. The Department partnered with the City Manager's Office to conduct the community conversation using the CMO's standard

structure for high-profile policy decisions under consideration by Council. An outline of the strategies and actions used for outreach and engagement are as follows:

- Landing page
  - [kirklandwa.gov/BodyWornCameras](http://kirklandwa.gov/BodyWornCameras)
  - 452 page views
- News Release
  - Published March 2, 2022
  - Picked up by Kirkland Reporter
- This Week in Kirkland articles/reminders
  - Promoting both the town hall and/or the follow-up focus groups
  - March 3, March 9, March 16, March 24, March 31, and April 7
- Social media
  - Facebook, Twitter, Instagram
- Town Hall Community Meeting (virtual)
  - Special City Council meeting
  - Approximately 28 community members attended
  - 14 speakers (four spoke twice)
- Follow-up Focus Groups
  - Six opportunities advertised
  - Two scheduled meetings held, with a total of three people attending
  - An additional two one-on-one interviews were set up at the request of community members.
- Online Comment Form and Email Input
  - Available on the BWC landing page since March 1
  - 24 submitted comments.
  - Additionally, staff received a position paper submitted from the local organization, Indivisible Kirkland, which includes a section on BWC.

On May 3, 2022, Staff provided an overview of community feedback and discussed related policy considerations at the City Council study session on the following themes, based on the feedback provided by the community:

1. Police Department Budget
2. Reasons Supporting the Program: Use as Deterrence to Police Use of Force
3. Civilian Oversight/Clear Chain of Custody
4. Privacy
5. Camera Operations
6. Report Writing
7. Communication with Public Concerning the Policy

A robust discussion occurred, acknowledging the significant investment to help ensure safe, effective and professional policing. The program would not increase the number of commissioned personnel but would enhance Officer and community safety while promoting community trust and transparency by more accurately capturing the actions, interactions and communication of both Officers and the public.

On May 17, 2022, Staff provided an updated draft Officer worn BWC Department policy that included suggestions made by the Council, members of the community and both commissioned

Officers and civilian staff. An overview of a potential City ordinance was briefly discussed as well as the estimated budget for a BWC program. Council approved the submission of the BWC policy to the Department of Justice to comply with the grant award requirements while directing staff to bring back legislation adopting the structure and safeguards for a BWC program.

On June 7, 2022, Staff provided a draft City of Kirkland Ordinance on Officer Worn BWC's that creates a new chapter of the Kirkland Municipal Code (KMC) regarding public safety technology. This new chapter will authorize police use of BWCs but will also be used to prohibit the use of facial recognition technology.

### **Council discussion:**

The Council provided the following direction to Staff:

- A suggested edit to 11.94.070 Facial Recognition Technology exceptions.
- Consider alternate terminology in 11.94.130 defining "community interest" (rather than request) as one of the articulable reasons for civilian review of BWC recordings

### **City of Kirkland Ordinance**

Staff have considered the Council comments from the June 7, 2022, City Council Meeting. The resulting redlined second draft City of Kirkland ordinance on Officer Worn BWCs is included as **Attachment A**. As previously discussed, the City Attorney and City Manager concluded that the most appropriate framework was to enact a new chapter of the Kirkland Municipal Code (KMC) regarding public safety technology and adds a new KMC to Chapter 11.94 entitled "Public Safety Technology" adding subparts related to "General Provisions," "Facial Recognition Technology," and "Body-Worn Cameras."

The second draft ordinance includes the following revisions (bold underline is new language):

Section 6: allows for exceptions for the use of facial recognition technology to ensure the efficient and effective operation of automated processes. These exceptions are:

- A) using an automated or semiautomated process for the purpose of redacting a recording for release or disclosure to protect the privacy of a subject depicted in the recording or to otherwise comply with chapter 42.56 RCW, provided the process does not generate or result in the retention of facial recognition information.
- B) using facial recognition or similar biometric technique on privately-owned consumer devices for personal use or security (such as a personal iPhone).
- C) using facial recognition or similar biometric technique in managing secure entry or access to restricted buildings, rooms, or other secure spaces, devices, or things, provided that:
  - 1) any **physical biometric identifiers** ~~data or information~~ derived from such a system is ~~only~~ obtained, retained, stored, possessed, accessed, used, or collected **only** with the knowledge and consent of any person authorized for such entry or access **and only for purposes arising from or related to such entry or access**; and
  - 2) **any physical biometric identifiers derived from such a system about any persons who have not consented may be collected, captured, or stored for security purposes consistent with Chapter 19.375 RCW but only for purposes arising from or related to managing secure entry or access.** ~~no~~

~~data or information derived from such a system about any persons not authorized for such entry or access may be obtained, retained, stored, possessed, accessed, used, or collected.~~

Section 7: adds a new explicit subsection reinforcing the City Manager's general authority to manage and oversee the Department's BWC program consistent with RCW 35A.13.080.

Section 10: adds civilian review of recordings to the ordinance to ensure transparency and accountability. The City Manager or designee(s), including but not limited to the City Ombud, the City Attorney's Office, or other legal representatives or civilian investigators of the City, may conduct a review of body worn camera recordings when there is an articulable reason justifying such review.

Articulable reasons for such review include, but are not limited to:

- A) When a civil claim has been filed or threatened against the City involving a specific incident.
- B) When a complaint has been made against an employee regarding a specific incident.
- C) When an incident involves a serious injury or death as a result of an use of force, a vehicular pursuit, or a vehicular collision.
- D) As part of any general auditing function directed by the City Manager that ensures compliance with this ordinance or department policy, provided such audit is consistent with applicable law and collective bargaining agreements.
- E) In connection with any incident that garners media or community ~~inquiry~~ **interest**.

The revised ordinance adds a specific new subsection regarding a civilian staff independent from the Department having access to the software system where BWC recordings will be stored.

**The City Manager shall designate a civilian employee in the City Attorney's Office to have access to the digital evidence storage software system independent from the Department. The civilian employee must have appropriate training and certifications to access the digital evidence storage software system and to handle potential evidence, such that any applicable state, federal, and Department security requirements are met. The City Manager shall develop and implement the process by which BWC footage or related data is reviewed or accessed by those authorized in this section.**

The ordinance explicitly states that it this level of civilian oversight is neither a substitution for nor intended to limit any other civilian oversight mechanisms or processes available under any other law and shall not be construed to limit or restrict such other mechanisms or processes.

Staff will continue to work with Council and the community to ensure transparency and accountability are the focus of the Officer BWC program. The Department will also continue to prioritize communication with the Council to ensure they are aware of community sensitive issues

and critical incidents. Both the City Manager's Office and the Chief of Police regularly meet with members of the Right to Breathe committee and other interested stakeholders.

**BWC Budget update:**

In the June 7, 2022 staff memo, the Department indicated that if the program was not renewed after five years, all leased equipment would be returned to the vendor to include the cameras and all Tasers. Commander Petrichor conducted further negotiations with the vendor and has since reported that while the BWC equipment would need to be returned, all Tasers would become property of the Department. This would significantly reduce the cost of terminating the program.

**Next steps:**

Staff seeks final review and adoption of a City of Kirkland ordinance on public safety technology, including Officer-worn BWCs.

**Attachment A** – Redlined Public Safety Technology Draft Ordinance

## 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  
3

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  
7

8 WHEREAS, the City Council has determined that a body-worn  
9 camera program may increase both community and officer safety; and  
10

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  
14

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  
20

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  
25

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  
30

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.  
35

36 NOW, THEREFORE, the City Council of the City of Kirkland do  
37 ordain as follows:  
38

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:  
50

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:  
66

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:  
77

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 **11.94.060 Facial Recognition Technology Prohibited**

92  
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, possess, 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:

102 **11.94.070 Exceptions.**

103  
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 data or information~~  
120 derived from such a system is ~~only~~ obtained, retained,  
121 stored, possessed, accessed, used, or collected only  
122 with the knowledge and consent of any person  
123 authorized for such entry or access and only for purposes  
124 arising from or related to 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 ~~no data or information derived from such~~  
131 ~~a system about any persons not authorized for such~~  
132 ~~entry or may be obtained, retained, stored, possessed,~~  
133 ~~accessed, used, or collected.~~
- 134 D) using software, applications, or systems that incorporate aspects  
135 of facial recognition technology but only if such use of the  
136 software, applications, or systems by the City or by City officials  
137 and employees does not include any affirmative or intentional



138 use of facial recognition technology or facial recognition  
139 information.

142 Section 7. A new section shall be added to part 3 of chapter  
143 11.94 KMC, to be codified as KMC 11.94.100, to read as follows:

144 **11.94.100 Body Worn Cameras Authorized**

146  
147 A) Law enforcement officers of the city of Kirkland and persons  
148 commissioned by the Kirkland ~~P~~olice ~~D~~epartment are  
149 authorized to use Department-issued body worn cameras  
150 (BWCs), provided such use is consistent with any collective  
151 bargaining agreements, Kirkland Police Department policy, this  
152 ordinance, chapter 10.109 RCW, and any other applicable state  
153 or federal laws. The use of non-Department issued BWCs while  
154 on-duty is prohibited.

155 A)B) The City Manager is authorized and directed to oversee  
156 this BWC program in accordance with the City Manager's  
157 general authority under RCW 35A.13.080.

158 B)C) The Kirkland Police Department must ensure that  
159 personnel assigned a BWC are properly trained in the use and  
160 deployment of BWCs. This training must include instruction on  
161 mandatory, permissible, and prohibited uses of BWCs;  
162 appropriate management of BWC recordings and data; and  
163 instruction to ensure proper placement of BWCs on officer  
164 uniforms.

165 D) This ordinance does not apply to any devices when used to  
166 intercept conversations for lawfully authorized investigative  
167 purposes under RCW 9.73.210 and RCW 9.73.230.

168  
169 Section 8. A new section shall be added to part 3 of chapter  
170 11.94 KMC, to be codified as KMC 11.94.110, to read as follows:

171 **11.94.110 Body Worn Cameras Policy**

172 The Kirkland Police Department must adopt a BWC policy consistent  
173 with this ordinance and with chapter 10.109 RCW. In addition to the  
174 policy elements required by RCW 10.109.010, the policy must:

175  
176  
177 A) Incorporate and implement evolving best practices in data and  
178 privacy security in order to protect recordings and associated  
179 data.  
180

181 B) Require that officers comply with applicable state and federal  
182 laws in the use and operation of BWCs and recordings, and  
183 ensure appropriate coaching and/or discipline when officers fail  
184 to follow BWC procedures or otherwise improperly use BWCs or  
185 recordings.

186 C) Incorporate adequate protections for privacy and civil liberties,  
187 including restrictions on recording in medical facilities, in

188  
189  
190  
  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
  
206  
207  
208  
209  
210  
  
211  
212  
213  
214  
  
215  
216  
  
217  
218  
219  
220  
  
221  
222  
223  
  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236

schools, and during First Amendment gatherings and providing appropriate discretion to limit recording during situations that present sensitive matters, such as rape, sexual abuse, or nudity.

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

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

**11.94.120 Security of Body Worn Camera Data**

- A) To protect the integrity of the BWC recording and the privacy of recorded individuals, the Department shall ensure that BWC recordings and associated data are protected from unauthorized access, disclosure, or use. The viewing of recordings is restricted for official use only.
- B) The Kirkland Police Department must utilize a digital evidence storage software system for digital evidence, including BWC recordings, that uses secured cloud or off-site storage. The selected software system must employ a robust security platform that ensures the following:
  - 1) To prevent inadvertent or intentional deletion or modification, the software system must maintain all original recordings or raw footage regardless of whether redactions or edits are made to a copy of the recording.
  - 2) Employees must not be able to alter, edit, or delete any recording except as authorized by Department policy.
  - 3) An electronic log or audit trail must be created any time a recording is accessed, viewed, transmitted, redacted, shared, or deleted. The log must include the date, time, and reviewer.
  - 4) Even after a recording is deleted, due to Washington State records retention requirements or as otherwise allowed by this policy, the audit trail must be retained.
- C) Nothing in this section is intended to restrict or prevent the release of BWC recordings as public records, consistent with chapter 42.56 RCW.

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

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

- A) The City Manager or his or her authorized designee(s), including, but not limited to, the City Ombud, the City Attorney's Office, the City Clerk's Office, and civilian investigators or advisory bodies authorized by the City, may conduct a review of body

237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283

worn camera recordings when there is an articulable reason justifying such review. Articulate reasons for such review include, but are not limited to:

- 1) When a civil claim has been filed or threatened against the City involving a specific incident.
- 2) When a complaint has been made against an employee regarding a specific incident.
- 3) When an incident involves a serious injury or death as a result of use of force, a vehicular pursuit, or a vehicular collision.
- 4) As part of any general auditing function directed by the City Manager that ensures compliance with this ordinance or department policy, provided such audit is consistent with applicable law and collective bargaining agreements.
- 5) In connection with any incident that garners media or community ~~inquiry~~ interest.

B) The City Manager shall designate a civilian employee in the City Attorney's Office to have access to the digital evidence storage software system independent from the Department. The civilian employee must have appropriate training and certifications to access the digital evidence storage software system and to handle potential evidence, such that any applicable state, federal, and Department security requirements are met. The City Manager shall develop and implement the process by which BWC footage or related data is reviewed or accessed by those authorized in this section.

C) This section is not a substitution for any other civilian oversight mechanisms or processes available under other law and shall not be construed to limit or restrict such other mechanisms or processes.

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

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

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

O-4796\* - - - -

284  
285

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

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

Attest:

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

Approved as to Form:

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