

SIDE LETTER AGREEMENT

BETWEEN
THE CITY OF SAN JOSE
AND
PEACE OFFICER PARK RANGER ASSOCIATION (POPRA)

Body Worn Camera Policy and Park Ranger Duty Manual

The City and the Peace Officer Park Ranger Association (POPRA) agree the attached Body Worn Camera Policy will be incorporated into the duty manual for Park Rangers and Senior Park Rangers.

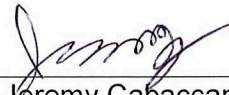
The City and POPRA further agree to continue discussions to update the duty manual for Park Rangers and Senior Park Rangers, including any further discussions on body worn cameras.

This Agreement shall be considered part of the tentative agreement for a successor MOA between the parties. This agreement shall become effective only as part of the overall tentative agreement for a successor MOA, when signed by all parties below, ratified by POPRA and approved by the City Council.

FOR THE CITY:

FOR THE UNION:

 5/24/23
Date
Jennifer Schembri
Director of Employee Relations
Director of Human Resources

 5/24/23
Date
Jeremy Cabaccang
Business Representative
POPRA

San Jose Park Ranger Body Worn Camera Policy FINAL DRAFT

DEFINITIONS

DEPARTMENT-ISSUED BODY WORN CAMERAS

A Department-issued body worn camera (BWC) is a camera worn on an individual Park Ranger's person that records and stores audio and video. The use of the BWC system provides documentary evidence for park patrol, protection, and enforcement of state and municipal laws and park rules and regulations, including, but not limited to, issuing citations, making arrests and performing parking control activities and interactions with park visitors except as otherwise noted.

DEFINITIONS

Power On / Off – The process of powering on or off the recording device. This merely turns the BWC on or off and does not refer to recording. When powered on, the BWC is in buffering mode and capturing only 30 seconds of video but does not save the recording to memory unless the camera is activated.

Recording on / Activating – The process of recording video and/or audio to memory on the device.

Recording off / Deactivating – The process of stopping the recording. This discontinues the recording being saved to memory on the device but does not prevent the device from buffering.

BODY WORN CAMERAS-GENERAL PROVISIONS

The Department adopts the use of BWCs to record interactions between Park Rangers and the public. Park Rangers shall utilize BWCs in accordance with the provisions of this policy.

USER TRAINING

The Department shall ensure that each Park Ranger is trained in the use of the BWC prior to issuance and deployment. The training shall include:

1. Training on operation (including when to activate and deactivate), maintenance and care;
2. Training on mandatory, discretionary, and non-permissible uses of body worn cameras;
3. Periodic training on significant changes in the law pertaining to body worn cameras;
4. Additional training at periodic intervals to ensure continued effective use of the body worn camera equipment, performance, and to incorporate changes, updates or other revisions in policies and equipment.

PARK RANGER RESPONSIBILITIES

Every Park Ranger assigned a BWC is responsible for ensuring that they are equipped with a Department-issued BWC and that the camera is fully charged and in good working order at the beginning of their shift. If a device is in need of repair, Park Rangers will notify their supervisor

and turn the BWC into the Supervising Park Ranger for repair or replacement. Actual time spent testing or reporting damage to a BWC shall be regarded as time worked.

Note: This section is inclusive of all uniform types including Bicycle Patrol, ATV Patrol, and Boat Patrol.

Park Rangers should wear the BWC on their uniform at a location that will facilitate an optimum recording field of view. This location may vary from Park Ranger to Park Ranger based upon their specific uniform and body composition.

Park Rangers will 'power on' the BWC before going into service and keep it powered on for the remainder of their shift, with the exception of bathroom breaks or those times when a Park Ranger is entering a Department changing room. Outside of these two exceptions, the Park Ranger will only 'power off' their BWC at the conclusion of their shift prior to placing it in a docking station to upload.

Note: Exceptions to this rule are certain incidents referenced in the Procedures Related to Viewing BWC Footage Prior to Making Statements section of this policy. Also, during a technical rescue where the presence of the BWC may pose a risk to the Park Ranger or other rescue personnel.

Park Rangers shall not deliberately remove, dismantle or tamper with any hardware, video evidence, and/or the evidence management software component of the BWC.

Each Park Ranger is responsible for ensuring that their assigned BWC is uploaded during their shift as needed or at the completion of their shift, or at any time the device's memory is deemed to be full. Actual time spent uploading the BWC files at the completion of a Park Ranger's shift shall be considered booking evidence and regarded as time worked. Exceptions to the requirement that BWC files are uploaded during a Park Ranger's shift or at the completion of their shift may be granted based on special circumstances such as a Park Ranger working a uniformed special event on a regularly-scheduled day off, and in those circumstances the Park Ranger should ensure their assigned BWC files are uploaded at the start of their next shift. Park Rangers should coordinate with their supervisor for these special circumstances.

Media captured via the BWC shall only be uploaded to Department-approved secure storage.

SUPERVISOR RESPONSIBILITIES

Supervisors shall utilize their BWC and ensure that Park Rangers utilize the BWC according to these policy guidelines.

Supervisors shall ensure videos related to any incidents referenced in the Procedures Related to Viewing BWC Footage Prior to Making Statements section of this policy are uploaded as soon as possible following the event or as requested by a supervisor.

Senior Park Rangers may review video captured by a Park Ranger's BWC. At no time, except at the direction of the Director or designee, shall the supervisor [Supervising Park Ranger] allow a citizen to view the footage.

In those circumstances where a concern is addressed with no further action required, Senior Park Ranger shall note the incident in the CAD event and submit a memorandum to the Supervising Park Ranger.

WHEN TO ACTIVATE

The safety of Park Rangers and members of the public is the highest priority and Park Rangers shall turn on their BWC at the beginning of their shift and activate their BWC for all public contacts except as described in the Deactivate section of this policy.

During their shift, Park Rangers shall activate the BWC prior to initiating, or due to safety reasons, as soon as practical after initiating, the following actions:

1. All encounters where there is at least reasonable suspicion the person(s) has committed, is committing, or may be involved in an activity in violation of Federal, State, or Municipal rules and regulations.
2. While enroute, and prior to arrival, to a call for service (regardless if the suspect, victim, or witness is present at the scene).
3. Taking or attempting to detain a person or take a person into custody.
4. Enforcement encounters where there is reason to believe that the individual is committing a violation for which a citation may be issued.
5. All incidents involving the use of force.
6. All public interactions, regardless of context, that escalates and becomes adversarial.
7. Suspect statements.
8. Witness/Victim statements with exceptions detailed in the "Victim and Witness Statements" section of this document.
9. Administrative vehicle stops where appropriate within City parks.

WHEN TO DEACTIVATE

As a general rule, BWC recordings shall not be intentionally deactivated until the conclusion of the Park Ranger's public contact, except for reasons as provided below.

Anytime the recording is deactivated prematurely, the reason(s) should be documented both on the BWC recording before deactivation and in the appropriate report. If no report is filed for the recorded encounter, then the reason(s) for the early deactivation should be recorded on the citation, CAD event, or other appropriate report.

Park Rangers must deactivate their BWCs in the following situations:

1. During routine, incidental contact with a citizen, (i.e., giving directions or lunch breaks) unless the incident becomes adversarial or otherwise triggers a reason to activate (see "When to Activate" section of this document).
2. When in public or private locker rooms, changing rooms, or restrooms, unless responding to an incident.
3. During briefings or the discussion of safety and security procedures.
4. While actively engaged in wildland fire fighting activities with no expectation of public contact or enforcement activities.
5. During scheduled interpretive programs with prior supervisor's approval.
6. When conducting purely maintenance or resource management assignments with no expectation of public contact or enforcement activities.

7. While Park Rangers are engaged in conversations with individuals with whom the Park Ranger is in a privileged relationship (e.g. spouse, attorney, labor representative, minister, etc.).

Note: A privileged conversation does not include a conversation with another Park Ranger or supervisor while still actively engaged in a call for service, investigation, or enforcement encounter.

8. When entering the Santa Clara County Main Jail's main facility.
9. When entering medical facilities.
10. When in a courtroom that is in session.
11. When engaging in trainings other than formal Field Training such as non-field training, refresher training, baton training, CIT, or other classroom training.

ADVISEMENTS AND CONSENT

Generally, Park Rangers are **not** required to advise or obtain consent to utilize the BWC from a private person when in a public place such as a City park.

However, when initiating contact with members of the public, Park Rangers **shall make a reasonable effort** to advise persons they are being recorded with the BWC, unless the Park Ranger has reason to believe that doing so will endanger the safety of the Park Ranger, another Park Ranger, a member of the public, or will interfere with the performance of their duties.

When a Park Ranger's grounds for a search is based solely on an individual's **consent**, they are required to both advise **and** obtain consent to record with a BWC from the person who is authorized to grant consent and is being recorded and/or searched. This does not apply to crimes in progress or other circumstances that would allow the Park Ranger to be lawfully present without a warrant.

VICTIM AND WITNESS STATEMENTS

When conducting an investigation, the Park Ranger shall attempt to record the victim or witness statement with the BWC. The recording may be valuable evidence that contributes to or complements an investigation. While evidence collection is important, the Department also recognizes it is important for Park Rangers to maintain credibility with people wanting to share information.

Should a Park Ranger encounter a reluctant victim or witness who does not wish to make a statement on camera, the Park Ranger shall use discretion and not record the victim or witness statement with the BWC, but document on camera the reason for not fully recording the statement with the BWC. The BWC should be reactivated as soon as practicable after the victim or witness statement is provided.

UNAUTHORIZED ACCESS AND USE

All BWC recordings shall remain the property of the Department and constitute official records of investigation of the Department.

Unauthorized access to, use, duplication, and/or distribution of BWC files is prohibited. Park Rangers shall not make copies of any BWC file for their personal use and are prohibited from using a recording device such as a phone camera or secondary video camera to record BWC files.

The BWC shall not be used to record:

1. Encounters not directly related to official activities in the performance of Park Ranger duties.
2. Performance of non-enforcement functions or administrative duties within a department facility.

Personally owned BWCs shall not be used while on duty.

Note: All activity related to BWC video files are automatically tracked in the evidence management system's audit trail. This information includes: the person accessing the file(s), the date and time of access, the activity that was performed, and the specific IP address from which the file(s) were accessed.

ACCIDENTAL RECORDINGS

In the event of an accidental activation of the BWC where the resulting recording is of no investigative or evidentiary value, the recording Park Ranger may request that the BWC video be deleted. The Park Ranger will submit a request for deletion via email, with sufficient information to locate the BWC file, to their direct supervisor.

The email will be forwarded through the Park Ranger's chain of command to their Supervising Park Ranger. The receiving Supervising Park Ranger shall review the file and approve or deny the request. The Supervising Park Ranger will ensure the file(s) is not associated with a public contact or CAD event. No files associated with an official Park Ranger contact, CAD event, or any pending litigation or complaint are eligible for deletion.

Should the Supervising Park Ranger approve the request, they will send an email to the Deputy Director – Parks Division with the reason for the deletion, including the authorizing authority. Only Supervising Park Rangers, with the approval of the Deputy Director – Parks Division shall delete the files. The reason for the deletion, including the authorizing authority, will be documented in the notes of the videos. These notes are retained by the evidence management system's audit trail. Deletions and requests for deletion are tracked by the Supervising Park Rangers' Office.

Park Rangers will not request deletion of BWC files that are not the result of an accident. Should the Park Ranger knowingly or unknowingly record something of a confidential nature, the Park Ranger will do the following:

- Place an electronic Marker within the video (via the BWC's Function Button) or within Evidence.com after uploading the video, AND
- Change the title of the video file(s) to "SENSITIVE/CONFIDENTIAL." This will indicate to the Supervising Park Ranger that the file(s) contains something of a sensitive nature. In these situations, further discussion between the Park Ranger and the Supervising Park Rangers Office may be required for coordination.
- Park Rangers are also encouraged to provide additional information in Evidence.com as to the sensitive or confidential nature of the video by adding notes within the video file. This will assist the Supervising Park Ranger with proper identification of the sensitive/confidential evidence.

DOCUMENTING USE OF THE BODY WORN CAMERA

Park Rangers should not substitute a BWC recording for a detailed and thorough report. Park Rangers should continue to prepare reports as outlined in Department policy.

If a Park Ranger is required to write a report or citation, the Park Ranger will also document in the report or citation the fact that a BWC was used to record the incident. If the BWC was not activated as per policy, the Park Ranger shall document in the report or citation the reason and/or justification for not activating their camera. Park Rangers shall advise Dispatch if the BWC was activated or not activated when clearing a call for service.

REVIEW OF BODY WORN CAMERA FILES

All BWC video file viewing and sharing is for City business use only. Department personnel may review BWC files according to the provisions of this policy and are reminded that all activity related to BWC video files are automatically tracked in the evidence management system's audit trail. This information includes: the person accessing the file(s), the date and time of access, the activity that was performed, and the specific IP address from which the file(s) were accessed.

A Park Ranger may review BWC files, including those of other Park Rangers, in the following instances:

1. For the purposes of completing investigations and preparing accurate official reports with the exception of making statements following certain incidents. See Procedures Related to Viewing BWC Footage Prior to Making Statements.
2. Prior to courtroom testimony or for courtroom presentations, or as part of preparation by the San Jose City Attorney's Office for litigation in which a Park Ranger is a party or a witness and the City Attorney's Office is representing the City and/or Park Rangers who are parties to the litigation.
3. For potential training purposes as referred to in the Training with Body Worn Camera Files section below.
4. For preparation of a personnel investigation interview, including review with a Park Ranger representative, outside the presence of any investigator or supervisor.
5. For other reasons as specified with the permission of the Director or designee.

Exception: Department members identified as Administrative Users may access BWC files from a computer or device outside of the Department for the purpose of completing administrative tasks, such as locking or unlocking users, etc.

PROCEDURES RELATED TO VIEWING BODY WORN CAMERA FILES PRIOR TO MAKING STATEMENTS

The Department recognizes that the video images recorded on the BWC are two dimensional and cannot always capture the entire scene due to a number of limiting factors. The BWC file(s) should be considered as just one piece of evidence collected from a scene or incident and not a singularly-inclusive piece of evidence.

Following a use of force that causes, or is reasonably expected to cause great bodily harm, substantial bodily harm, loss of consciousness, or death that requires a Park Ranger to make a statement related to that incident, Park Rangers and their representative(s) **shall not** view their

BWC video, or any video capturing their image or the incident on any device, prior to making an initial statement. Use of force is defined in the San Jose Park Ranger Policy Manual Section 300.

In situations where the San Jose Police Department is charged with the investigation and collection of evidence, the Department will release all involved Park Ranger BWCs to the San Jose Police Department. The San Jose Police Department will be responsible for ensuring the BWC file is uploaded on the Department's system.

ADMINISTRATIVE REVIEW OF BODY WORN CAMERA FILES

The Department may review BWC files at any time and address any policy violations committed by Park Rangers upon discovery by the Department.

Supervisors and other investigators may access BWC files for administrative investigations.

Supervisors should, on a reasonable basis, review BWC files to ensure that BWC equipment is functioning properly and Park Rangers are adhering to the requirements of this policy.

Supervisors who inadvertently discover policy violations will have discretion to resolve the violation with training or informal counseling. Should the policy violation rise to the level of more formal discipline, the supervisor will articulate the reason for expanding the scope of investigation to the Supervising Park Ranger and adhere to policies set forth in City policy.

Exception: Senior Park Rangers and the Supervising Park Ranger may view BWC files to evaluate the performance of a recruit Park Ranger.

TRAINING WITH BODY WORN CAMERA FILES

A BWC file may be utilized as a training tool for individuals, specific units, and the Department as a whole. Department members recommending utilization of a BWC file for training purposes will submit the recommendation to their supervisor for approval and contact the Supervising Park Ranger for assistance as needed.

Exception: Senior Park Rangers may use BWC files to provide immediate training to recruits and to assist with the completion of the Daily Observation Report (DOR).