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## Portable Audio/Video Recorders

### 425.1 PURPOSE AND SCOPE

The Hayward Police Department requires that employees (issued proper equipment) use either a department-issued digital audio recorder (DAR) or body worn camera (BWC) during their official police duties. These recorders are intended to assist officers in the performance of their duties by providing an unbiased audio and/or video record of a contact.

#### 425.1.1 ACCREDITATION STANDARDS

This section pertains to the following CALEA Standards: 17.5.4, 41.3.8

### 425.2 DEFINITIONS

**Digital Audio Recorder (DAR)** – A device individually worn by employees that can capture audio when activated by the employee.

**Body Worn Camera (BWC)** – A device individually worn by employees that can capture audio and video when activated by the employee.

**Digital Evidence Management System (DEMS)** – A management system designed to digitally collect, store, secure, disseminate and purge recorded media. The digital recordings are accessible to authorized personnel and maintain an audit trail of user activity.

### 425.3 POLICY

Employees shall only use a department-issued DAR or BWC. All video and/or audio recordings created while on duty, to include photos of crime scenes, traffic accidents, arrests, subject stops, traffic stops, prisoner and witness interviews, evidence, and any other daily activity are the property of the Hayward Police Department. Employees shall not mix work related recordings with their personal information or personal recordings. Additionally, employees shall not use department-issued video or audio recording devices and recording media for personal use.

Employees shall utilize their DAR and BWC in accordance with the provisions of this policy to ensure the proper and most effective use of both devices.

Except for official law enforcement related purposes, duplication or dissemination of any recording outside the Hayward Police Department is strictly prohibited without specific written authorization of the Chief of Police or his/her designee.

### 425.4 OFFICER RESPONSIBILITIES

Prior to going into service, each uniformed officer will be responsible for making sure that he/she is equipped with a department-issued DAR or BWC in good working order. The device shall be sufficiently charged and tested for proper function. Officers shall report malfunctions, damage, loss or theft of their recording devices to their supervisor prior to going into service.

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In regard to BWCs, uniformed officers shall wear the recorder on their person in a secured fashion and in such a way to provide an unobstructed camera view of officer/citizen contacts. Officers shall use an approved mount to secure the BWC to their uniform.

By the conclusion of the officer's shift, the officer shall upload the BWC recording(s) to the DEMS to include the appropriate ID (citation or incident number), TITLE (abbreviated description of the footage), and CATEGORY. Officers shall follow upload procedures pursuant to this policy. In the same manner, at the conclusion of the officer's shift, DAR recordings shall be uploaded into the PUMA Management System.

Officers shall document the use of DARs or BWCs in any associated report for evidentiary purposes. In the event an officer fails to record an incident as required by this policy or the recording device malfunctions, the officer shall document the reason(s) in their associated report and on the appropriate form for record keeping. He/she shall submit the form to his/her supervisor as soon as practical.

#### **425.4.1 NON-UNIFORMED RESPONSIBILITY**

Any officer assigned to non-uniformed positions may carry a department-issued DAR or BWC at any time the officer believes that such a device may be beneficial to the situation. When a non-uniformed officer works a uniformed shift, he/she shall wear and use a Department-issued DAR or BWC in accordance with this policy.

#### **425.4.2 TRAINING**

Officers must complete an agency-approved training to ensure proper use and operations. Additional training may be required at periodic intervals to ensure the continued effective use and operation of the equipment, proper calibration and performance and to incorporate changes, updates or other revisions in policy or equipment.

#### **425.5 MEMBER PRIVACY EXPECTATION**

All recordings made by members on any [department/office]-issued device at any time, and any recording made while acting in an official capacity for this [department/office], regardless of ownership of the device it was made on, shall remain the property of the [Department/Office]. Members shall have no expectation of privacy or ownership interest in the content of these recordings.

#### **425.6 SUPERVISOR RESPONSIBILITIES**

Supervisors shall ensure proper performance pursuant to this policy regarding DARs and BWCs. Supervisors shall ensure that employees properly document the activation of their DAR or BWC in the associated report. In cases where the officer's DAR or BWC was not activated pursuant to this policy, the supervisor is expected to ensure proper documentation by the employee of the incident on the appropriate form and submit the form to the IA manager.

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When improper use of the DAR or BWC becomes apparent, supervisors shall document the officer's policy violation accordingly based on the Standards of Conduct and Evaluation of Employees policies.

Supervisors shall work to promptly address any technical issues as soon as practical that may arise with the recording devices. DARs or BWCs that are malfunctioned, damaged, lost or stolen shall be replaced prior to the officer going into services or as soon as practicable.

#### **425.6.1 SUPERVISOR RESPONSIBILITIES**

Supervisors should take custody of a portable audio/video recording device as soon as practicable when the device may have captured an incident involving the use of force, an officer-involved shooting or death or other serious incident, and ensure the data is downloaded (Penal Code § 832.18).

#### **425.7 OPERATING PARAMETERS**

Penal Code § 632 prohibits any individual from surreptitiously recording any conversation in which any party to the conversation has a reasonable belief that the conversation was private or confidential, however Penal Code § 633 expressly exempts law enforcement from this prohibition during the course of a criminal investigation, as follows:

- (a) No member of this Department may surreptitiously record a conversation or video footage of any other member of this department without the expressed knowledge and consent of all parties. Nothing in this section is intended to interfere with an officer's right to openly record any interrogation pursuant to Government Code § 3303(g).
- (b) Officers may surreptitiously record any conversation with or video footage of an individual, including another member of this department, during a criminal investigation in which the officer reasonably believes that such a recording will be beneficial to the investigation.
  - 1. For the purpose of this policy, any officer contacting an individual suspected of violating any law or during the course of any official law enforcement related activity shall be presumed to be engaged in a criminal investigation. This presumption shall not apply to contacts with members of this Department conducted solely for administrative purposes.

Officers that are present during a YFSB counseling session shall not record any portion of that session without the knowledge of the counselor and prior approval from a YFSB supervisor or sworn supervisor.

All on-scene officers (inclusive of initiating and witness officers) shall activate their audio recorders or cameras pursuant to this policy.

Personnel are not required to obtain consent from an individual when:

- (a) In a public place,
- (b) In a location where there is no reasonable expectation of privacy and the officer is not conducting a criminal investigation.

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#### 425.7.1 SURREPTITIOUS USE OF THE PORTABLE RECORDER

Members of the [Department/Office] may surreptitiously record any conversation during a criminal investigation in which the member reasonably believes that such a recording will be lawful and beneficial to the investigation (Penal Code § 633).

Members shall not surreptitiously record another [department/office] member without a court order unless lawfully authorized by the Chief of Police or the authorized designee.

#### 425.7.2 EXPLOSIVE DEVICE

Many portable recorders, including body-worn cameras and audio/video transmitters, emit radio waves that could trigger an explosive device. Therefore, these devices should not be used where an explosive device may be present.

#### 425.7.4 CESSATION OF RECORDING

Once activated, the portable recorder should remain on continuously until the member reasonably believes that his/her direct participation in the incident is complete or the situation no longer fits the criteria for activation. Recording may be stopped during significant periods of inactivity such as report writing or other breaks from direct participation in the incident.

Members shall cease audio recording whenever necessary to ensure conversations are not recorded between a person in custody and the person's attorney, religious advisor or physician, unless there is explicit consent from all parties to the conversation (Penal Code § 636).

#### **425.8 REQUIRED ACTIVATION**

At no time should an employee jeopardize his/her safety in order to activate a recording device or change the recording media. If an employee's safety is in jeopardy, he/she shall activate their recording device as soon as practicable after the officer safety issue has been addressed. Officers shall activate their DAR or BWC and record contacts under the following circumstances/situations:

- (a) All priority 1 and 2 dispatched calls for service (prior to arrival on scene)
- (b) All self-initiated contacts. Whenever possible, audio or video recording devices shall be activated prior to any self-initiated activity or field contact. All other assisting officers shall also activate their BWC prior to arriving to the scene of the incident.
- (c) When responding to any in-progress incident. Whenever possible, DAR or BWC devices shall be activated prior to arrival at any in-progress incident. All other assisting officers shall also activate their DAR or BWC devices prior to arrival at any in-progress incident.
- (d) All searches including, but not limited to, people, vehicle and buildings. When executing a search warrant, a parole or probation search, or consent search officers shall record the "Knock and Notice" with their DAR or BWC. Officers shall record any conversation with the occupants.
- (e) All officers involved in K-9 deployment, searches and audible warning of a canine deployment.

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- (f) Any foot pursuit or vehicle pursuits: primary, secondary officers and other authorized officers.
- (g) All Code 3 driving and/or responses.
- (h) Officers assigned to crowd control, protests or mass arrest incidents.
- (i) Suspect, Witness and victim statements; for use of force incidents this will include witness attempts.
- U) Transports involving prisoners, suspects, victims, witnesses or any person involved in the investigation.
- (k) Any call for service or field contact where the officer reasonably believes the contact may become adversarial (e.g. domestic disturbances, contacts with mentally ill subjects, etc) or where the contact becomes adversarial after an officer's initial contact.
- (l) In circumstances where the officer reasonably believes the recorded footage may contain evidentiary value.
- (m) SRU personnel (members of the negotiation, entry/arrest, perimeter team) engaged in an active tactical operation or enforcement encounter.

If multiple members of the Department are working together, all involved members shall utilize their cameras with respect to this policy. Members shall not coordinate or otherwise decide to use only one camera to capture the incident.

Members shall remain sensitive to the dignity of all individuals being recorded and exercise sound discretion to respect privacy by discontinuing recording whenever it reasonably appears to the member that such privacy may outweigh any legitimate law enforcement interest in recording. Requests by members of the public to stop recording shall be considered using this same criterion. Recording shall resume when privacy is no longer at issue unless the circumstances no longer fit the criteria for recording.

Other than at the conclusion of the contact or investigation, personnel may deactivate in places where there is a reasonable expectation of privacy or in circumstances where the audio recorder or camera may prevent them from obtaining information in relation to an investigation. Instances where personnel may deactivate include, but are not limited to:

- (a) During interviews involving sexual assault victims,
- (b) In the presence of an explosive device,
- (c) Inside hospital emergency rooms and other medical facilities,
- (d) In tactical planning situations;
- (e) While in a police facility.

#### 425.8.1 DETENTION FACILITY

Members assigned to the HPD jail shall activate their BWC's in accordance with the Required Activation (4 25.8), as well as while in performance of the following duties:

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1. Any time an inmate is removed or escorted from their cell or holding area
2. Entering a cell, or holding area, occupied by an inmate. These situations include, but not limited to:
  - a. Conducting a count
  - b. Offering and service of meals
  - c. Contacting an inmate who is inside their cell, including conversations through the window
  - d. Movement of a prisoner, examples include but not limited to, visitation, cell changes, ect.
  - e. Medical emergencies
  - f. Any other inmate contact where recording is not otherwise prohibited
3. Processing of new arrestees, including the general medical screening questionnaire
4. Searches of a cell or holding area
5. During transportation of inmates, including on-loading and off-loading of transportation vehicles
6. Members shall NOT intentionally record inmates while conducting a strip search, while an inmate is speaking with their attorney, or during an inmate's use of a toilet or shower; unless circumstances arise which dictate the need for BWC activation, such as the inmate becoming uncooperative and/or resistive during the contact, or other situations where recording this contact becomes reasonably necessary.

#### 425.8.2 ANIMAL CONTROL SERVICES

Members assigned to the HPD animal services shall activate their BWC's in accordance with the Required Activation (425.8), as well as while in performance of the following duties:

1. All calls for service and investigations requiring any field contact
2. High priority calls for service with the exception of stray/injured animals, or wildlife rescues
3. Capture of aggressive animals
4. In-field euthanasia
5. In shelter contact related to case/incident investigations and any issuance of Notice to Comply, Citation s or Orders
6. Whenever assisting a sworn officer
7. Circumstances where the employee reasonably believes the recorded footage may contain evidentiary value

#### 425.8.3 PROHIBITED USE OF BIOMETRIC SURVEILLANCE SYSTEM

The installation, activation, or use of biometric surveillance systems, including facial recognition, in connection with portable recorders is prohibited (Penal Code § 832.19).

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#### **425.9 IDENTIFICATION AND PRESERVATION OF RECORDINGS**

To assist with identifying and preserving data and recordings, members should download, tag or mark these in accordance with procedure and document the existence of the recording in any related case report.

A member should transfer, tag or mark recordings when the member reasonably believes:

- (a) The recording contains evidence relevant to potential criminal, civil or administrative matters.
- (b) A complainant, victim or witness has requested non-disclosure.
- (c) A complainant, victim or witness has not requested non-disclosure but the disclosure of the recording may endanger the person.
- (d) Disclosure may be an unreasonable violation of someone's privacy.
- (e) Medical or mental health information is contained.
- (f) Disclosure may compromise an undercover officer or confidential informant.

Any time a member reasonably believes a recorded contact may be beneficial in a non-criminal matter (e.g., a hostile contact), the member should promptly notify a supervisor of the existence of the recording.

##### **425.9.1 RETENTION REQUIREMENTS**

All recordings shall be retained for a period consistent with the requirements of the organization's records retention schedule but in no event for a period less than 180 days.

##### **425.10 POST-ACTIVATION PROCEDURES**

Any time an employee records a contact, which constitutes evidence in a criminal case, the employee shall cross-reference the associated case number on the recording under the "ID" column and in the associated police report. In all cases of activation, the employee shall identify the appropriate category of retention.

When employees activate a recording device during the performance of their duties, the recording media shall be uploaded at the conclusion of their shift to the DEMS or the PUMA Management System.

##### **425.11 RELEASE OF RECORDINGS**

Recordings made using portable recording devices pursuant to this policy are department records and may only be released as provided in the Release of Records and Information Policy or for other authorized legitimate department business purposes.

##### **425.12 RETENTION OF RECORDING MEDIA**

BWC and DAR recordings shall be retained in the DEMS or PUMA Management System where they are accessible for review and use strict to the guidelines pursuant to this policy. Access to recordings is automatically logged and can be audited. It should be clear that DEMS or the PUMA

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Management System will not allow for recordings to be manipulated or destroyed. Accidental recordings may be deleted at the request of the recording officer. Requests to delete accidental footage shall be approved by the Division Commander/Watch Commander after it has been proven that the recording does not contain any evidentiary value.

Recordings that contain evidentiary value shall be retained in the same manner as any other evidence gathered during a criminal investigation. Recordings that contain administrative or evidentiary value shall be retained for up to five years. These recordings include the following cases:

- (a) Involving reportable use of force
- (b) Leading to a detention or arrest
- (c) Administrative or criminal investigations

For all non-criminal recordings when it comes to DEMS, the retention of recording media will be 90 days provided that it remains unassociated to any criminal or administrative investigations.

For all non-criminal recordings when it comes to the PUMA Management System, the retention of recording media will be 90 days provided that it remains unassociated to any criminal or administrative investigations.

#### **425.13 REVIEW OF RECORDED MEDIA FILES**

When preparing written reports, members should review their recordings as a resource. However, members should not use the fact that a recording was made as a reason to write a less detailed report.

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct, reports of meritorious conduct or whenever such recordings would be beneficial in reviewing the member's performance.

Recorded files may also be reviewed:

- (a) Upon approval by a supervisor, by any member of the Department who is participating in an official investigation, such as a personnel complaint, administrative investigation or criminal investigation.
- (b) Pursuant to lawful process or by court personnel who are otherwise authorized to review evidence in a related case.
- (c) By media personnel with permission of the Chief of Police or the authorized designee.
- (d) In compliance with a public records request, if permitted, and in accordance with the Release of Records and Information Policy.

#### **425.14 AUTHORIZED REVIEW AND USE OF RECORDED MEDIA FILES**

All recordings are the property of the Hayward Police Department and are not to be released outside the agency without prior written approval or court order or subpoena. Audio or video

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recordings shall only be reviewed or used for internal or external investigations of misconduct or where there is reasonable suspicion that a recording contains evidentiary value. Authorized groups may have access to review or use recorded media files on a right to know, need to know basis. The following groups include:

- (a) By a supervisor or the Internal Affairs Unit in response to a personnel complaint, to investigate a violation of policy by an officer, to use for training purposes or to ensure proper use of the DAR or BWC per this policy. Managers and supervisors shall document and forward to the Patrol Commander a quarterly audit of BWC footage; the quarterly audit shall review footage from at least two randomly selected personnel. Managers and supervisors shall notify employees when a random compliance audit is completed. Internal Affairs investigations and personnel complaints do not constitute an audit.
- (b) By the personnel who originally recorded the incident. Members shall not use the fact that a recording was made as a reason to write a less detailed report. Employees may review only their own recordings, unless they have received prior permission from their division commander to review other available recordings, as it relates to:
  - Prior to preparing written reports and/or statements relevant to any incident to help ensure accuracy and consistency of accounts
  - Prior to courtroom testimony or for courtroom presentation
  - Officer-involved shootings
  - In-custody deaths
- (c) Pursuant to lawful process or by criminal investigators or court personnel authorized to review evidence in a related case or to aid in an investigation.
- (d) By media personnel with the written permission of the Chief of Police or authorized designee. Recordings that unreasonably violate a person's privacy or sense of dignity shall not be publicly released unless disclosure is required by law or order of the court.
- (e) By the City Attorney or his/her designee through permission by a Division Commander.

Recordings shall not be used by any member for the purpose of embarrassment, intimidation or ridicule.

In the absence of extenuating circumstances, an individual employee's recording shall not be viewed by another employee except via the share feature within Evidence.com and only after supervisor approval has been given.

#### **425.15 SYSTEM ADMINISTRATOR RESPONSIBILITIES**

The System Administrator is designated by the Chief of Police and has oversight responsibilities to include, but not limited to, the following:

- (a) Operation and user administration of the system
- (b) System evaluation
- (c) Training

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- (d) Policy and procedure review and evaluation
- (e) Coordination with IT regarding system related issues
- (f) Ensure recorded files of evidentiary value are secured and maintained for a minimum of one year. Ensure all other routine files are secure and maintained for 90 days.
- (g) Ensure recorded files are reviewed and released in accordance with federal, state, and local statutes and the City of Hayward/Hayward Police Department retention policy.

#### **425.16 COORDINATOR**

The Chief of Police or the authorized designee shall appoint a member of the Department to coordinate the use and maintenance of portable audio/video recording devices and the storage of recordings, including (Penal Code § 832.18):

- (a) Establishing a system for downloading, storing and security of recordings.
- (b) Designating persons responsible for downloading recorded data.
- (c) Establishing a maintenance system to ensure availability of operable portable audio/video recording devices.
- (d) Establishing a system for tagging and categorizing data according to the type of incident captured.
- (e) Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.
- (f) Working with counsel to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
- (g) Maintaining logs of access and deletions of recordings.

#### **425.17 RETENTION OF RECORDINGS**

Recordings of the following should be retained for a minimum of two years (Penal Code § 832.18):

- (a) Incident involving use of force by an employee
- (b) Officer-involved shootings
- (c) Incidents that lead to the detention or arrest of an individual
- (d) Recordings relevant to a formal or informal complaint against an officer or the Hayward Police Department

Recordings containing evidence that may be relevant to a criminal prosecution should be retained for any additional period required by law for other evidence relevant to a criminal prosecution (Penal Code § 832.18).

All other recordings should be retained for a period consistent with the requirements of the organization's records retention schedule but in no event for a period less than 180 days.

Records or logs of access and deletion of recordings should be retained permanently (Penal Code § 832.18).

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### 425.17.1 RELEASE OF AUDIO/VIDEO RECORDINGS

Requests for the release of audio/video recordings shall be processed in accordance with the Records Maintenance and Release Policy.

### **425.18 REVISIONS**

Enacted: December 17, 2007

Revised: February 18, 2009

Revised: July 8, 2009

Revised: April 25, 2012

Revised: April 9, 2013

Revised: July 9, 2013

Revised: November 3, 2014

Revised: March 31, 2015

Revised: May 23, 2016

Revised: February 28, 2017

Revised: September 21, 2017

Revised: October 16, 2017

Revised March 30, 2018

Revised: June 7, 2020

Revised: October 23, 2020

Revised: February 9, 2021

Revised: June 21, 2021