

TOWN OF BROOKLINE ADVISORY COMMITTEE
PUBLIC SAFETY SUBCOMMITTEE

Public Hearing (virtual)
April 11, 2023

WARRANT ARTICLE 23: Resolution requesting the Select Board, Town Administrator and Human Resources Director to work with the Police Department to adopt and implement an in-car and body worn camera policy for the Police Department. Petitioner: Donelle O’Neal Sr.

Public Hearing (virtual)
April 11, 2023

Attendees:

Subcommittee members Janice Kahn(chair), David-Marc Goldstein, Neil Gordon, Alisa Jonas, and Mark Penzel; Donelle O’Neal Sr., Petitioner; Jennifer Paster, Acting Chief of Police; Kevin Mealy, Brookline Police Superintendent; Paul Campbell, Brookline Police Deputy Superintendent; Michael Keaveney, Brookline Police Patrol Officer and President of Police Union; Ann Braga, Human Resources Director; John Moreschi, 1st Assistant Town Counsel; Police Commissioners Advisory Committee members Judith Fabricant (chair) and Ronald Wilkenson; Perry Grossman, TMM-5; Lynda Roseman, TMM-14

The recording of the April 11, 2023 Subcommittee Public Hearing can be viewed here:
https://brooklinema.zoomgov.com/rec/share/X0lrcIwrpgrSGoH9Vxqj8H4a2JTlBmrqk2UkyrgpGsBvRxLw-pf-LKZM4_F96PYq.VN6956E61OdJKTjA

Recommendation: Favorable Action by a vote of 4 in favor, 0 opposed, 0 abstentions on Warrant Article 23 as amended.

Executive Summary:	WA 23, if passed, would serve as Town Meeting affirmation for the Brookline Police to establish and implement a policy for the use of In-Car Video (“ICV”) and Body-Worn Cameras (“BWC”). \$200,000 in funding for the deployment of cameras is already included in the proposed Capital Improvements Program (“CIP”) for FY24. At this time, the Town Administration and the Brookline Police Union are in arbitration, which is addressing, among other issues, establishing terms for the deployment of cameras.
Voting Yes will...	Voting Yes will demonstrate Town Meeting support for the use of ICV and BWC by the Brookline Police. This showing of support will encourage the Town Administration and the Brookline Police Union to agree to a policy for using cameras, and also encourage its implementation.
Voting No will...	Voting No will send a message to the Town Administration and the Brookline Police that ICV and BWC is not supported by many members of the community, and so may dissuade the Town from continuing to work on developing this law enforcement tool.

Financial impact [if any]	If the Town Administration and the Police Union can agree to the terms for the use of ICV and BWC, their deployment is expected to cost the Town approximately \$200,000/year.
Legal implications [if any]	By its very nature as a new tool of law enforcement, it has legal implications. Recordings will be used in trials and investigations. Implementation of an ICV/BWC system needs to be crafted in accordance with State regulations as well as compliance with constitutional guidance, especially as developed under the 4 th amendment. Given the role of cameras as a tool of our law enforcement, it has the potential to result in civil litigation for a variety of reasons, for example, inadequate redaction of private information when footage is provided in response to a public records request or improper handling of video while it is in storage.

Background: Usage of cameras as a law enforcement tool is already widespread in the United States. About half of all local police departments in the country use some form of body cameras, while an even greater percentage use some form of dashboard cameras. Several states require all local law enforcement agencies within their jurisdiction to use body cameras. The police killing of George Floyd in 2020 has resulted in greater interest in the use of cameras to provide increased transparency and accountability by municipalities that had previously not approved cameras for police departments.

In Massachusetts, the Legislature established the Law Enforcement Body Camera Task Force as part of the police reform law passed in 2020. The Task Force was charged with developing regulations for the use of body cameras by local law enforcement departments. The Task Force submitted its Recommended Regulations in August 2022. See <https://www.mass.gov/doc/law-enforcement-body-camera-final-report/download> Boston has been using body cameras for several years already, and in Cambridge, the City Manager announced in February that the City will be implementing body cameras in the near future, a decision spurred by a fatal police shooting in January.

In Brookline, the implementation of body and dashboard cameras has been a subject of discussion for several years. In September 2020 the Town Administration and the Police Union entered a Memorandum of Agreement that provided a one-year retroactive cost-of-living increase for police employees. The MOA also explicitly committed the Union to accepting without negotiations the Town’s authority to deploy, at its discretion, body cameras, dashboard cameras, and GPS, with the union reserving the right to bargain over the terms and conditions. Currently the Town and the union are in arbitration to once again obtain an agreement for a retroactive wage increase, and, among other matters, to develop the terms and conditions for the implementation of ICV/BWC. The Police Department has identified a vendor that will provide the system for approximately \$200,000/year for a four year period. The Capital Improvements Program includes the \$200,000 in funding for the first year of the contract in its proposed FY24 budget.

Discussion:

The Public Safety Subcommittee of the Advisory Committee held a public hearing and discussion of WA 23 on April 11, 2023.

The Petitioner stated that the use of ICV and BWC by the police is an important tool to increase accountability and transparency, which has become more urgent given the current climate of tensions between the Brookline police and the public, exacerbated by the George Floyd killing in 2020. He believes that Brookline has a great police department and that the use of cameras can help demonstrate their professionalism, which in turn will improve police/community relations. It is also a useful tool for investigations and evidence collection, serving as an objective means of documenting what has occurred in an incident. He has filed this warrant article because a Town Meeting vote to endorse the use of cameras will support implementation of their use by the Police Department.

The subcommittee questioned to what extent the \$200,000 budgeted for cameras in the FY24 CIP will cover all costs of implementing the program. According to Acting Police Chief Paster and Deputy Superintendent Campbell, the four year contract with the vendor they have identified includes the equipment and associated software, digital storage, redaction work, training, maintenance and equipment replacement. The Town will own all the rights to the data that is collected, however. The annual cost is anticipated to be between \$180,000 to \$200,000, with the higher amount likely in the first year of implementation.

A subcommittee member questioned whether the cameras used will be able to identify license plates. This had been a concern with the implementation of the fixed video cameras located in Brookline. The Petitioner said that the particular capabilities will be determined by the Town, with input from the vendor.

Concern was also raised about the many other complications and issues that need to be addressed, for example, how long to keep footage, how to deal with photos of minors, and whether the footage is subject to the Public Records law. Deputy Superintendent Campbell responded that there are many already-existing policies in place that the Town can use as models: Boston, the State Police, an ACLU prototype, among others. The recently developed Recommended Regulations by the State Task Force also provides standards and procedures. The State, moreover, already has a variety of regulatory guidance. For example, under State law, the footage is a public record, but subject to redactions for specified purposes. State law also requires that footage be preserved for at least 30 days, though the State Task Force recommends a minimum of 180 days. Deputy Superintendent Campbell would prefer keeping footage for three years, which is the Statute of Limitations for civil lawsuits against the police. If the footage has already been destroyed, it could appear to be a cover-up.

Deputy Superintendent Campbell noted that the policies that can be decided at the town level are subject to negotiations, but which are now in arbitration.

Police Union President Keaveney stated that the arbiter's decision is expected by the end of this month. He also noted that the union has no problems with the use of cameras.

The subcommittee generally was in support of the Resolution, agreeing with the Petitioner that deployment of cameras is a useful law enforcement tool. Given that deployment of cameras has been a topic of debate by some in the community, the subcommittee also agreed with the

Petitioner that a Town Meeting vote in favor of Article 23 would demonstrate community support for the Town to implement the use of ICV/BWC.

The subcommittee made two minor amendments to the Article, and the Petitioner has approved of both:

1. The Article's "Therefore" clause directs that funding for the implementation of cameras "be included in the Brookline Police Department Fiscal Year 2023-2024 Budget." The FY24 budget will already be approved before this resolution is voted on, however. The amendment thus removes that directive in the "Therefore" clause and instead adds the following Whereas clause: WHEREAS, funding for the purchase, maintenance, and storage of ICV, BWC and recordings from such equipment is included in the FY 24 CIP budget for the Brookline Police Department;
2. The Article's "Therefore" clause requests that the Select Board, Town Administrator, Human Resources Director, and Police Department work together to draft the ICV /WBC. Given the advisory role of the Police Commissioners Advisory Committee (PCAC) to the Select Board, the amendment explicitly calls for PCAC participation in an advisory capacity to the Select Board as it drafts the policy.

The subcommittee recommended favorable action on the following amended motion by a vote of 4-0-0.

To see if the Town will adopt the following:

RESOLUTION PERTAINING TO THE ADOPTION OF AN IN-CAR VIDEO AND BODY WORN CAMERA POLICY FOR THE BROOKLINE POLICE DEPARTMENT.

WHEREAS, In-Car Video ("ICV") and Body Worn Cameras ("BWC") are considered to be effective law enforcement tools that reinforce the public's perception of police professionalism and preserve factual representations of officer-civilian interactions; and

WHEREAS, ICV and BWC may be useful in documenting crime and accident scenes or other events that include the confiscation and documentation of incidental evidence or contraband; and

WHEREAS, ICV and BWC are expected to enhance the Police Department's ability to document and review statements and events during the course of an incident, and preserve video and audio information and evidence for investigative and prosecutorial purposes; and

WHEREAS, although ICV and BWC recordings may provide only a limited perspective of encounters and incidents, and thus should be considered with all other available evidence, such as witnesses' statements, officer interviews, forensic analysis, and documentary evidence, studies have shown that ICV and BWC are a contributing factor in reducing complaints against police officers, increasing police accountability, and enhancing the public trust; and

WHEREAS, the policy of the Brookline Police Department is to respect the legitimate privacy interests of all persons in Brookline, while ensuring professionalism in its workforce, and

therefore, Brookline Police Officers should only use ICV and BWC within the context of existing and applicable federal, state, and local laws, regulations, and the Department's rules and policies;

WHEREAS, funding for the purchase, maintenance, and storage of ICV, BWC and recordings from such equipment is included in the FY 24 CIP budget for the Brookline Police Department;

NOW THEREFORE, be it resolved, that Town Meeting requests the Select Board, with the advice of the Police Commissioners Advisory Committee (PCAC), along with the Town Administrator and Human Resources Director or their designees, to work promptly, constructively, and collaboratively with the appropriate members of the Brookline Police Department to adopt a policy pertaining to the use of ICV and BWC by Brookline Police Officers, and that the use of such equipment be implemented as soon as practicable. ~~Be it further resolved that funding for the purchase, maintenance, and storage of ICV, BWC and recordings from such equipment be included in the Brookline Police Department Fiscal Year 2023-2024 Budget.~~

Or act on anything relative thereto.