



**CITY OF PACIFIC GROVE**  
300 Forest Avenue, Pacific Grove, California 93950

**AGENDA REPORT**

**TO:** Honorable Mayor and Members of City Council

**FROM:** Amy Christey, Chief of Police and Daniel Gho, Public Works Director

**MEETING DATE:** October 19, 2016

**SUBJECT:** Response to Monterey County Grand Jury Report on Body Worn Cameras and Pacific Grove Sewage Spill

**CEQA:** Does Not Constitute a "Project" under the California Environmental Quality Act (CEQA)

**RECOMMENDATION**

Staff recommends Council approve the attached response to the 2015-2016 Monterey County Civil Grand Jury Report.

**DISCUSSION**

On June 30, 2016 the Monterey County Civil Grand Jury issued its report entitled "The Slowly Expanding Use of Body-Worn Video Cameras by Law Enforcement Agencies in Monterey County", and the report entitled "Pacific Grove Sewage Spill". The full report is posted online at: [http://www.monterey.courts.ca.gov/Documents/GrandJury/2016/CivilGrandJuryReport\\_2016.pdf](http://www.monterey.courts.ca.gov/Documents/GrandJury/2016/CivilGrandJuryReport_2016.pdf)

The City is responsible for Finding Nos. F1 through F6, and Recommendation Nos. F26, and R35 through R39 pertaining to "The Slowly Expanding Use of Body-Worn Video Cameras by Law Enforcement Agencies in Monterey County". The City is responsible for Findings Nos. F4-F8 and Recommendations R-2 – R-4 pertaining to the "Pacific Grove Sewage Spill". State law requires the City to respond separately to each Finding and Recommendation set forth in the Jury Report. As to Findings, the City must agree or wholly or partially disagree with the Finding. As to Recommendations, the City must state that it has implemented, will implement or will not implement the recommendation(s).

The City agrees with the findings and recommendations made. The City's proposed response to the Grand Jury meets the requirements set out in law. If approved, this action shall authorize the Mayor to send the response letters to the Monterey County Civil Grand Jury on behalf of the City.

**FISCAL IMPACT**

None. The funding related to some of the responses in implementing a Body Worn Camera Program, including related hardware and software, is approved in the FY2016-17 general fund operating budget for the Police Department.

**ATTACHMENTS**

- 1. Draft Response Letter to Grand Jury for Body Worn Camera
- 2. Police Department Body Worn Camera Policy
- 3. Draft Response Letter to grand Jury for Pacific Grove Sewage Spill

RESPECTFULLY SUBMITTED:

REVIEWED BY:



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Amy Christey  
Chief of Police

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Ben Harvey  
City Manager



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Daniel Gho  
Public Works Director



**300 Forest Avenue  
Pacific Grove, California, 93950**

October 19, 2016

Honorable Mark E. Hood  
Presiding Judge Superior Court  
240 Church Street  
Salinas, Ca. 93901

Dear Judge Hood,

This correspondence is in reference to the 2015-2016 Monterey County Grand Jury Report entitled, "The Slowly Expanding Use of Body Worn Cameras by Law Enforcement Agencies in Monterey County."

Pursuant to the Grand Jury's request, the Pacific Grove City Council (Council) reviewed the Findings and Recommendations of the Grand Jury report at its regular meeting on October 19, 2016.

Council authorized the following response to the Grand Jury's Report. Listed below are the Council's responses to the Findings and Recommendations.

**Finding of the Grand Jury Investigation:**

**F 1** The use of BWCs (Body Worn Cameras) responds to public demands for greater law enforcement transparency.

**Response:** As to the finding regarding the City of Pacific Grove, the respondent agrees.

**F 2** BWCs, when recording lawful police conduct, provide positive risk management benefits.

**Response:** As to the finding regarding the City of Pacific Grove, the respondent agrees.

**F 3** BWC recordings can serve as a valuable officer training resource.

**Response:** As to the finding regarding the City of Pacific Grove, the respondent agrees.

**F 4** Law enforcement best practices now include law enforcement's use of BWCs when funds have been made available for their purchase and that of required data storage capacity.

**Response:** As to the finding regarding the City of Pacific Grove, the respondent agrees.

**F 5** At a minimum in California, written department policies must comply with the requirements of Penal Code Section 832.18. (Appendix 3)

**Response:** As to the finding regarding the City of Pacific Grove, the respondent agrees.

**F 6** In the absence of other sources of funding, each City Council must make sufficient funds available to its police department before the police department can purchase BWCs for its officers and secure storage system for resulting BWC recordings.

**Response:** As to the finding regarding the City of Pacific Grove, the respondent agrees.

**Finding of the Grand Jury Investigation for Pacific Grove:**

**F 26** The Pacific Grove Police Department does not provide BWCs for its officer's use.

**Response:** As to the finding regarding the City of Pacific Grove, the City disagrees in part. The Pacific Grove Police Department was funded for BWCs in the 2016-2017 fiscal year budget. The Pacific Grove Police Department is currently conducting a BWC test pilot project for future Council decision regarding the type of BWC to purchase.

**Recommendation of the Grand Jury:**

**R 35** As part of the Pacific Grove Police Department's next annual budget request (or before) the Department shall apply to the Pacific Grove City Council for funds sufficient to purchase body-worn cameras of the departments choosing for each officer and for a secure data storage system with adequate capacity to store the data recorded by those cameras.

**Response:** The recommendation has been implemented. The funding for the BWCs was included in the Police Department 2016-2017 fiscal year budget. The department is currently conducting a pilot program to assist them in purchasing the most cost-effective equipment and secure software storage medium. The full implementation of the BWC program is estimated to be implemented prior to the end of fiscal year 2016-2017.

**R 36** As part of the Pacific Grove Police Department's next annual budget allocation (or before) the City Council shall provide funds sufficient to enable the Police Department to purchase body-worn cameras of the department's choosing for each officer and for a secure data storage system with adequate capacity to store the data recorded by those cameras.

**Response:** The recommendation has been implemented. The funding for the BWCs was included in the Police Department 2016-2017 fiscal year budget. The department is currently conducting a pilot program to assist them in

purchasing the most cost-effective equipment and secure software storage medium. The full implementation of the BWC program is estimated to be implemented prior to the end of fiscal year 2016-2017.

**R 37** The Pacific Grove Police Department shall adopt a written body-worn camera policy, which at a minimum includes the “best practices” set forth in California Penal Code 832.18.

**Response:** The recommendation has been implemented. The department adopted a written body-worn camera policy, Lexipol #429, on July 1, 2016 for the purpose of the pilot program and implementation of body-worn cameras by the end of the fiscal year 2016-2017.

**R 38** The Chief of the Pacific Grove Police Department shall meet with the department’s legal counsel to review the legal sufficiency of the department’s proposed body-worn camera policy before it is adopted by the department.

**Response:** The recommendation has been implemented. Further, the Pacific Grove Police Department subscribes to Lexipol and the Policy adopted on July 1, 2016 contains language that includes law enforcement best practices, and is legally compliant with court decisions and case law.

**R 39** The Chief of the Pacific Grove Police Department shall meet with the department’s legal counsel at least annually to review the then-current laws relating to the use of body-worn cameras and the storage of their recordings, and to revise department policy if necessary to comply with the law.

**Response:** The recommendation has been implemented. Further, the Department subscribes to Lexipol policy and by doing so, receives constant updates related to court decisions, case law, best practices, etc.

Please feel free to contact Chief Amy Christey by email or telephone at [achristey@cityofpacificgrove.org](mailto:achristey@cityofpacificgrove.org) or 831.648.3143 respectively if you have any questions.

Sincerely,

Bill Kampe  
Mayor

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## Portable Audio/Video Recorders

### 429.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of portable audio/video recording devices by members of this department while in the performance of their duties. Portable audio/video recording devices include all recording systems whether body-worn, hand held or integrated into portable equipment.

This policy does not apply to lawful surreptitious audio/video recording, interception of communications for authorized investigative purposes or to mobile audio/video recordings (see the Investigation and Prosecution and Mobile Audio/Video policies).

### 429.2 POLICY

The Pacific Grove Police Department may provide members with access to portable recorders, either audio or video or both, for use during the performance of their duties. The use of recorders is intended to enhance the mission of the Department by accurately capturing contacts between members of the Department and the public.

### 429.3 MEMBER PRIVACY EXPECTATION

All recordings made by members acting in their official capacity shall remain the property of the Department regardless of whether those recordings were made with department-issued or personally owned recorders. Members shall have no expectation of privacy or ownership interest in the content of these recordings.

### 429.4 MEMBER RESPONSIBILITIES

Prior to going into service, each uniformed member will be responsible for making sure that he/she is equipped with a portable recorder issued by the Department, and that the recorder is in good working order. If the recorder is not in working order or malfunctions at any time, the member shall promptly report the failure to his/her supervisor and obtain a functioning device as soon as practicable. Uniformed members should wear the recorder in a conspicuous manner or otherwise notify persons that they are being recorded, whenever possible.

Any member assigned to a non-uniformed position may carry an approved portable recorder at any time the member believes that such a device may be useful. Unless conducting a lawful recording in an authorized undercover capacity, non-uniformed members should wear the recorder in a conspicuous manner when in use or otherwise notify persons that they are being recorded, whenever possible.

When using a portable recorder, the assigned member shall record his/her name, PGPD identification number and the current date and time at the beginning and the end of the shift or other period of use, regardless of whether any activity was recorded. This procedure is not required when the recording device and related software captures the user's unique identification and the date and time of each recording.

## *Portable Audio/Video Recorders*

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Members should document the existence of a recording in any report or other official record of the contact, including any instance where the recorder malfunctioned or the member deactivated the recording. Members should include the reason for deactivation.

### **429.4.1 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).

### **429.5 ACTIVATION OF THE PORTABLE RECORDER**

This policy is not intended to describe every possible situation in which the portable recorder should be used, although there are many situations where its use is appropriate. Members should activate the recorder any time the member believes it would be appropriate or valuable to record an incident.

The portable recorder should be activated in any of the following situations:

- (a) All enforcement and investigative contacts including stops and field interview (FI) situations
- (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops
- (c) Self-initiated activity in which a member would normally notify the Dispatch Center
- (d) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording

Members should 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 should be considered using this same criterion. Recording should resume when privacy is no longer at issue unless the circumstances no longer fit the criteria for recording.

At no time is a member expected to jeopardize his/her safety in order to activate a portable recorder or change the recording media. However, the recorder should be activated in situations described above as soon as practicable.

### **429.5.1 SURREPTITIOUS USE OF THE PORTABLE RECORDER**

Members of the Department may surreptitiously record any conversation during the course of 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 member without a court order unless lawfully authorized by the Chief of Police or the authorized designee.

## *Portable Audio/Video Recorders*

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### 429.5.2 CESSATION OF RECORDING

Once activated, the portable recorder should remain on continuously until the member's 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).

### 429.5.3 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.

## **429.6 PROHIBITED USE OF PORTABLE RECORDERS**

Members are prohibited from using department-issued portable recorders and recording media for personal use and are prohibited from making personal copies of recordings created while on-duty or while acting in their official capacity.

Members are also prohibited from retaining recordings of activities or information obtained while on-duty, whether the recording was created with department-issued or personally-owned recorders. Members shall not duplicate or distribute such recordings, except for authorized legitimate department business purposes. All such recordings shall be retained at the Department.

Members are prohibited from using personally-owned recording devices while on-duty without the express consent of the Watch Commander. Any member who uses a personally-owned recorder for department-related activities shall comply with the provisions of this policy, including retention and release requirements.

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

## **429.7 REVIEW OF RECORDINGS**

When preparing written reports, members should review their recordings as a resource. However, members shall not retain personal copies of recordings. 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 or reports of meritorious conduct or whenever such recordings would be beneficial in reviewing the member's performance.

Recorded files may also be reviewed:

## *Portable Audio/Video Recorders*

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- (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 Records Maintenance and Release Policy.

All recordings should be reviewed by the Custodian of Records prior to public release (see the Records Maintenance and Release Policy). Recordings that unreasonably violate a person's privacy or sense of dignity should not be publicly released unless disclosure is required by law or order of the court.

### **429.8 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.



**300 Forest Avenue  
Pacific Grove, California, 93950**

October 19, 2016

Honorable Mark E. Hood  
Presiding Judge Superior Court  
240 Church Street  
Salinas, Ca. 93901

Dear Judge Hood,

This correspondence is in reference to the 2015-2016 Monterey County Grand Jury Report entitled, "Pacific Grove Sewage Spill"

Pursuant to the Grand Jury's request the council reviewed the Findings and Recommendations of the Grand Jury report at its council meeting October 19, 2016.

Council authorized me to respond to the Grand Jurys Request. Listed below are the council's response to the Findings and Recommendations.

**Finding of the Grand Jury Investigation:**

**F1** MRWPCA is responsible for the May 18, 2015, sanitary sewer overflow at Fountain Avenue, Pacific Grove. They own and operate said pump station, and were making repairs there when the overflow occurred.

**Response:** MRWPCA response required.

**F2** MRWPCA did not have a procedure to address potential false pressure readings during valve maintenance on May 18, 2015.

**Response:** MRWPCA response required.

**F3** Diverting the SSO into the Monterey Bay prevented a costlier and hazardous uncontrolled overflow. MRWPCA's response in dealing with the May 18 SSO was appropriate given the alternative.

**Response:** MRWPCA response required.

**F4** The condition of PG owned sewer infrastructure was unrelated to the circumstances of the SSO on May 18, 2015.

**Response:** As to the finding regarding the City of Pacific Grove, the respondent agrees.

**F5** PG fulfilled its obligation in the Ecological Rights Foundation v. City of Pacific Grove Case #CO3-2612 PVT.

**Response:** As to the finding regarding the City of Pacific Grove, the respondent agrees.

**F6** PG has so far only approved projects outlined in the 2014 SSMP when matching funds are available.

**Response:** As to the finding regarding the City of Pacific Grove, the respondent agrees.

**F7** Due to rate increases from Proposition 218, PG will have sufficient funds to resolve the sewer infrastructure issues identified in the 2014 SSMP.

**Response:** As to the finding regarding the City of Pacific Grove, the respondent agrees.

**F8** PG is sufficiently maintaining its sanitary sewer system through its contracts with Greenline and Root Tamers.

**Response:** As to the finding regarding the City of Pacific Grove, the respondent agrees.

#### **Recommendations of the Grand Jury**

**R1** MRWPCA implement staff training to account for and manage situations of false equipment readings.

**Response:** MRWPCA required to respond.

**R2** The City of Pacific Grove prioritize sewer projects based on severity of pipe degradation and public need.

**Response:** The City has implemented.

**R3** The City of Pacific Grove annually budget for sewer projects using Proposition 218 funds and other funds as they become available.

**Response:** The City has implemented.

**R4** The City of Pacific Grove actively seek matching funds for the sewer projects.

**Response:** The City has implemented.

Please feel free to contact Daniel Gho, Public Works Director via email or telephone at [dgho@cityofpacificgrove.org](mailto:dgho@cityofpacificgrove.org) or 831.648.5722 respectively if you have any questions.

Sincerely,

Bill Kampe  
Mayor