

USE OF AUDIO AND VIDEO RECORDING DEVICES

449.1 PURPOSE AND SCOPE

This policy applies to the use of audio and video recording of field activity in the course of official police duties, to include the use of Officer-Worn Cameras (OWC), and for all employees that view recorded files.

Audio and video recordings are intended to assist and complement officers in the performance of their duties. When recordings are obtained during enforcement activities, they can provide a valuable visual and/or audio record of the incident. It is anticipated this evidence will assist officers in report writing except where prohibited by department policy, protect officers from unfounded allegations of misconduct, reduce needless litigation in the criminal justice system, and provide a more transparent record of encounters with law enforcement.

449.2 RECORDING DEVICES AND SYSTEMS

The Police Chief will designate a system administrator to have oversight and coordinate the department's use of recording devices and systems.

Personnel will use only recording devices or systems issued and approved by the Department. Devices shall be operated and maintained according to the manufacturer's instructions and recommendations, relevant training, and in compliance with this policy.

Personnel shall not disable, re-configure or otherwise tamper with any recording device hardware or software components and settings, other than troubleshooting measures consistent with appropriate care and maintenance guidelines.

The use of other personal recordings devices is discouraged and should not be used on a routine basis. Any member who uses a personally owned recording device for department-related activities shall comply with the provisions of this policy.

Audio or video media files recorded for official police duties are the property of the Department.

449.3 UTILIZATION OF RECORDING DEVICES

Personnel utilizing an issued recording device shall:

- (a) Test any issued recording device prior to going into service and ensure the unit is functioning properly and is adequately charged to complete his or her shift.
- (b) Report any problems with, or malfunction of a department issued device to their immediate supervisor as soon as possible.
- (c) Position any recording device, such as a camera or microphone, on their person to facilitate optimum recording.
- (d) At least once at the end of each shift, upload data files to ensure storage capacity is not exceeded and/or to view uploaded audio/video.

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- (e) Monitor system effectiveness and make recommendations for operational improvement and policy revision.

Upon notification of any problems with the OWC System, supervisors shall notify the System Administrator or designee, stating the problem or malfunction. If the System Administrator or designee is not available, the supervisor shall notify the on-duty Watch Commander.

449.3.1 ACTIVATION OF RECORDING DEVICES

Unless it is unsafe or impractical to do so, or mechanical issues that impede the use of the device are present, officers shall make every reasonable effort to activate the recording device prior to making contact in any of the following incidents. If circumstances prevent recording at the beginning of an event, the officer shall begin recording as soon as practical.

- (a) Response to dispatched calls for service. Officers are encouraged to start recording emergency responses (Code 3) when the officer begins travel to the call.
- (b) Pursuits or a vehicle evading.
- (c) Enforcement or investigative encounters where there is a reasonable suspicion that the person is involved in criminal activity or a violation of the law. This includes, but is not limited to self-initiated activities, traffic stops, pedestrian checks or any other investigative or enforcement encounters.
- (d) Search of a person, vehicles or other property.
- (e) Service of search and arrest warrants.
- (f) Canine deployments (including cover officers, perimeter officers, etc.)
- (g) During prisoner transport when a prisoner has resisted, made threats towards any officer, been verbally abusive or is of the opposite sex.
- (h) All suspect statements.
- (i) Any other contact that becomes adversarial, confrontational, assaultive, or enforcement-oriented after the initial contact in a situation that would not otherwise require recording.
- (j) Personnel may activate the device before or during any other incident at their discretion.

Upon activating recording device for one of the above incidents, personnel shall not terminate recording until the incident is secure and no further communication with the parties involved is reasonably anticipated. Personnel may deactivate the camera or not record when discussing an administrative, tactical or law enforcement sensitive information away from the public.

Recording such contacts with the public shall be the rule and not the exception. If circumstances prevent an officer from recording such a contact, then this must be noted along with the explanation in any subsequent report.

449.3.2 PRIVACY CONSIDERATIONS

Recording devices shall not be used to capture non-work related activity and shall not be activated in places where reasonable expectation of privacy exists, such as locker rooms, dressing rooms or restrooms. The noted areas include both public and private locations.

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Personnel should be aware of their surroundings when operating a recording device, such as in a hospital emergency room where the privacy of patients should be considered or in other areas where there is a reasonable expectation of privacy.

Personnel are not required to obtain consent from a private person when:

- (a) In a public place.
- (b) In a location where there is no reasonable expectation of privacy (e.g., inside a building or dwelling where the user is lawfully present and engaged in the performance of official duties).

For areas with a reasonable expectation of privacy, officers will ask for consent to record. The request and any response will be recorded. If the request is denied, officers will stop recording during the time that they are in the private area. This exception does not apply to crimes in progress or other circumstances that would allow the officer to be lawfully without a warrant.

If the recording device is activated or is going to be activated while interviewing a crime victim, personnel should notify the victim of this fact prior to obtaining a statement, whenever practical. If a crime victim refuses to provide a recorded statement, personnel should deactivate recording device, obtain the statement and document this fact along with a summary in the police report.

It is highly recommended that if an officer turns the camera off prior to obtaining information from a victim or witness they should document on camera the reason for turning the camera off.

Officers may surreptitiously record any conversation during the course of a criminal investigation in which the officer reasonably believes that such a recording will be beneficial to the investigation (Penal Code 633). Personnel are encouraged to advise private persons they are recording if the advisement may gain compliance, or assist in the investigation, and does not interfere with the investigation or officer safety.

Personnel shall have the discretion to turn the recording device off during conversations with members of the community, including but not limited to confidential informants, who wish to discuss criminal activity in their neighborhood but are hesitant to come forward if they will be recorded.

SWAT personnel who are issued a recording device and are engaged in an active SWAT entry, shall defer to the SWAT supervisor or incident commander for direction on the activation of their recording device. Recording obtained during tactical operations shall be reviewed by the Police Chief or his/her designee prior to external release.

Personnel shall not use recording functions to record any personal conversation of or between another department member or employee without the recorder member's/employee's knowledge or permission.

449.3.3 RECORDING SHALL NOT STOP UNTIL THE EVENT HAS CONCLUDED

Once recording has begun, officers will record the entire event. An event has concluded when all of the following apply:

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- The officer has completed his or her part of the active investigation;
- There is little possibility that the officer will have further contact with any person involved in the event; and
- The officer is leaving the area of the event.

It shall be deemed a violation of this policy for personnel to fail to activate the device or intentionally terminate a recording in order to commit a violation of law or department policy.

Anytime a recording is terminated early, the reason shall be documented in the appropriate incident documentation.

449.3.4 DOCUMENTING USE OF A RECORDING DEVICE

Personnel using a recording device shall document its use in a relevant report. If no incident report is filed for the recorded encounter, then the fact that the event was recorded shall be documented in a subsequent report, FI card, or CAD entry.

If an officer's recording device malfunctions or is inoperable and the officer cannot utilize the device during their shift, this shall be noted in all written reports so that there is a contemporaneous record.

Personnel should not substitute "refer to video" for a detailed and thorough investigative report. Personnel should avoid using exact quotes, but should represent statements in their reports as a summary of what is contained in the statement/video, such as, "In summary, the victim related."

When video of evidentiary value is captured by an officer-worn camera, officers shall identify the related files by entering the following information into the digital evidence repository.

- (a) The MVPD case number in the Case ID Field.
- (b) Entering a title. The title should include sufficient information to identify the file, such as crime code, suspect name, location, event, etc.
- (c) Selecting the appropriate category or categories.

449.4 REVIEW AND USE OF RECORDED FILES

Recorded files and digitally recorded evidence may only be reviewed for official use. Other than approved administrative users of the digital evidence repository, personnel shall only access the repository from Department authorized computers, Department workstations, Mobile Data Computers or approved mobile devices and application.

Personnel may review recordings when they have a need and right to know for the following purposes:

- To complete a criminal investigation, prepare official reports, or prepare for a judicial process.
- Criminal investigation
- Officer-involved collision, including Collision Review Board investigations
- Vehicle Pursuit investigation or review

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- Public Disclosure request
- Use of Force review investigation
- Personnel Complaint
- Training purposes, with permission of the involved officers and approval of the Police Chief.
- Audit and Quality Control/Troubleshooting

In those circumstances where a complaint is resolved following review of recorded files with no further action necessary, supervisors shall add an additional category of citizen complaint to the file and make appropriate notations in the notes section of digital evidence repository. This will allow Professional Standards personnel to capture incidents that are resolved by this camera system.

Supervisors shall not review recordings for the sole purpose of searching for violations of department policy or law related to a specific complaint or incident.

Supervisors may also review recording device data for purposes such as following up on citizen complaints, reviewing use of force situations, critical incidents, or other criminal/administrative investigations. During such reviews supervisors may identify videos which are appropriate for training purposes.

Personnel viewing video recordings should be mindful that video evidence has limitations and may depict the events differently than a person recalls, and may not depict all of the events as seen or heard by involved parties. Video has a limited field of view and may not capture events as normally seen by the human eye. The "frame rate" of video may limit the camera's ability to capture movements normally seen by the human eye. Videos are a two-dimensional medium and may not capture depth, distance or positional orientation as well as the human eye.

449.4.1 MINOR MISCONDUCT DISCOVERED DURING REVIEW

If, in the course of reviewing a recorded file, minor acts of misconduct unrelated to the original reason for reviewing a file are discovered, they will not result in formal discipline or an internal investigation. However, such acts may result in training or counseling and may be included in an employee's performance evaluation. Examples of minor misconduct include but are not limited to uniform violations, rudeness, and profanity when there was no complaint. Exception: Profanity and slurs that disparage a protected class under city, state, or federal law are not considered minor misconduct.

449.4.2 RECORDED FILE INTEGRITY

All recorded media, images, footage or audio, from any recording device, to include personally owned devices, are property of the Mountain View Police Department and shall not be copied, released, or disseminated in any form or manner outside the parameters of this policy without the express consent of the Police Chief or a division captain, and in compliance with applicable laws.

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Department members are prohibited from the unauthorized use, duplication, retention, and/or distribution of audio and video files for their personal use and are prohibited from using a recording device to record or capture files, recordings, photos, or footage unless in the course of their official duties.

449.4.3 REQUEST FOR RECORDED FILES

Recordings shall be treated as other forms of direct evidence and subject to discovery and disclosure in accordance with the law.

Any department request for recorded evidence files shall be made to Property and Evidence, or for OWC footage, to the System Administrator. Any request not the result of a lawful discovery request by the District Attorney or City Attorney's Office shall be approved by the Police Chief or a division captain.

Non-Departmental requests for media files shall be accepted and processed in accordance with Departmental policy as set forth in Policy Section 810, Records Release and Security.

Media inquiries or requests shall be processed in accordance with Policy Section 346, News Media Relations. Due to the heightened privacy concerns associated with a video recording, any recording disclosed to the media may be edited to preserve the privacy of individuals unrelated to the case who were captured by the recording when they had a reasonable expectation of privacy, or any involved minors. When appropriate, court orders preventing or limiting the dissemination of the recording shall be secured prior to distribution.

449.4.4 COPYING FILES

A copy of a file may be made in accordance with the provisions of this policy for evidence, District Attorney request, etc. If the video is evidence in a case, the officer or a designated department member shall make a copy of the file and book the copy into Property and Evidence.

Other than as provided in this policy, no member of this Department shall download any video from the digital evidence repository or camera onto any computer, device, drive, CD, DVD or any other format without the express consent of the Police Chief or a division captain.

449.4.5 SENSITIVE RECORDINGS

Personnel conducting sensitive criminal or internal investigations may request restricted access or limit public disclosure of files. When accessing sensitive recordings, the department member viewing the file shall document the reason for access by entering the related IA case number or reason for access in the "NOTES" field of the digital evidence repository prior to viewing. The System Administrator shall be notified to remove the access restriction when the investigation is closed.

449.5 CRITICAL INCIDENTS

When safe and practical, an on scene supervisor should retrieve an officer worn recording device from the involved officer(s) at the scene. The supervisor will be responsible for assuring the

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evidence media is uploaded into the digital evidence repository, or processed in accordance with Property and Evidence Guidelines.

Following a time sensitive critical incident, a video may only be viewed prior to being uploaded into the digital evidence repository:

- (a) When exigent circumstances occur, such as when an officer is injured, or to obtain identifying information or other pertinent information.
- (b) To allow investigators, such as Professional Standards personnel, to view video in order to assist in an investigation.

If an officer is involved in an "Officer-Involved Incident", as defined by the Santa Clara County Police Chief's Association Officer-Involved Incident Guidelines, personnel will provide an initial statement to investigators prior to reviewing any recorded footage of the incident. The involved employee will have an opportunity to review recordings after the initial statement has been taken and provided a supplemental statement if desired.

449.6 CATEGORIES AND RETENTION

Employees utilizing the OWC shall identify each video by category. In the event a video does not fall into a specified category and has no apparent evidentiary or administrative value, the officer may leave the video as uncategorized. Retention periods are established by the Police Chief in accordance with state and federal mandates.

<u>Category</u>	<u>Retention Period</u>
(a) Uncategorized	6-month retention
(b) Arrest - misdemeanour	1-year retention
(c) Arrest - felony	1- year retention
(d) Traffic Stop	1- year retention
(e) Field Interview	1- year retention
(f) Evidence/Investigation	1- year retention
(g) Pursuit	1-year retention
(h) Training	6-month retention
(i) Use of force	1-year retention
(j) Citizen Complaint	1-year retention
(k) Critical Incident	1-year retention

Files for recordings for a criminal case will be transferred from the repository to a storage device that will be retained in Property and Evidence. Retention of the evidence will be in accordance with evidentiary rules.

449.6.1 DELETING FILES

Files will be deleted in compliance with evidentiary rules and the records retention policy.

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Accidental recordings may be deleted where the resulting recording is of no investigative or evidentiary value. The recording employee may request that the file be deleted by submitting an email request with sufficient information to locate the file to the employee's division captain or designee, through his/her chain of command, who shall review the file, approve or deny the request, and forward to the System Administrator for action. The requesting employee shall be notified of the outcome.