

Office of the City Manager

SUPPLEMENTAL AGENDA MATERIAL

Meeting Date: January 23, 2018

Item Number: 34a

Item Description: **Proposed Ordinance: Surveillance Technology Use and Community Safety**

Submitted by: **A. Greenwood, Chief of Police**

Alternative language for a Surveillance Technology Use ordinance is provided. This draft provides for transparency in acquisition, use and reporting of specified and defined surveillance technology, while mitigating resource impacts upon staff and Council. Following an initial report on City-owned existing surveillance technology, a report would be made to Council on an annual basis. The report would summarize which technologies were used and how the technologies were used, and a summary of any complaints received regarding the use of the technology, and general information regarding any unauthorized access to the data collected by the technology. Should an exigency exist, staff could utilize new technology, but would be required to report such use to Council, and again report such use in the next following annual report. The ordinance provides that Council approval would be required for acquisition of any new surveillance technology, regardless of cost.

ORDINANCE NO. #,###-N.S.

CITY OF BERKELEY SURVEILLANCE TECHNOLOGY USE ORDINANCE

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. Findings

The City Council finds as follows:

- A. Through the enactment of this ordinance, the City seeks to establish a thoughtful process regarding the procurement and use of surveillance technology that carefully balances the City's interest in protecting public safety with its interest in protecting the privacy and civil rights of its community members.
- B. Transparency is essential when the City is considering procurement and use of surveillance technology.
- C. Although such technology may be beneficial to public order and safety, inappropriate use of some technologies may have the potential to put both privacy and civil liberties at risk.
- D. Decisions relating to surveillance technology should occur with strong consideration of the impact such technologies may have on civil rights and civil liberties, as with all rights guaranteed by the California and United States Constitutions.
- E. Surveillance technology may involve immediate, as well as ongoing, financial costs. Before the City acquires any surveillance technology, it must evaluate all costs associated with the procurement, installation, use and maintenance of the technology.
- F. Policy decisions regarding whether and how surveillance technologies should be funded, acquired, or used should be governed by the City Council as the elected representatives of the City.
- G. In addition to applicable local, state, and federal law, legally enforceable safeguards, including robust transparency, oversight, and accountability measures are important in the protection of civil rights and civil liberties.
- H. Data reporting measures will enable the City Council and public to confirm that mandated civil rights and civil liberties safeguards have been strictly observed.

Section 2. That Berkeley Municipal Code Chapter ###.### is hereby added as follows:

###.###.### Definitions

- A. "Surveillance Technology" means an electronic device, system utilizing an electronic device, or similar technological tool used, designed, or primarily intended to remotely and surreptitiously collect, audio, visual, location, thermal, olfactory, biometric, or similar information specifically associated with, or capable of being associated with, an individual or group. Examples of covered Surveillance Technology include, but are not limited to: cell site simulators (e.g. "Stingrays"); automatic license plate readers;

gunshot detectors (e.g. "ShotSpotter"); facial recognition software; social media analytics software; and gait analysis software.

1. "Surveillance Technology" does not include the following devices, hardware, or technology, unless they have been equipped with, or are modified to become or include, a Surveillance Technology as defined in "Definitions" Section 2A above:

(a) Routine office hardware, such as televisions, computers, and printers, that is in widespread public use and will not be used for any surveillance functions;

(b) Handheld Parking Citation Devices;

(c) Manually-operated, portable digital cameras, audio recorders, and video recorders that are not designed to be used remotely and whose functionality is limited to capturing, viewing, editing and downloading video and/or audio recordings;

(d) Surveillance devices that cannot record or transmit audio or video or be remotely accessed, such as image stabilizing binoculars, night vision goggles, or thermal imaging cameras;

(e) Technological devices that are not designed to surreptitiously collect surveillance data, and that are used in the conduct of: fire operations; search and rescue operations; missing person searches, and wanted suspect searches;

(f) Manually-operated technological devices that are not designed to surreptitiously collect surveillance data, such as two-way radios and city-issued cellular phones.

(g) Municipal agency databases;

(h) Electrocardiogram machines;

(i) Body-worn cameras;

(j) Cybersecurity capabilities, technologies and systems used by the City of Berkeley Department of Information Technology to predict, prevent and protect the City of Berkeley and its community members from potential cybersecurity events (e.g. reconnaissance or monitoring our systems; intrusion, interference or attack on our systems); and cybersecurity capabilities, technologies and systems used by the City of Berkeley in cybersecurity monitoring and cyber-forensic based investigations and prosecutions of illegal activity; or

(k) Stationary building security cameras affixed to City property and facilities.

###.### City Council Approval Requirement

The City Manager shall obtain City Council approval by placing an item on the Action Calendar at a duly noticed meeting of City Council meeting prior to any of the following:

A. Acquiring for use Surveillance Technology, with or without exchange of monies or consideration;

B. Final administrative regulations for the use of surveillance technologies that are subject to City Council approval.

###.### Reporting

The City Manager shall report the following to the City Council on an annual basis:

- A. Which Surveillance Technology was used (generally, not per instance).
- B. How the Surveillance Technology was used (generally, not per instance).
- C. The nature of investigation or event for which the Surveillance Technology was used.
- D. A summary of formal complaints received regarding the use of the Surveillance Technology.
- E. General information regarding any unauthorized access to the data collected by the surveillance technology.

###.###.### Temporary Acquisition and Use of Surveillance Equipment

Notwithstanding the provisions of this ordinance, the City Manager may temporarily acquire or temporarily use Surveillance Technology in exigent circumstances without following the provisions of this ordinance before that acquisition or use. However, in such cases, the City Manager shall: (1) provide notice of that acquisition and use to the City Council in writing within 30 days following the conclusion of those circumstances; and (2) include that Surveillance Technology in the City entity's next annual report to the City Council following the conclusion of those circumstances.

###.###.### Compliance for Existing Surveillance Technology

The City Manager shall submit a report to the City Council containing information on the Surveillance Technology in use prior to the effective date of this ordinance. The report shall be submitted to the City Council within 90 days of the effective date of the ordinance.

###.###.### Surveillance Technology Contracts

Any City contract with a vendor for ongoing Surveillance Technology in the City of Berkeley must be approved by the City Council regardless of the dollar amount of the contract.

Section 3. Severability

The provisions in this Ordinance are severable. If any part of provision of this Ordinance, or the application of this Ordinance to any person or circumstance, is held invalid, the remainder of this Ordinance, including the application of such part or provisions to other persons or circumstances, shall not be affected by such holding and shall continue to have force and effect.

Section 4. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

COMPLAINT DEADLINES REPORT

COMPLAINT INVESTIGATIONS										
NO.	Complainant	Filed Date	Incident Date	Notice of Allegations Due (20 Bus. Day)	Notice of Allegations Issued	BOI Packet (80 days)	BOI Packet Issued	BOI Findings Report Goal (105 days)	120 Days	STATUS
2419		06/14/17	Jun-17	07/12/17	06/19/17	09/02/17		09/27/17	10/12/17	subject ofc. out to 1/30
2424		08/07/17	Jul-17	09/04/17	08/09/17	10/26/17	12/01/17	11/20/17	12/05/17	Adm. Closure tabled to 1/24
2429		10/20/17	Aug-17	11/17/17	10/27/17	tbd		tbd	tbd	On hold; active criminal case
2430		10/20/17	Aug-17	11/17/17	11/01/17	01/08/18	01/08/18	02/02/18	02/17/18	Adm. Closure to Comm. 2/14
2432		11/17/17	Nov-17	12/15/17		02/05/18		03/02/18	03/17/18	Allegations/Interview due
2434		11/21/17	Nov-17	12/19/17	11/28/17	02/09/18		03/06/18	03/21/18	Investigation
2437		01/04/18	Oct-17	02/01/18	01/16/18	03/25/18		04/19/18	05/04/18	Investigation

LATE-FILE COMPLAINT REQUESTS						
NO.	Complainant	Filed Date	Late File Form?	Commission Vote Date	Approved	STATUS
2438		1/10/18	Y	01/24/18		pending approval 1/24

POLICY COMPLAINTS									
NO.	Complainant	Filed Date	Notice of Complaint to BPD	Due to Comm (30 days or next mtg.)	Initial Commission Meeting Date	Commission Approval Date	Commission Resolved? y/n	Policy Issue	STATUS
2433	GUERRA, GLORIA	11/27/17	12/7/17	12/27/17	12/13/17 01/10/18				tabled to 1-24-18

Harris, Leslie D.

From: Linda Franklin <godzilinda@gmail.com>
 Sent: Thursday, January 11, 2018 7:58 PM
 To: All Council; City Clerk; bca-steering-committee@googlegroups.com
 Subject: Corrected letter. Please refer to this letter instead of the letter in the Jan 23rd agenda packet

Corrected letter. Please refer to this letter instead of the letter in the Jan 23rd agenda packet

Dear Mayor Arreguin and City Council members,

The Police Department Agreements: Northern California Regional Intelligence Center (NCRIC), Urban Area Security Initiative (UASI) which funds Urban Shield, the Armored Police Van are of vital concern to Berkeley residents, shoppers and workers. This was greatly demonstrate by the 500 attendees at the Special Meeting of 6/20/17, 150 of whom spoke, asking you to vote **NOT** to renew these programs, and **NOT** purchase an armored police van ("Specially Equipped Panel Van").

We consider it urgent to agendize these programs for review at a Special Meeting. An annual review is required for consideration of whether or not to renew NCRIC or UASI. In the past this has happened in the fall of a new fiscal year. In other words, considering the renewal of essentially for the 2017 Fiscal Year retroactively on 6/20/17, 10 days before the end of that fiscal year, must not be repeated.

We are highly supportive of the No vote on NCRIC by Mayor Arreguin and council members Davila, Harrison. we ask that the remaining council members seriously consider joining in voting not to renew this program.

What is the status for the Task force Report on NCRIC, which was voted for on 6/20/17: the urgency of reviewing NCRIC, associated with the FBI Joint Terrorism Task Force is mandated by the necessity of doing so before the Surveillance Ordinance, scheduled for the Jan 23, 2018 City Council meeting.

This urgency particularly applies to Urban Shield, as the Council overwhelmingly approved on 6/20/17, a subcommittee to review Urban Shield scenarios and report back within 6 months. That 6 months is up next week, on 12/19/17!

Please inform us of the location and use status of the "Specially Equipped Panel Van" Armored Police Van). You finally resolved on 6/20/17 that "....the city council will adopt a policy for use of the Specially Equipped Panel Van prior to its being deployed in any capacity by the City of Berkeley." Since the UASI funding agreement indicated this armored police van would be deployed in September 2017, we are concerned.

These federal Department of Homeland Security and FBI programs are administered by President Trump appointees, such as Attorney General Jeff Sessions, a known racist. Therefore, we ask that you give our request serious and immediate attention and reply to us promptly.

Sincerely,

--
 Linda Franklin, Secretary
 BCA (Berkeley Citizens Action)

November 20, 2017 revised 1/20/18

Item 34a on 1/23/18

Surveillance Technology and Community Safety Ordinance ~~Items 23a and 23b on Dec 5, 2017~~
City Council Agenda

Dear Mayor Arreguin and City Councilmembers

We are strongly in favor of a Surveillance Ordinance which truly protects the privacy, free speech and assembly rights of the residents, workers, and visitors to Berkeley, as guaranteed by the U.S. and California Constitutions.

The proposed Surveillance Technology and Community Safety Ordinance, if modeled after the Santa Clara County Ordinance, focuses on surveillance **technology** and particularly **new** technology. In order to truly protect the privacy and First Amendment rights of the Berkeley Community, this ordinance must involve a review of all existing programs, systems and General Orders, which involve surveillance, but which may or may not involve technology. For example, we request that a review of the following existing programs be included in the ordinance:

1. **The Northern California Regional Intelligence Center (NCRIC)** *and associated FBI JOINT TERRORISM TASK FORCE*
2. **General Order N-18, Situational Awareness Group (SAG)**
SAG is comprised of the Terrorism Liaison Group (part of NCRIC) and the Gang Information Group (GIG).
3. **Geographical Information System (GIS-Contract 10414 Amended 6/27/17)**
originally referred to in City Council Agendas as a Homeland Security Computer Server Project. (see Agenda Information Calendar 4/18/2006 and also attached \$10,000 invoice to Contra Costa County Sheriff's office for Berkeley's Information Technology Department's work in establishing a Homeland Security Data Server Site in that County).
4. **License Plate Recognition Contract 9977 with Portable Computer Systems**
5. **Berkeley Police Department G.O. R-23** and other orders dealing with Criminal Intelligence policies.
6. **Criminal Intelligence Operational Activities Section Two, II Use of Undercover Criminal Intelligence Officers A2. Standard for Infiltrating a Non-target Group.**
(In City Clerk's office's Police Binder 2015 and possibly later ones).
7. **Body-Worn Cameras**
8. **Security Camera Data Base**
9. *Drones: e.g. Sheriff Ahern's*

Regarding No. 3 above, Situational Awareness Group (SAG), the Division Lieutenant in command of SAG is also a NCRIC Terrorism Liaison Coordinator (Item 7. in Order N-18). And

see: "State's gang database fails to ensure privacy", S.F. Chronicle 8/11/16. California CalGang database tracks around 150,000 alleged gang members, 85% of whom are Latino or African American.

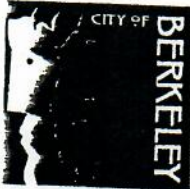
In view of all of the above existing programs and policies and others not listed which involve surveillance, we ask that you include them in the ordinance for review for their compliance with the intent of the ordinance to protect our privacy and our freedom of speech and assembly Constitutional rights.

Sincerely,

Gene Bernardi

Veterans For Peace East Bay Chapter 162,
SuperBOLD (Berkeleyans Organizing for Liberty Defense)

ATTACHMENT BELOW



Department of Information Technology
Office of the Director

INVOICE

City of Berkeley, Department of Information Technology 2180 Milvia St. 4 th Floor Berkeley, CA 94704 Phone: 510-981-6540, Fax 510-981-6560 Contact Name: Patrick DeTemple	Date: 04/15/05 Re: OJP 03 Supplemental Funding
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Bill To: Tracy Hein, Emergency Services Manager Contra Costa Office of the Sheriff, Office of Emergency Services 50 Glacier Drive Martinez, CA 94553 Phone: 925-335-1529
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Description	Amount
The City of Berkeley (Department of Information Technology) has successfully completed the East Bay Homeland Security Data Server Site (one of four being implemented in the region) as specified in the above referenced grant. The servers are for data management and implementation of the appropriate data model in support of Contra Costa County and other bay area first responders in cooperation with the Homeland Security Data Server Pilot Project. These servers (data and application) will help organizations publish, discover, access, exchange, and maintain the vital geospatial information required to support critical infrastructure protection, response, and recovery operations. It will provide support for these functions and base information layers to State and regional E Team Emergency Response and Incident Management implementations. Expenditure allocable to this item (which includes secure - https - access, County data upload and download functions) is ten thousand dollars (\$10,000) which covers the costs of this project from December 1, 2004 through April 14, 2005.	\$10,000.00

If you have any questions about the invoice, please contact the issuing department above.

Make all checks and payments payable to: The City of Berkeley
Mail all payments to:

The Department of Information Technology
City of Berkeley
2180 Milvia, 4th floor
Berkeley, CA 94704

COMMUNITY FORUM

KEEP ALTA BATES MEDICAL CENTER IN BERKELEY!

Sutter Health intends to close Alta Bates Hospital—Berkeley's only acute-care and birthing center hospital—as early as 2019, in a move that would deprive our community of a critical facility which provides vital services to East Bay residents, like labor and delivery, emergency room, and intensive care. Join us at this critical event aimed at organizing a community effort to **KEEP ALTA BATES HOSPITAL IN BERKELEY.**



FEB
SAT **03**

WHEN: Saturday, February 3, 2018
11:00 am - 1:00 pm

WHERE: Ed Roberts Campus
3075 Adeline Street
Berkeley CA 94703

Pizza will be provided!
RSVP to KHarrison@CityofBerkeley.info

Communities Deserve Hospitals!

Co-Sponsors

The Berkeley Mayor's Office and other East Bay mayors
Councilmembers from Alameda and Contra Costa Counties
California Nurses Association
Alameda Labor Council
The Associated Students of the University of California
Berkeley Progressive Alliance
The Albany Democratic Club
Building Opportunities for Self-Sufficiency (BOSS) Berkeley
Organizing Congregations for Action-BOCA
Healthy Black Families Inc.
California Research Alliance (CARA)
Berkeley Citizens Action
Starbucks Coffee
Gio's Pizza and Bocce
Center for Accessible Technology
Bateman Neighborhood Association (BNA)
Claremont Elmwood Neighborhood Association (CENA)
Berkeley Neighborhood Council (BNC)
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**A Voice for Nurses.
A Vision for Healthcare.**