

ORDINANCE O-4796

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO PUBLIC SAFETY TECHNOLOGY, ENACTING A NEW CHAPTER OF THE KIRKLAND MUNICIPAL CODE RESTRICTING USE OF FACIAL RECOGNITION TECHNOLOGY, ENACTING A NEW CHAPTER OF THE KIRKLAND MUNICIPAL CODE AUTHORIZING POLICE USE OF BODY WORN CAMERAS, AND APPROVING A SUMMARY ORDINANCE FOR PUBLICATION.

1 WHEREAS, the City Council, in Resolution R-5434, called for
2 implementation of a body-worn camera pilot program; and

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4 WHEREAS, to enhance transparency and accountability, the
5 Kirkland Police Department seeks to have officers use body worn
6 cameras in the course of official duties; and

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8 WHEREAS, the City Council has determined that a body-worn
9 camera program may increase both community and officer safety; and

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11 WHEREAS, RCW 10.109.020 strongly encourages cities to
12 adopt an ordinance or resolution authorizing the use of BWCs prior to
13 their use by law enforcement; and

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15 WHEREAS, the City has actively engaged the community
16 through a robust public engagement process to solicit comment on the
17 benefits, opportunities, costs, and concerns of a body-worn camera
18 program and to obtain input into the development of operational policies
19 governing body-worn cameras; and

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21 WHEREAS, in evaluating the implementation of body-worn
22 cameras, the City Council considered the importance of protecting
23 privacy and civil rights and liberties in implementing advanced policing
24 technologies; and

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26 WHEREAS, the City Council finds that when policing technology
27 includes an aspect of facial recognition it presents a risk of endangering
28 civil rights and liberties to such an extent that it substantially outweighs
29 the purported benefits; and

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31 WHEREAS, the City Council recognizes that a growing number
32 of local governments have adopted laws prohibiting the use of facial
33 recognition technology, with appropriate exceptions, in order to protect
34 individuals' privacy and civil rights.

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36 NOW, THEREFORE, the City Council of the City of Kirkland do
37 ordain as follows:

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39 Section 1. A new chapter, entitled "Public Safety Technology,"
40 shall be codified and added to Title 11 of the Kirkland Municipal Code
41 as chapter 11.94. Within the new chapter, the following sections 2

42 through 3 shall be codified under a new Part 1, entitled "General
43 Provisions"; the following sections 4 through 6 shall be codified under a
44 new Part 2, entitled "Facial Recognition Technology"; and the following
45 sections 7 through 10 shall be codified under a new Part 3, entitled
46 "Body Worn Cameras."
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48 Section 2. A new section shall be added to part 1 of chapter
49 11.94 KMC, to be codified as KMC 11.94.010, to read as follows:
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51 **11.94.010 Definitions**
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53 For purposes of this chapter, the following definitions apply:

54 "Body-worn camera" or "BWC" means a small system that includes, at
55 minimum, a camera, microphone, and recording device that captures
56 audio and video signals and that is specifically designed to be worn on
57 a person.

58 "Facial recognition" means an automated or semi-automated process
59 that assists in identifying or verifying an individual based on the physical
60 characteristics of their face.

61 "Facial recognition technology" means any computer software or
62 application that performs facial recognition.
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64 Section 3. A new section shall be added to part 1 of chapter
65 11.94 KMC, to be codified as KMC 11.94.020, to read as follows:
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67 **11.94.020 Violations**
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69 Violation of this chapter shall not be punishable under KMC
70 11.04.010(m) unless expressly provided within a section. Instead, any
71 City employee who violates a provision of this chapter may be subject
72 to discipline in accordance with the City's disciplinary policies and
73 procedures and applicable collective bargaining agreements.
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75 Section 4. A new section shall be added to part 2 of chapter
76 11.94 KMC, to be codified as KMC 11.94.050, to read as follows:
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78 **11.94.050 Facial Recognition Technology — Purpose**
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80 Facial recognition technology is increasingly prevalent, even on
81 personal devices, and facial recognition systems are being developed
82 for many public and private sector uses. Deployment of facial
83 recognition technology presents ethical implications and can have broad
84 social consequences, with concerns around the technology's accuracy,
85 potential for infringement on democratic freedoms, and potentially
86 discriminatory impact. The purpose of this restriction on facial
87 recognition technology is to protect the privacy and civil liberties of
88 residents and visitors of the city of Kirkland.

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Section 5. A new section shall be added to part 2 of chapter 11.94 KMC, to be codified as KMC 11.94.060, to read as follows:

11.94.060 Facial Recognition Technology Prohibited

The City of Kirkland and any official or employee of the City shall not obtain, retain, possess, access, or use any facial recognition technology or enter into any agreement that authorizes any third party, on behalf of the City, to obtain, retain, possess, access, or use any facial recognition technology.

Section 6. A new section shall be added to part 2 of chapter 11.94 KMC, to be codified as KMC 11.94.070, to read as follows:

11.94.070 Exceptions.

Nothing in KMC 11.94.060 shall be construed to prohibit the City or City officials and employees from:

- A) using an automated or semiautomated process for the purpose of redacting a recording for release or disclosure to protect the privacy of a subject depicted in the recording or to otherwise comply with chapter 42.56 RCW, provided the process does not generate or result in the retention of facial recognition information.
- B) using facial recognition or similar biometric technique on privately-owned consumer devices for personal use or security.
- C) using facial recognition or similar biometric technique in managing secure entry or access to restricted buildings, rooms, or other secure spaces, devices, or things, provided that:
 - 1) any physical biometric identifiers derived from such a system is obtained, retained, stored, possessed, accessed, used, or collected only with the knowledge and consent of any person authorized for such entry or access and only for purposes arising from or related to such entry or access; and
 - 2) any physical biometric identifiers derived from such a system about any persons who have not consented may be collected, captured, or stored for security purposes consistent with Chapter 19.375 RCW but only for purposes arising from or related to managing secure entry or access.
- D) using software, applications, or systems that incorporate aspects of facial recognition technology but only if such use of the software, applications, or systems by the City or by City officials and employees does not include any affirmative or intentional use of facial recognition technology or facial recognition information.

137 Section 7. A new section shall be added to part 3 of chapter
138 11.94 KMC, to be codified as KMC 11.94.100, to read as follows:

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140 **11.94.100 Body Worn Cameras Authorized**

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142 A) Law enforcement officers of the city of Kirkland and persons
143 commissioned by the Kirkland Police Department are authorized
144 to use Department-issued body worn cameras (BWCs), provided
145 such use is consistent with any collective bargaining
146 agreements, Kirkland Police Department policy, this ordinance,
147 chapter 10.109 RCW, and any other applicable state or federal
148 laws. The use of non-Department issued BWCs while on-duty is
149 prohibited.

150 B) The City Manager is authorized and directed to oversee this
151 BWC program in accordance with the City Manager's general
152 authority under RCW 35A.13.080.

153 C) The Kirkland Police Department must ensure that personnel
154 assigned a BWC are properly trained in the use and deployment
155 of BWCs. This training must include instruction on mandatory,
156 permissible, and prohibited uses of BWCs; appropriate
157 management of BWC recordings and data; and instruction to
158 ensure proper placement of BWCs on officer uniforms.

159 D) This ordinance does not apply to any devices when used to
160 intercept conversations for lawfully authorized investigative
161 purposes under RCW 9.73.210 and RCW 9.73.230.

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163 Section 8. A new section shall be added to part 3 of chapter
164 11.94 KMC, to be codified as KMC 11.94.110, to read as follows:

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166 **11.94.110 Body Worn Cameras Policy**

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168 The Kirkland Police Department must adopt a BWC policy consistent
169 with this ordinance and with chapter 10.109 RCW. In addition to the
170 policy elements required by RCW 10.109.010, the policy must:

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172 A) Incorporate and implement evolving best practices in data and
173 privacy security in order to protect recordings and associated
174 data.

175 B) Require that officers comply with applicable state and federal
176 laws in the use and operation of BWCs and recordings, and
177 ensure appropriate coaching and/or discipline when officers fail
178 to follow BWC procedures or otherwise improperly use BWCs or
179 recordings.

180 C) Incorporate adequate protections for privacy and civil liberties,
181 including restrictions on recording in medical facilities, in
182 schools, and during First Amendment gatherings and providing
183 appropriate discretion to limit recording during situations that
184 present sensitive matters, such as rape, sexual abuse, or nudity.

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- D) Ensure any recordings that unreasonably violate a person's privacy or sense of dignity not be publicly released, absent appropriate redaction, unless disclosure is required by law or order of the court.

Section 9. A new section shall be added to part 3 of chapter 11.94 KMC, to be codified as KMC 11.94.120, to read as follows:

11.94.120 Security of Body Worn Camera Data

- A) To protect the integrity of the BWC recording and the privacy of recorded individuals, the Department shall ensure that BWC recordings and associated data are protected from unauthorized access, disclosure, or use. The viewing of recordings is restricted for official use only.
- B) The Kirkland Police Department must utilize a digital evidence storage software system for digital evidence, including BWC recordings, that uses secured cloud or off-site storage. The selected software system must employ a robust security platform that ensures the following:
 - 1) To prevent inadvertent or intentional deletion or modification, the software system must maintain all original recordings or raw footage regardless of whether redactions or edits are made to a copy of the recording.
 - 2) Employees must not be able to alter, edit, or delete any recording except as authorized by Department policy.
 - 3) An electronic log or audit trail must be created any time a recording is accessed, viewed, transmitted, redacted, shared, or deleted. The log must include the date, time, and reviewer.
 - 4) Even after a recording is deleted, due to Washington State records retention requirements or as otherwise allowed by this policy, the audit trail must be retained.
- C) Nothing in this section is intended to restrict or prevent the release of BWC recordings as public records, consistent with chapter 42.56 RCW.

Section 10. A new section shall be added to part 3 of chapter 11.94 KMC, to be codified as KMC 11.94.130, to read as follows:

11.94.130 Civilian Review of Body Worn Camera Recordings

- A) The City Manager or his or her authorized designee(s), including, but not limited to, the City Ombud, the City Attorney's Office, the City Clerk's Office, and civilian investigators or advisory bodies authorized by the City, may conduct a review of body worn camera recordings when there is an articulable reason justifying such review. Articulable reasons for such review include, but are not limited to:

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- 1) When a civil claim has been filed or threatened against the City involving a specific incident.
 - 2) When a complaint has been made against an employee regarding a specific incident.
 - 3) When an incident involves a serious injury or death as a result of use of force, a vehicular pursuit, or a vehicular collision.
 - 4) As part of any general auditing function directed by the City Manager that ensures compliance with this ordinance or department policy, provided such audit is consistent with applicable law and collective bargaining agreements.
 - 5) In connection with any incident that garners media or community interest.
- B) The City Manager shall designate a civilian employee in the City Attorney's Office to have access to the digital evidence storage software system independent from the Department. The civilian employee must have appropriate training and certifications to access the digital evidence storage software system and to handle potential evidence, such that any applicable state, federal, and Department security requirements are met. The City Manager shall develop and implement the process by which BWC footage or related data is reviewed or accessed by those authorized in this section.
- C) This section is not a substitution for any other civilian oversight mechanisms or processes available under other law and shall not be construed to limit or restrict such other mechanisms or processes.

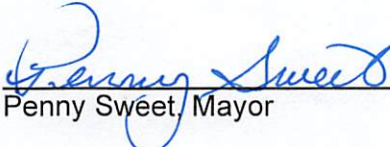
Section 11. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected.

Section 12. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication pursuant to Section 1.08.017 of Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council.


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Passed by majority vote of the Kirkland City Council in open meeting this 5 day of July, 2022.


Signed in authentication thereof this 5 day of July, 2022.


Penny Sweet, Mayor

Attest:


Kathi Anderson, City Clerk

Approved as to Form:


Kevin Raymond, City Attorney

Publication Date: 07/11/2022

PUBLICATION SUMMARY
OF ORDINANCE NO. O-4796

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO PUBLIC SAFETY AND POLICING TECHNOLOGY, ENACTING A NEW CHAPTER OF THE KIRKLAND MUNICIPAL CODE RESTRICTING USE OF FACIAL RECOGNITION TECHNOLOGY, ENACTING A NEW CHAPTER OF THE KIRKLAND MUNICIPAL CODE AUTHORIZING POLICE USE OF BODY WORN CAMERAS, AND APPROVING A SUMMARY ORDINANCE FOR PUBLICATION.

SECTION 1. Adds a new Kirkland Municipal Code ("KMC") chapter 11.94 entitled "Public Safety Technology," adding subparts related to "General Provisions," "Facial Recognition Technology," and "Body-Worn Cameras."

SECTION 2. Adds a new KMC 11.94.010 providing definitions for the terms "body-worn camera," "facial recognition," and "facial recognition technology."

SECTION 3. Adds a new KMC 11.94.020 related to violations of chapter 11.94 KMC.

SECTION 4. Adds a new KMC 11.94.050 providing a purpose section for restricting facial recognition technology.

SECTION 5. Adds a new KMC 11.94.060 prohibiting the City's use of facial recognition technology.

SECTION 6. Adds a new KMC 11.94.070 providing for exceptions for KMC 11.94.060.

SECTION 7. Adds a new KMC 11.94.100 authorizing body-worn cameras for law enforcement officers.

SECTION 8. Adds a new KMC 11.94.110 related to provisions for a body-worn camera policy.

SECTION 9. Adds a new KMC 11.94.120 related to the security of body-worn camera data.


SECTION 10. Adds a new KMC 11.94.130 providing civilian oversight of the body-worn camera program.

SECTION 11. Provides a severability clause for the ordinance.

SECTION 12. Authorizes publication of the ordinance by summary and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the 5 day of July, 2022.

I certify that the foregoing is a summary of Ordinance O-4796 approved by the Kirkland City Council for summary publication.



Kathi Anderson, City Clerk