

Ordinance No. 694-2021

By Council Member Polensek

AN EMERGENCY ORDINANCE

To supplement the Codified Ordinances of Cleveland, Ohio 1976 by enacting new Section 135.13, related to disclosure of police use of deadly force recordings.

WHEREAS, this Council recognizes that transparency facilitates increased trust between the City's Division of Police and the citizens in the community; and

WHEREAS, public trust is necessary for effective law enforcement; and

WHEREAS, this ordinance constitutes an emergency measure providing for the immediate preservation of the public peace, property, health, or safety in that the prompt release of footage from a City recording device of police use of deadly force will further the goals of transparency and earned trust; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLEVELAND:

Section 1. That the Codified Ordinances are supplemented by enacting new Section 135.13 to read as follows:

Section 135.13 Disclosure of Police Use of Deadly Force Recordings

(a) *Definitions.* As used in this section:

(1) "City recording device" means a wearable camera system, dashcam, or other device capable of making a video recording that is issued to a police officer for use in the course of the officer's official duties.

(2) "Dashcam" means a video-recording device installed in a City police vehicle by the City, or a City-authorized party, for the purpose of recording video in and around the vehicle.

(3) "Deadly force" means any action that is likely to cause or does cause death or serious physical harm to any person.

(4) "Extraordinary circumstances" means, but is not limited to, any one of the following: terrorist attack; mass-shooting incident; cyberattack; riot; strike; flooding; disruption of City operations by a natural disaster; disruption of City operations through loss of electrical power or other utility outage, or similar circumstances beyond the City's control.

(5) "Footage" means that portion of a video recording made by a City recording device that documents an incident.

(6) "Incident" means a police officer's use of deadly force against a person or use of force resulting in serious physical harm to a person.

(7) "Petition" means a written request for the release of footage made pursuant to this section rather than the Ohio Public Records Act that reasonably describes the incident for which the request was made.

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(8) “Petitioner” means an individual who has submitted a petition pursuant to this section.

(9) “Police officer” means any sworn law enforcement agent employed by or volunteering for the Division of Police, Department of Public Safety of the City of Cleveland, including a supervisor or reserve officer, that is engaged in his or her official duties.

(10) “Serious physical harm” means: any physical harm that carries a substantial risk of death; any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary substantial incapacity; any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement; or any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain.

(11) “Wearable Camera System” means a body worn digital recording device with secured internal memory for storage of recorded video and audio, which operates in two modes, buffering and event, that is issued by the City to a police officer, and that is designed to be worn or otherwise utilized by the police officer in the course of the officer’s duties.

(b) The Director of Public Safety, in consultation with the Chief of Police, shall release footage, redacted as consistent with applicable state and federal laws, within seven (7) days of any incident involving a police officer’s use of deadly force against a person or use of force causing serious physical harm to a person. The released footage shall be from at least three (3) City recording devices or, if the incident is recorded by fewer than three (3) such devices, the released footage shall be from all City recording devices that recorded the incident. The released footage shall begin at least sixty (60) seconds prior to the incident or at the beginning of the recording, whichever is shorter. Footage is released by making it publicly available on the City website.

(c) In addition to the footage released pursuant to division (b) of this section, the Director of Public Safety, in consultation with the Chief of Police, shall release all remaining footage of the incident, redacted as consistent with applicable state and federal laws, within thirty (30) days of the incident. The released footage shall begin at least sixty (60) seconds prior to the incident or at the beginning of the recording, whichever is shorter. Footage is released by making it publicly available on the City website.

(d) Any person allegedly aggrieved by the failure of the Director of Public Safety and the Chief of Police to release footage as set forth in divisions (b) or (c) of this section may file a written petition with the Director of Law for the release of the footage. After receipt of the petition, the Director of Law shall determine whether the requested footage exists, and if such footage exists, shall cause it to be released within seven (7) days of receipt of the petition. Such release shall be in the same manner as set forth in divisions (b) or (c) of this section. If the requested footage does not exist or cannot be reasonably identified, the Director of Law shall notify the petitioner in writing within seven (7) days of receipt of the petition.

(e) The Director of Public Safety, the Chief of Police and the Director of Law are not required to release footage of an incident when the release is prohibited by court order or some other legal prohibition that requires denying the release of the footage.

A showing of the existence of a court order or other legal prohibition is a complete defense to any action made to compel the release of footage under this section.

(f) The requirement to release footage within the time frames set forth in divisions (b), (c) and (d) of this section does not apply in extraordinary circumstances, during which the release of requested footage shall be within a reasonable time.

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(g) If a petitioner is allegedly aggrieved by the failure of the Director of Law to release footage as required under division (d) of this section, the aggrieved petitioner may file an action in mandamus against the Director of Law.

Section 2. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

MDP:rns
8/18/2021

