

## DRAFT Video Release Ordinance for the City of Detroit

### **I. PURPOSE.**

This ordinance will provide direction to officials and agencies of the City of Detroit (“City”) with respect to the public release by the City of videotape and audiotape recordings and certain specified police reports that relate to certain types of incidents involving the Detroit Police Department (“DPD”) members, and shall prescribe procedures under which requests can be made to delay temporarily the release of those items to the public.

### **II. ORDINANCE CONSIDERATIONS.**

This ordinance is intended to strike a balance between competing and sometimes conflicting interests of

1. the public in obtaining timely access to video and audio recordings particularly those related initial police reports pertaining to certain incidents involving the use of force by police officers;
2. individuals who are the subject of the police action;
3. units of local, state and federal government (including agencies of the City) involved in investigating or otherwise addressing the consequences of those incidents.

Government institutions and officials with appropriate jurisdiction may have an interest in temporarily delaying the release of such information to the public in circumstances where it might compromise their efforts to address these incidents, including (but not limited to) criminal, disciplinary or other types of investigations. Those interests may include a desire to avoid instances where early release of information could cause fact witnesses, whether civilian or otherwise, intentionally or inadvertently to conform their recollections of events to fit what they see in a video, hear in an audio recording, or read in a report. In addition, certain individuals, such as persons injured in these incidents or their families, may also have interests concerning the release of these items. Despite those interests, however, the people of the City have an undeniable, and in some cases paramount, interest in being informed, in a timely fashion and based on the most accurate information possible, about how their police department conducts its business, especially where the use of force by the police results in the death of, or great bodily harm to, a civilian.

This ordinance attempts to balance those competing interests by permitting specifically interested entities to request a temporary delay in the public release of recordings or reports in order to protect the integrity and effectiveness of their investigations, while assuring that these materials will become available to the public within a limited and certain period of time. [The goal of this ordinance is to increase transparency with respect to the operations of the DPD, and in doing so to foster increased trust and communication between the police department and the community whom it serves.](#)

### III. SCOPE.

A. **Incidents.** This ordinance encompasses the following types of incidents:

1. those in which a DPD member discharges his or her firearm in a manner that strikes, or that potentially could strike, another individual, even if no allegation of misconduct is made;
2. those in which a DPD member discharges his or her Taser or stun gun in a manner that strikes another individual and results in death or great bodily harm; and
3. those in which, as a result of the use of force by a DPD member, the death of, or great bodily harm to, a person occurs while that person is in police custody.

(Referred to hereinafter as the "Incident.") "Great bodily harm" means any injury that is serious enough to require treatment in a hospital or similar facility, including those facilities located in a correctional facility.

B. **Recordings and Reports.** This ordinance applies to the following items that relate to any Incident:

1. all video and audio recordings relating to the Incident, including tapes of 911 calls, dispatch recordings, DPD radio calls, video and audio from DPD dash or body cameras, videos from DPD or surveillance equipment, as well as any video or audio recordings made using cameras or equipment not owned or controlled by the City that come into the possession or control of DPD, the Board of Police Commissioners ("BOPC"), or the Office of the Chief Investigator ("OCI"); and
2. any arrest reports, original case incident reports, Use of Force/Detainee Injury Report (UF-002), Supervisor Investigation Reports (UF-002a), officer battery report, and any tactical response reports.

(Individually and collectively referred to hereinafter as "Information.")

### IV. RELEASE OF INFORMATION

A. **Timing of Release of Information.** Any Information covered by this ordinance shall be released to the public no more than 60 calendar days from the date of the Incident unless a request is made to delay the release of any or all of the Information pursuant to this ordinance. Where any video or audio recording of an Incident covered by this ordinance made using cameras or equipment not owned or controlled by the City comes into the possession of the City after the date of that Incident, it shall be released to the public no more than 60 days after it comes into the possession of the City. The City shall make every effort to provide for the release of such recordings simultaneously with the release of other Information related to the Incident.

- B. **Requests to Delay Release.** Upon written request from a government entity specified herein, the City will delay release of Information for a period not to exceed 30 calendar days. Any such request shall be made in writing and shall be directed to the BOPC Attorney and City Corporation Counsel. Such a request may be made by the United States Attorney for the Eastern District of Michigan, the Wayne County Prosecutor, the Attorney General of Michigan, BOPC, or any other federal, state, county or local law enforcement agency. Any request must set forth with specificity the length of the delay requested (not to exceed an additional 30 calendar days) and shall set forth as reasons supporting the requested delay, 1 or more of the factors listed in Michigan Rule 8.119 (Court Records and Reports). In addition, any such request must identify the specific item(s) sought to be temporarily withheld from release. The written request to delay release will itself be released to the public immediately upon receipt using a portal or website used for the distribution of Information subject to this ordinance. The City will not honor any further requests to delay release beyond the initial request, and will not honor a request for a delay of release that exceeds 30 calendar days.
- C. **Early Release of Information.** Where doing so will not compromise an ongoing investigation, any Information covered by this ordinance may be released before the expiration of 60 calendar days, and may occur as soon as possible after the Incident.
- D. **Manner of Release of Information.** The City shall create and maintain a publicly accessible website, dropbox or similar portal dedicated to the posting of Information covered by this ordinance. Such website shall be controlled and managed by the Board of Police Commissioners as the oversight and transparency body.

#### **V. NOTICE TO AFFECTED PARTIES.**

Prior to the release of Information, BOPC will attempt to notify any person who was the subject of the police action and is depicted in any video recording, or if that person is deceased or otherwise unavailable, that person's legal representative and/or next of kin, that the video recording and any related Information will be released and the date of release. BOPC will also offer to promptly show such individuals (and/or, if applicable, their legal representative and/or next of kin) the video recording(s) in which that person was depicted, and to play any related audio, in advance of its public release, and to answer questions and provide other information concerning the Incident and the status of any investigation of the Incident, to the extent that information can be provided without compromising any investigation.

#### **VI. ONGOING REVIEW.**

The provisions of this ordinance should be reviewed by the City after it has been in effect for one year (or sooner if appropriate) in order to determine whether experience with its implementation and application supports revision of the ordinance with respect to any issue, including (but not limited to) whether the 60-day period and the 30-day extension it provides for may be shortened or whether its scope may be expanded to cover additional types of incidents.

## **VII. LEGAL PROCESS.**

This ordinance is intended solely to govern the conduct of the City and its agencies and officials with respect to the matters it covers. It is not intended to displace or supersede any legal right or remedy available to any person or entity. It is also not intended to prevent or hinder compliance by the City with respect to any legal obligations, including (but not limited to):

1. any order of court;
2. any obligation to redact identifying or other information from any item covered by this ordinance before its release to the public; or
3. any obligations imposed by the Freedom of Information Act, 442 of 1976.