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Oakland Poised to Protect Civil Liberties with New Surveillance Technology Ordinance

By *Brian Hofer*

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On May 9, the City of Oakland's Public Safety Committee will vote on a draft surveillance equipment ordinance. This new law, as it's currently written, would significantly protect people's privacy rights in this era of government and corporate spying. Oakland's Privacy Advisory Commission — which I chair — unanimously approved a draft of the surveillance ordinance that the council will now consider.



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The law — which is based on an ACLU model that was first adopted last year by Santa Clara County last year — would require public hearings before any city department seeks funding, or purchases equipment, or otherwise moves forward with any surveillance technology proposals.

If the Council determines that the benefits of a proposed new technology outweigh its costs and concerns, a use policy will be developed that includes robust safeguards for our civil liberties, and ensures the security of all information collected.

Transparency is key. Proper oversight of how our local governments use surveillance technologies through mandated annual reporting and ongoing review by elected officials, will ensure that the use policies aren't just words on paper, but that they're complied with.

The ordinance will also shift the balance of power. By requiring Council approval for acquisition or use of surveillance technology, law enforcement will no longer be able to make secret, unilateral decisions, such as OPD's move to acquire and use a Stingray cell-phone tracking device in 2007. Our City Council found out about this in 2014, after a TV station broke the news. There was no Stingray use policy until the Privacy Commission brought one forth in January 2017.

It has become clear that in the new Trump era, we must protect our civil liberties at the local level. Comments made by Trump and his cabinet members, and his executive orders targeting sanctuary cities and immigrants, make it more important than ever that the amount of surveillance and personal data collected be the bare minimum, to ensure the safety of our communities.

As a member of Oakland Privacy, we have worked on this project with the counties of Santa Clara, Alameda, and San Francisco, the cities of Berkeley, Palo Alto, and Richmond, and BART. Although each jurisdiction is at a different step in the process, all eyes are on Oakland: we started this conversation, and we continue to lead by implementing cutting edge reforms.

In fact, the City of Oakland has been informally operating according to the

ordinance framework for the past two years, but in a backwards manner. This ordinance will codify the process that has led to unanimously adopted use policies for the Domain Awareness Center, cell-site simulator, and a thermal imaging camera — three specific surveillance technologies that already are subject to rigorous oversight.

By bringing all stakeholders to the table to transparently determine what is appropriate in our own community, we have created a space for robust dialogue around a complicated topic.

With the adoption of this ordinance, Oakland's City Council can show it is earnest about protecting the public's right to privacy and civil liberties.

By supporting implementation of the ordinance, administrative staff and law enforcement officials can demonstrate that they intend to earn the community's trust by operating within the rules.

Brian Hofer is a member of Oakland Privacy, and Chair of the City of Oakland's Privacy Advisory Commission. He lives in Oakland. The comments in this piece are his own.

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