

From: [Trish Spencer](#)
To: [Lara Weisiger](#)
Subject: Fwd: [EXTERNAL] Fwd: Surveillance Technology Ordinance - Item 7-3
Date: Monday, December 5, 2022 5:21:38 PM
Attachments: [We sent you safe versions of your files.msg](#)
[Surveillance Ord 12-5-22.pdf](#)
[12-17-19 Minutes.pdf](#)
[Coalition SUPPORT - Surveillance Ordinance + FR Ban 12-13-19.pdf](#)

----- Forwarded message -----

From: Brian Hofer <brian@secure-justice.org>
Date: Dec 5, 2022 10:29 AM
Subject: [EXTERNAL] Fwd: Surveillance Technology Ordinance - Item 7-3
To: Trish Spencer <tspencer@alamedaca.gov>
Cc:

Mimecast Attachment Protection has deemed this file to be safe, but always exercise caution when opening files.

Apologies, I had a typo in your email below.

Brian Hofer
Executive Director



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----- Forwarded message -----

From: **Brian Hofer** <brian@secure-justice.org>
Date: Mon, Dec 5, 2022 at 10:24 AM
Subject: Surveillance Technology Ordinance - Item 7-3
To: Marilyn Ezzy Ashcraft <mezzyashcraft@alamedaca.gov>, Malia Vella <mvella@alamedaca.gov>, John Knox White <JknoxWhite@alamedaca.gov>, <tdaysog@alamedaca.gov>, <tspencer@alameda.ca.gov>, Nishant Joshi <njoshi@alamedaca.gov>

Mayor and City Council Members,

Please see our attached letter **opposing** Item 7-3 on tomorrow's agenda, a proposed surveillance technology ordinance.

Brian Hofer
Executive Director



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December 5, 2022

VIA EMAIL ONLY

Mayor Marilyn Ezzy Ashcraft (mezzyashcraft@alamedaca.gov)
Vice Mayor Malia Vella (mvella@alamedaca.gov)
John Knox White (jknoxwhite@alamedaca.gov)
Tony Daysog (tdaysog@alamedaca.gov)
Trisha Herra Spencer (tspencer@alameda.ca.gov)
Alameda City Council
Alameda City Hall
2263 Santa Clara Avenue
Alameda, CA 94501

Re: Surveillance Technology Ordinance (Item 7-E) – oppose unless amended

Dear Mayor Ashcraft and City Councilmembers:

We write to comment on Item 7-E, the introduction of an ordinance requiring that city staff seek City Council approval before using and/or acquiring surveillance technology (“STO”). **We ask that you vote No**, as the harm from enacting such a weak ordinance would negatively impact other jurisdictions working towards meaningful reform around the acquisition and use of surveillance technology at the municipal level, and the ordinance will not lead to greater protections for the civil liberties of Alameda’s residents and visitors¹.

Background

First, we want to thank Council Member Knox White (and previously, Vice Mayor Vella) for their now years-long pursuit at bringing Alameda forward as most of its neighbors have done when considering the difficult decisions regarding privacy impacting and potentially civil liberties violating surveillance technologies.

Alameda’s City Council has twice unanimously introduced a surveillance technology vetting framework by referral. Following the path taken by many of your surrounding neighbors like San

¹ Believing that the published version was a mistake, we asked the Interim City Manager last week if the correct draft was uploaded. No reply has been received. The uploaded draft references a Use Policy (in the Annual Report definition) but does not actually require a use policy, nor is one defined anywhere. There is no provision regarding a use policy requirement anywhere in the uploaded Ordinance.

Francisco, Berkeley, Oakland, and even BART, the framework is modeled off an ACLU vetting framework that calls for an impact analysis to be performed prior to acquisition or use, so that better informed decisions are made. A proposed use policy is brought forward at the same time, as the two documents work together. Ideally, any red flags raised by the impact analysis will be mitigated by the guardrails in your proposed policy. If the City Council finds that the benefit from using such technology outweighs the costs (as to civil liberties and the taxpayer), then use and/or acquisition may occur.

The framework also calls for ongoing annual reporting, so that the elected leaders and the public can gauge for themselves whether taxpayer funds are being expended wisely, and that no civil liberties harm is occurring. This exercise in up-front vetting occurred somewhat informally recently with the Police Department's introduction of a use policy for automated license plate readers ("ALPR") and annual reporting requirement, which Secure Justice collaborated on.

By way of background, Vice Mayor Vella introduced almost the same referral in 2018, which directed staff to return to the City Council with a draft ordinance for consideration. Staff refused. At that time, there were approximately seven jurisdictions across the country that had enacted similar legislation, including a few in the Bay Area. According to ACLU National, there are now 25+ jurisdictions with such ordinances in operation, with at least two dozen more actively considering similar proposals. California presently has eight such jurisdictions operating under this framework, including the first transit district in the nation (BART), smaller and more comparable jurisdictions like Davis and Berkeley, and larger cities like San Francisco and San Diego.

On December 17, 2019, Council Member Knox White again introduced a referral for among other things, a surveillance technology vetting and facial recognition ban ordinance, following the groundbreaking lead of neighboring San Francisco which just months earlier had become the first entity to ban facial recognition. His referral was supported by the greater Bay Area civil liberties/privacy community (letter enclosed for reference). Dozens of municipalities have since joined San Francisco in banning this harmful and error-prone technology, including Oakland and Berkeley. As the minutes reflect, staff was directed to "strongly consider San Francisco's" then state-of-the-art ordinance, and further directed to return with a "facial recognition ban ordinance." (Minutes enclosed for reference). Again, staff refused to follow the Council's referral by not incorporating the facial recognition ban provision.

If enacted as written, Alameda's STO will be the worst of the two-dozen similar ordinances in effect. We have not identified a single individual or entity in support of this proposal, which raises the question – why enact a law no one supports? Staff's opposition (as evidenced by the draft itself), like the civil liberties community, is clear and the harm of enacting such a weak precedent far exceeds any nominal benefit from enacting the STO. We fail to see any upside to adopting the proposal.

Major Identified Deficiencies

First, it is impossible in the short period of time available to identify all the deficiencies in the STO. Secure Justice frequently works with municipalities to help them understand the nuances and real-world impact of this framework, as we have helped craft such legislation, advocated for

it, and I have administered it as Chair of the City of Oakland’s Privacy Advisory Commission. These conversations typically take anywhere from 1-2.5 years to refine the language before introducing it to the Council for consideration. Most of those conversations have **not** occurred in Alameda, at least not with the public. It was only a week ago that the draft STO was published online so that we could see it for the first time.

1. Omission of Use Policy Requirement

The largest oversight is fatal to this entire STO having any success in protecting civil liberties – the complete omission of any rules for use of the technology. This takes the term “performative art” to a new level. No other ordinance like this in the country has omitted the use policy requirement, for obvious reasons.

2. Facial Recognition Ban

Alameda’s Police Department ignored your unenforceable policy statement not to use facial recognition, as we warned you back in 2019 when the Council failed to enact the ban by ordinance². Staff is again refusing to do as you directed and did not draft the facial recognition ban provision. The City Council must re-assert itself as the policy setting body for Alameda.

3. Omission of Critical Findings

Staff may not understand the finer points in the STO due to the turnover that has occurred since the referral was introduced, but many of the provisions are remarkably uniform across the country in the two dozen jurisdictions that have enacted similar measures, and staff was specifically directed to look at San Francisco’s version. We have always made ourselves available if needed to discuss this proposal.

We also know from our limited conversations that staff has looked at the ordinances enacted in San Francisco, Oakland, BART, and Davis. Each of those ordinances contains a finding that must be made by the City Council both during the up-front vetting process, and during the annual reporting review, namely, that the benefits of using the technology outweigh the costs (both to civil liberties, and the taxpayer). As written, the STO is merely a rubber-stamp approval mechanism that gives the public the illusion of meaningful reform, but surely is not.

A primary goal of this oversight and transparency framework is to create a culture of “mindfulness” in the staff, public, and elected leaders, so that greater informed decisions are made via the impact analysis and annual report review, and sufficient guardrails are put into place to protect our civil liberties via the use policy. If the only requirement for approval is the submission of a document requesting approval, that intent of the ordinance will be frustrated and the impact analysis itself will be without any utility, because no privacy-protecting use policy will be crafted.

² Alameda has previously experienced what might occur when operating via unenforceable policy – although the City Council unanimously rejected the use of facial recognition by way of policy statement, the Police Department ignored that decision by using Clearview AI.

4. Exempts Existing Technology

Unlike the 25+ other jurisdictions, Alameda again would be the sole outlier in exempting all existing technology. This flies in the face of common sense. If you accept the premise that surveillance technology needs to be regulated, then the technology Alameda is presently using must be covered. While we understand that a city of your size will not have the staff capacity of some other jurisdictions, Alameda also has far less technology that would be covered by the STO. The relatively minor “savings” in staff time pale in comparison to the lack of transparency, accountability and public engagement, and the lack of sufficient guardrails in community-crafted use policies could lead to significant legal liability should misconduct occur.

5. Enforcement

While any elected official will be wary of lawsuits, a) the track record from other jurisdictions across the country shows legal action under this model is a statistical rarity, b) the legal fees paid due to lawsuits based upon this ordinance is extremely low, c) and Alameda would again be an outlier (with just a couple others out of the 25+) that omitted the private right of action and attorney fees provision enacted by your Bay Area neighbors and most of the municipalities operating under this model³.

There are no criminal penalties attached to the STO, nor monetary damages (nor in the version we proposed). There will be no rush to the courthouse from plaintiffs’ attorneys looking for quick money, because no such payout is possible here. Because we favor compliance more than lawsuits, we have in the past supported a ‘right-to-cure’ provision in other jurisdictions like BART and San Francisco. Prior to filing a lawsuit, a potential claimant would be required to provide notice to the city of the alleged violation. The city would be given a period of time (e.g., 30 days) to “cure” the violation if substantiated, and notice would be provided from the city (to the extent legally allowable) of the corrective action taken. In this scenario, the private right of action would not arise. If the City ignored the chance to cure, only then upon the expiration of the notice period could a lawsuit commence. Thankfully, this has been quite rare.

Conclusion

We all know the missing component to fixing America’s criminal justice and policing systems – lack of accountability. When our elected leaders fail to assert themselves as the policy setting body that they were elected to be, and when they fail to give important matters the weight of law (and make such laws practically enforceable by all), a signal is sent to the community that the City Council isn’t interested in meaningful reform, nor accountability. If there isn’t a third vote on the City Council to move the needle in the right direction, it’s not worth taxpayer money or staff time to proceed on this item, and your actions will negatively impact the hard work of other jurisdictions on this topic.

³ \$3,300 is the largest attorney fees award to date – paid to Secure Justice in ’21 by the City of Berkeley. We have identified only three lawsuits in the entire country against the 25+ municipalities operating under this model since the first ordinance was enacted in 2016.

Alameda City Council
Surveillance Technology Ordinance
December 5, 2022

Acknowledging your staff's lack of expertise with this model and possible lack of capacity, we would be happy to hold the pen and craft an ordinance following the San Francisco model, streamlined to better fit Alameda's resources, and honoring the intent (and specific language) of the December 17, 2019 referral⁴.

We believe that solutions to the above missing provisions can be found with greater engagement. However, past failures to act by this City Council indicate a lack of political will to enact a meaningful vetting framework.

Sincerely,



Brian Hofer
Executive Director
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cc Chief Joshi (njoshi@alamedaca.gov)

Encls.

⁴ In the short window of time we've had to digest staff's draft, Secure Justice has identified and relayed to a key administrative stakeholder a few areas where the administrative burden could be relieved without defeating the intent of the ordinance.

MINUTES OF THE SPECIAL CITY COUNCIL MEETING
TUESDAY- -DECEMBER 17, 2019- -5:00 P.M.

Mayor Ezzy Ashcraft convened the meeting at 5:02 p.m.

Roll Call – Present: Councilmembers Daysog, Knox White, Oddie, Vella and Mayor Ezzy Ashcraft – 5.

[Note: Councilmember Vella arrived at 5:26 p.m.]

Absent: None.

Public Comment

Doug Biggs, Alameda Point Collaborative, discussed his desire to work together and settle the Crab Cove case.

Jack Sylvan, Brookfield Properties, discussed Brookfield's proposal for the Enterprise District.

The meeting was adjourned to Closed Session to consider:

(19-681) Conference with Legal Counsel – Existing Litigation (Pursuant to Government Code § 54956.9); Case Name: Friends of Crab Cove v. Vella et al.; Court: Superior Court of the State of California, County of Alameda; Case Number: RG18933140

(19-682) Public Employee Performance Evaluation Pursuant to Government Code § 54957; Position Evaluated: City Manager - Eric Levitt

(19-683) Conference with Real Property Negotiators (Pursuant to Government Code Section 54956.8); Property: Various Sites at Alameda Point: (a) Site A, Phase 2, area bordered by West Atlantic Avenue and Coronado Avenue on the North and South, respectively, and by Ferry Point and Main Street on the West and East, respectively; (b) Phase 1 of the Enterprise District, area bordered by Pacific Avenue a and W. Ticonderoga Avenue on the North and South, respectively, and by Orion Street and Central Avenue on the West and East, respectively; (c) West Midway, area bordered by West Midway Avenue and West Tower Avenue on the North and South, respectively, and by Pan Am Way and Orion Street on the West and East, respectively; [not discussed] and (d) Bachelor Enlisted Quarters (BEQ) and Hangar Row, BEQ – Buildings 2, 3, 4, 2660 Monarch Street, 2599 Lexington Street, 2651 Lexington Street, 2701 Lexington Street, and Hangar Row - W. Tower and Monarch Streets; Persons Negotiating: Debbie Potter, Community Development Director, and Michelle Giles, Redevelopment Project Manager; Negotiating Parties: City of Alameda and (a) Alameda Point Partners, (b) Prospective Developers, (c) Prospective Developers, [not discussed] and (d) Jamestown L.P.; Under Negotiation: Price and terms

Following the Closed Session, the meeting was reconvened and the City Clerk announced that regarding Existing Litigation, the staff provided information to Council and Council provided direction with no vote taken; and regarding Performance Evaluation, Council voted unanimously to approve a \$6,000 annual transportation allowance, increase base pay by 3% the first full pay period in January; future increase amount in 2021 would be tied to the EXME (Executive Management) will be effective on anniversary date;

Mayor Ezzy Ashcraft called a recess at 7:08 p.m. and reconvened the meeting at 10:21 p.m.

Following the Closed Session, the meeting was reconvened and the City Clerk announced that regarding Real Property, staff provided information and Council provided direction with not vote taken.

Adjournment

There being no further business, Mayor Ezzy Ashcraft adjourned the meeting at 10:48 p.m.

Respectfully submitted,

Lara Weisiger
City Clerk

The agenda for this meeting was posted in accordance with the Sunshine Ordinance.

MINUTES OF THE REGULAR CITY COUNCIL MEETING
TUESDAY- -DECEMBER 17, 2019- -7:00 P.M.

Mayor Ezzy Ashcraft convened the meeting at 7:15 p.m. Councilmember Daysog led the Pledge of Allegiance.

ROLL CALL - Present: Councilmembers Daysog, Knox White, Oddie, Vella, and Mayor Ezzy Ashcraft – 5.

[Note: Councilmember Vella arrived at 7:16 p.m.]

Absent: None.

AGENDA CHANGES

None.

PROCLAMATIONS, SPECIAL ORDERS OF THE DAY AND ANNOUNCEMENTS

(19-684) Presentation by Assemblymember Rob Bonta: State Legislative Update.

Assemblymember Bonta gave a brief presentation on new State legislation.

Mayor Ezzy Ashcraft expressed gratitude for the presentation; stated continuing help is needed for the Alameda Hospital.

Councilmember Oddie expressed support for the work on homelessness and the League of California Cities housing committee; stated the most challenging aspect of development is funding for affordable housing projects; inquired upcoming plans for affordable housing in the next year.

Assemblymember Bonta responded that he served on Alameda City Council during the time redevelopment agencies were abolished in California; stated the recession combined with a Supreme Court ruling lead to the abolition; there have been multiple efforts to bring redevelopment agencies back; two parts have been promoted: economic revitalization, and affordable housing; given the housing crisis, the focus has primarily been on affordable housing; many bills have been vetoed due to budget constraints; the Governor requires high cost projects to be included in the budget; tax credits and one-time budget money may be an option going forward; the State of California is short by 3 million housing units; all cities must contribute their fair share.

Councilmember Daysog expressed support for the return of redevelopment agencies and for more effort around solutions for traffic congestion solutions on major State highways.

Vice Mayor Knox White expressed support for a partnership in traffic safety including

automated speed enforcement.

Councilmember Vella stated the City recently passed Vision Zero; traffic safety is the most important element in planning City streets; some City streets are still under control of Caltrans; a local jurisdiction determining the safest options for streets should include ways to work with Caltrans; housing projects need support, especially from the State; several affordable housing projects have begun and more will be approved; expressed support for youth mental health services, which do not have enough funding.

Mayor Ezzy Ashcraft inquired whether there is an update on the Regional Measure (RM) 3 court challenge.

Assemblymember Bonta responded the eventual outcome is assumed positive; stated funding is held up; follow up will occur.

Mayor Ezzy Ashcraft inquired the timing of the update; stated there is assurance of funding, but delays are painful; housing and mental health issues are a core focus; remnants of the Lanterman-Petris-Short Act are still in effect; commensurate programs with State aid are needed; discussed the homeless encampment conditions on Alameda Avenue in Oakland; stated people need to be housed.

Assemblymember Bonta responded a transportation measure will be on the ballot to help with congestion; stated access to funding can be applied for through a competitive grant process; expressed support for focus on wide spread mental health services.

ORAL COMMUNICATIONS, NON-AGENDA

(19-685) Laura Gehringer, Alameda, discussed the needs for a safer school zone at Love Elementary School; requested help.

(19-686) Sarah Burninham, Alameda, expressed concern over a letter the City sent regarding traffic safety and eight children being hit by cars since the beginning of the school year; stated permanent change is needed; urged the speed limit be changed to 15 miles per hour (MPH).

(19-687) Rachel Playto, Alameda, expressed concern over nothing occurring since the November 5th rally; urged a 15 MPH zone be adopted.

(19-688) Maria Gayo, Alameda, discussed Fernside Boulevard traffic calming.

CONSENT CALENDAR

The City Clerk made an announcement regarding the two Public Hearing [paragraph nos. 19-703 and 19-704] and there was no public comment.

Vice Mayor Knox White moved approval of the Consent Calendar.

Councilmember Vella seconded the motion, which carried by unanimous voice vote – 5. [Items so enacted or adopted are indicated by an asterisk preceding the paragraph number.]

(*19-689) Minutes of the Special City Council Meeting, the Special Joint City Council and Successor Agency to the Community Improvement Commission Meeting and the Regular City Council Meeting Held on November 19, 2019. Approved.

(*19-690) Ratified bills in the amount of \$3,870,487.64.

(*19-691) Recommendation to Accept the Annual Review of the Affordable Housing Ordinance and the City's Affordable Housing Unit Fee Consistent with Section 27-1 of the Alameda Municipal Code; Accept the Annual Affordable Housing Unit Fee Fund Activity Report; and Find that: 1) Unit/Fee Requirements Set Forth in Local Law Remain Reasonably Related to the Impacts of Development, and 2) the Affordable Housing Units, Programs and Activities Required by Local Law Remains Needed to Support the Production of Affordable Housing in the City. Accepted.

(*19-692) Recommendation to Accept the 2013 Local Library Bond Measure Annual Report. Accepted.

(*19-693) Recommendation to Accept and File Various Community Facilities Districts (CFD) Reports for Fiscal Year (FY) Ending June 30, 2019, including: CFD No. 03-1 (Bayport Municipal Services District); CFD No. 13-1 (Alameda Landing Public Improvements); CFD No. 13-2 (Alameda Landing Municipal Services District); CFD District No. 14-1 (Marina Cove II); and CFD No. 17-1 (Alameda Point Public Services District). Accepted.

(*19-694) Recommendation to Accept a Biennial Report for the Public Art Fund. Accepted.

(*19-695) Recommendation to Authorize the City Manager to Execute a One-Year Agreement, in an Amount Not to Exceed \$100,000, with Alameda Family Services for Student Mental Health Services. Accepted.

(*19-696) Recommendation to Approve Closure of the Remaining North Course Holes at Corica Park to Improve the Overall Construction Schedule Timeline. Accepted.

(*19-697) Recommendation to Authorize the City Manager to Execute an Amendment to the Existing Citywide Project Stabilization Agreement for Public Works or Improvement Contracts Providing for a Three (3) Year Renewal and Options for Subsequent Annual Renewals. Accepted.

(*19-698) Recommendation to Authorize the City Manager to Execute a First Amendment to the Agreement with Trimacs Maintenance & Landscape Construction,

Inc., Extending the Term of the Agreement by Thirteen Months and Increasing the Compensation to an Amount Not to Exceed \$65,882, for an Aggregate Amount Not to Exceed \$129,845, for Landscape Services in City of Alameda Island City Landscape and Lighting District 84-2, Zone 6 - Marina Village. Accepted.

(*19-699) Resolution No. 15619, "Reappointing Wendi Poulson as Trustee to the Alameda County Mosquito Abatement District Board." Adopted.

(*19-700) Resolution No. 15620, "Receiving and Filing the Fiscal Year 2018-19 Development Impact Fee (DIF) Report and Five-Year Report, Containing Both Development Impact Fees and Fees Otherwise Subject to Development Agreements, and Making Certain Findings as Required by Government Code Sections 66000 et seq." Adopted.

(*19-701) Resolution No. 15621, "Amending the Electric Utility Professionals of Alameda (EUPA) Salary Schedule to Reflect a New Salary for the Finance and Utility Billing Manager and the Support Services Manager and Revised Job Classification Titles for Finance and Utility Billing Manager, Utility Billing Specialist, and Utility Billing Technician." Adopted.

(*19-702) Resolution No. 15622, "Certifying the Ballot Tabulation Results for the 2019 Water Quality and Flood Protection Fee Initiative" Adopted; and

(*19-702 A) Ordinance No. 3258, "Adding Article IV to Chapter 18 of the Municipal Code, and Ordering Levies of the 2019 Water Quality and Flood Protection Fee for Fiscal Year 2020-21, as Approved by a Majority of Votes in Favor of the Fee Submitted by Property Owners." Finally passed.

(*19-703) Public Hearing Under the Federal Tax Equity and Fiscal Responsibility Act of 1982 to Consider Resolution No. 15623, "Approving the Issuance of Revenue Bonds by the California Municipal Finance Authority in an Aggregate Principal Amount Not to Exceed \$45,000,000 to Finance a 70-Unit Multifamily Rental Housing Facility for Low- and Very Low-Income Families Located within Alameda Point Site A for the Benefit of Eden Housing Inc., or an Entity to be Established by Eden Housing Inc. (or an Affiliate)." Adopted.

(*19-704) Public Hearing Under the Federal Tax Equity and Fiscal Responsibility Act of 1982 to Consider Resolution No. 15624, "Approving the Issuance of Revenue Bonds by the California Municipal Finance Authority in an Aggregate Principal Amount Not to Exceed \$45,000,000 to Finance the Rosefield Village, a 92-Unit Multifamily Rental Housing Project, Located at 718-746 Eagle Avenue and 715-727 Buena Vista Avenue, Alameda, California for the Benefit of the City of Alameda Housing Authority." Adopted.

REGULAR AGENDA ITEMS

(19-705) Recommendation to Authorize the City Manager to Negotiate and Execute the

Seaplane Lagoon Ferry Terminal Operating Agreement between the City of Alameda and the Water Emergency Transportation Authority; and

(19-705 A) Introduction of Ordinance Approving a License and Authorizing the City Manager to Negotiate and Execute Documents Necessary to Implement the Terms of a 66-Year License with the San Francisco Bay Area Water Emergency Transportation Authority for Use of Real Property and Submerged Land at Alameda Point. Introduced.

The Redevelopment Project Manager gave a brief presentation.

Councilmember Oddie inquired whether the agreement was previously approved by the Water Emergency Transportation Authority (WETA) Board, to which the Redevelopment Project Manager responded in the affirmative.

Mayor Ezzy Ashcraft inquired the process for the City making reasonable efforts to ensure priority for ferry riders during ferry operation hours under the landside assets portion of the agreement.

The Redevelopment Project Manager responded said aspect is still being worked out.

The Assistant City Attorney stated the parking provision is important to WETA and was discussed at length; there has been agreement to continue to work on the details.

The City Manager stated City staff are currently working on parking management; the ferry is part of the priority areas; parking management is very important for ferries; the goal is to have parking available by early September.

Mayor Ezzy Ashcraft stated the reason AC Transit does not provide service to areas such as the Main Street Ferry Terminal is due to free parking; paid parking must be implemented in the future; inquired whether WETA will be responsible for hauling away and disposing of dredging materials.

The Assistant City Attorney responded in the affirmative; stated hauling and disposal are part of the dredging process.

Mayor Ezzy Ashcraft inquired whether the responsibility of replacement falls on the City or WETA when submerged pier outlives its useful life and must be replaced.

The Assistant City Attorney responded piers are part of the waterside assets and are the responsibility of WETA; stated the distinction of the submerged land is that it is City-owned and any damage caused by WETA actions will be their responsibility.

Vice Mayor Knox White moved approval of the staff recommendation and introduction of the ordinance.

Councilmember Oddie seconded the motion.

Under discussion, the City Manager, Mayor Ezzy Ashcraft and Councilmember Oddie made brief comments about the partnership.

On the call for the question, the motion carried by unanimous voice vote – 5.

(19-706) Councilmember Oddie moved approval of hearing the privacy policy [paragraph no. 19-707] next.

Vice Mayor Knox White seconded the motion, which carried by unanimous voice vote – 5.

(19-707) Resolution No. 15625, “Establishing a Privacy Policy, Data Management Policy, and Prohibiting the Use of Face Recognition Technology.” Adopted.

The Assistant City Manager gave a Power Point presentation.

Councilmember Daysog inquired whether facial recognition technology would allow for police use.

The Assistant City Manager responded facial recognition technology would not be used by the City of Alameda; stated City Officers could utilize facial recognition technology if it is used as part of a criminal investigation by another agency; the City would not seek out or pursue the use of facial recognition technology.

Councilmember Daysog inquired whether facial recognition technology could be used if a potential crime was recorded at an Automated Teller Machine (ATM), to which the Assistant City Manager responded in the negative.

Expressed support of a complete facial recognition ban and concern over democracy taking over privacy: Saláh Elbakri, Support Life Foundation.

Expressed support for an ordinance, rather than policy; discussed the dangers of facial recognition software: Tim Kingston, San Francisco Public Defender Racial Justice Committee.

Expressed support for the privacy policy and adoption of an ordinance for data management and face recognition technology: Brian Hofer, Secure Justice.

Urged the Council to adopt an ordinance; discussed logging: Matt Cagle, American Civil Liberties Union (ACLU) of Northern California.

Discussed changing jobs and being questioned by the Federal Bureau of Investigators; stated the line has to be drawn: Gulled Mahmoud.

Requested an ordinance be adopted; expressed concern over using facial recognition technology: Mokntar Mohamed.

Councilmember Daysog inquired whether the facial recognition policy covers the use of video data captured by police worn body cameras.

The Assistant City Manager responded the City has a separate public safety policy related to body camera footage; stated the current contract does not have facial recognition technology.

The Police Chief stated the vendor for body worn cameras, Axon, does not offer facial recognition technology; facial framing technology, similar to a cellphone, is used for redaction purposes.

Councilmember Daysog inquired whether the facial recognition technology is algorithm based and able to capture an abundance of data in real-time.

The Assistant City Manager responded the policy is not specific to that level of detail; provided the definition of facial recognition technology.

Discussed evidence of spying; states use policies make community members feel safe: Sameena Usman, Council on American-Islamic Relations.

Councilmember Vella stated that she previously brought a referral for an ordinance relative to data collection and management; expressed support for going beyond a policy and enacting an ordinance; expressed concern about being tape recorded without knowledge; stated that she believes in the right to privacy and the Constitution; expressed concern for the propensity for abuse of various types of technology; discussed electronic forms of communication; expressed support for a data management ordinance, adopting privacy policy principles, an ordinance related to facial recognition and legally enforceable safeguards; stated policies can evolve; expressed concern about vendor policy changes; for citizens being unable to participate or speak with the City due to protections not being in place.

Mayor Ezzy Ashcraft stated that she is unaware of a reference to cellphone tapings in the policy; noted the Grand Jury report will be discussed at a later time.

Councilmember Vella stated that she raises the reference in relation to privacy; technology can be used in a number of different ways.

Mayor Ezzy Ashcraft inquired whether the policy refers to telephone recordings made on a cell phone.

The City Attorney responded that with facial recognition, there is a cell phone use exemption; stated the data retention policy contains information about phone calls, not

specific to cell phone recordings.

The Assistant City Manager stated Exhibit B relates to data collection and does list the different kinds of data collected from the public to assist in conducting City operations; any data collection City staff would undertake would be covered by that portion of the policy.

Councilmember Oddie inquired what happens with Ring video footage voluntarily provided by residents to the City.

The City Manager responded law enforcement is exempt.

The Assistant City Manager stated the Police Department is not subject to all policies for investigative purposes; there are policies in place to address surveillance videos in the investigation of a crime.

Councilmember Oddie stated that he has understood the Police Department would not be allowed to use facial recognition software; inquired whether the [Ring doorbell] videos are exempt from facial recognition.

Mayor Ezzy Ashcraft requested clarification of the difference between a camera taking a photograph or video and facial recognition software.

Councilmember Oddie responded the inquiry is related to the use of video for facial recognition.

The Police Chief stated the Police Department does not require sharing of video footage.

Councilmember Oddie inquired the process when video is shared with the Police Department.

The Police Chief responded video received would only be used for the investigation of a crime; stated there is no facial recognition component when videos are received.

Councilmember Oddie inquired whether video footage would be submitted to a vendor that offers facial recognition software services.

The Assistant City Manager responded the City would not initiate the process; stated the software could be leveraged as a resource in the scenario of a crime spree involving Federal Bureau of Investigations (FBI) which uses facial recognition technology; the technology is not something the City of Alameda would be paying for or directly seeking.

In response to Councilmember Oddie's hypothetical inquiry about facial recognition being used in the instance of red light or speed cameras, the Police Chief outlined the use of camera imaging for identification purposes.

Councilmember Oddie inquired whether photos would be sent out to a vendor that uses facial recognition to identify the driver, to which the Police Chief responded in the negative.

Councilmember Oddie inquired whether public transportation authorities could use facial recognition technology within the City.

The Assistant City Manager responded the policy would not limit outside agencies from implementing the use of facial recognition technology.

Councilmember Oddie inquired the difference between a policy and an ordinance.

The City Attorney responded an ordinance has the effect of law; stated Council has a number of choices when an ordinance is adopted such as providing for enforcement mechanisms; violation of ordinances cause opportunity for private parties to bring litigation; a policy adopted by resolution is unable to be altered without being brought back for Council consideration; a policy does not have some of the enforcement mechanisms on the law enforcement and litigation sides that exist with an ordinance.

Councilmember Oddie expressed support for an ordinance; stated people deserve the protection of law and not just a policy.

Councilmember Daysog stated the item is related to automated or semi-automated facial recognition technology, not body cameras or ATM videos, which capture events or activities that could be interpreted in a non-automated fashion; the policy does not preclude Police from using technology in a reasonable manner to help secure public safety; the questions raised are important for every city to address; noted riot participants are being identified by facial recognition software internationally; expressed support for the policy; stated facial recognition technology is closely intertwined with first amendment rights; a reference to storing of information should be made in Exhibit C.

Vice Mayor Knox White expressed support for moving forward with an ordinance; stated that he would like the item to return quickly; expressed support for a facial recognition ban; discussed the acquisition of surveillance technology; expressed support for bringing back a surveillance ordinance; stated facial recognition technology does not work; noted African Americans are 5 to 10 times more likely to be misidentified; stated people have a right to not be harassed due to faulty coding of a program; facial recognition technology is not advanced enough for discussion; expressed support for a surveillance ordinance to return and include a facial recognition ban,; including any questions the City Manager and City Attorney might raise; stated policies are the first step to begin the creation of trust in government.

Mayor Ezzy Ashcraft stated the report presented is thorough; expressed support for an ordinance returning to Council; stated the quote "Everyone Belongs Here" holds true; outlined her experience as a person of Arab-American descent; stated a discussion will

occur related to license plate readers early next year; Council has received correspondence from residents who would like an increase in the ability to capture people who have committed serious crimes; different interests should be explored.

Councilmember Vella moved approval of the policies as written [adoption of the resolution] and directing staff to come back to Council with a facial recognition ban ordinance and with a data management privacy oversight ordinance.

Councilmember Daysog seconded the motion.

Under discussion, Councilmember Vella stated there are existing examples of both ordinances; she would like to the ordinance based on existing examples versus being drafted from scratch; she would like to hear back about any City concerns.

Councilmember Oddie stated the ACLU model ordinances can be helpful.

Vice Mayor Knox White inquired whether the motion could be amended to include adopting the principles and direction to adopt a surveillance ordinance modeled after the San Francisco.

Mayor Ezzy Ashcraft stated that she would like to give staff direction to consider the surveillance ordinance, but not direct use of San Francisco's model; noted there are differences between Alameda and San Francisco.

Vice Mayor Knox White inquired whether there is support to add the surveillance [ordinance] based on the [San Francisco] existing example.

Councilmember Vella responded in the affirmative.

Councilmember Daysog expressed support for the motion to use "strongly consider using San Francisco."

Vice Mayor Knox White stated the language has come from the privacy groups; the policies are correct as written and only need to be converted to an ordinance.

On the call for the question, the motion carried by unanimous voice vote – 5.

Mayor Ezzy Ashcraft called a recess at 9:14 p.m. and reconvened the meeting at 9:21 p.m.

(19-708) Recommendation to Consider Adoption of a City Council Code of Conduct and Councilmember Handbook, and Code of Conduct, Providing Guidelines for Councilmembers to Follow in Conducting City Business and Fulfilling Their Responsibilities as City Elected Officials.

The City Manager and City Attorney gave a Power Point presentation.

Mayor Ezzy Ashcraft expressed support for the use of the City of Sunnyvale's handbook style; stated some of the proposed language is antiquated and could be updated; the City of Sunnyvale's language is well thought out; the item Council adopts should be simple and straight-forward; the policy brought forth by staff is well referenced.

Councilmember Oddie discussed an article related to Code of Conduct; stated the City of Sunnyvale handbook is comprehensive; the item is an opportunity to show residents Council's ethics and values; all elected officials should be covered by the policy; officials could sign the proposed handbook to acknowledge their promise of service; that he would like input from Council before discussing social media and the Brown Act; questioned procedures for social media interactions.

Councilmember Vella expressed support for the City of Sunnyvale's Code of Conduct, for including all elected officials, for including language reflecting elected and appointed officials interactions with staff, and for providing a safe space for dialogue and open conversation with respect; stated open dialogue can sometimes be lost in the heat of advocacy; a fraternization policy is lacking; expressed support for including a fraternization policy; noted the City of Sunnyvale adopts its Code of Conduct on the Consent Calendar annually and updates the contents regularly.

Vice Mayor Knox White stated the City of Sunnyvale Code of Conduct handbook answers many questions; the Sunnyvale handbook is about ethics and behavior; there are long-standing issues and questions that repeatedly arise related to agenda setting in the Alameda version; expressed support for adopting a version of the Sunnyvale handbook, with the expansion to all elected officials that are able to be covered, and referencing the Brown Act; discussed social media in relation to the Brown Act.

Councilmember Oddie stated that he read an article noting a violation in which three or more Councilmembers press "like" [on a social media post] being an expression of support.

Vice Mayor Knox White stated Councilmembers should trust that other members will look through social media content prior to joining; outlined an instance where he did not comment on social media content since two other Councilmembers already posted; stated a lack of social media presence is not the answer; expressed concern over banning social media commenting; stated if a problem occurs, time can be set aside at the following workshop to discuss.

Councilmember Vella stated Councilmembers click "like" to acknowledge the original poster as heard; Councilmembers want to be responsive, but it can be difficult on social media; expressed concern for excessive censorship, unresponsiveness, or engaging in an item that is not up for Council discussion.

Councilmember Daysog stated the purpose of discussing a Code of Conduct relates to inquiries made by Councilmembers about City Manager administrative tasks and prohibitions on Councilmembers involving themselves in the appointment of particular positions in City Hall; any Code of Conduct adopted must reflect decisions made; expressed support for Councilmembers never specifically inquiring about or advocating for specific individuals or sets of individuals; stated Councilmembers should have the ability to talk or inquire about jobs and types of characteristics the City Manager is interested in or characteristics desired by Councilmembers; however, the Code of Conduct should prohibit the pursuit or inquiry of appointing named individuals or sets of individuals; Councilmembers may also discuss current Department Heads.

Mayor Ezzy Ashcraft outlined the Executive Summary; stated this is an opportunity to better prepare the current and future Councils; a clear set of guidelines will equip all to perform as best as possible; expressed support for the Sunnyvale handbook; stated the Sunnyvale handbook lacks specific references to the Alameda Charter; expressed support for melding the Sunnyvale handbook with references to the Alameda Charter; stated that she would like quotes omitted; a social media policy should be discussed.

Councilmember Oddie stated that the Sunnyvale handbook dedicates two pages to analysis of member inquiries to staff; many concerns could be addressed; discussed the prohibition of Council interference; stated there needs to be guidance related to what is and is not allowed regarding employees that do not directly report to Council; expressed support for including the analysis of an inquiry in the handbook; noted the Sunnyvale handbook contains information about prohibition of interference.

Mayor Ezzy Ashcraft expressed support for including specific reference to the Alameda City Charter.

Councilmember Vella stated the Sunnyvale handbook includes an interpretation of its Charter; Council has been tasked with interpreting how the Charter is applied; referencing the Charter section would prove helpful; discussed current Charter language related to Council interference; stated outlining and defining terms would be helpful; mentioned the City Manager duties related to staff appointments; stated Sunnyvale's Charter language is similar to the Alameda City Charter.

Mayor Ezzy Ashcraft expressed support for a glossary of terms.

Councilmember Oddie stated the Sunnyvale handbook includes sanctions and guidelines in the event of an issue; outlined a previous event involving officer discipline.

Mayor Ezzy Ashcraft summarized the direction being provided to staff; stated Council supports the language included in the Sunnyvale handbook, minus the quotes and incorporating specific Alameda Charter items.

Councilmember Vella requested a fraternization policy be added.

Mayor Ezzy Ashcraft stated the item is a Code of Conduct for the City Council and other elected and appointed members; expressed support for further discussion.

Vice Mayor Knox White inquired whether a motion will be made or will direction to staff be provided.

Mayor Ezzy Ashcraft stated the City Manager is not expecting adoption; outlined staff recommendations; requested direction from the City Attorney.

The City Attorney responded Council motions are acceptable; stated specificity would be most helpful.

The City Manager stated that he can accept either a motion or direction; stated the better direction provided, the better response.

Vice Mayor Knox White moved approval of directing staff to return to the Council with a Code of Ethics that is very much based on the Sunnyvale document and consider adding or determining where the appropriate place to provide additional items: agenda setting, fraternization, etc., which may not belong in the ethics but could come back to Council to address said issues.

Mayor Ezzy Ashcraft questioned if fraternization is among Councilmembers and Board and Commission members, which is what the handbook is addressing.

Councilmember Oddie stated the handbook should be for all elected officials.

Vice Mayor Knox White stated staff can be included as well.

Mayor Ezzy Ashcraft stated the document is a City Council Code of Conduct and Councilmember handbook.

Vice Mayor Knox White stated there is an interest and it overlays with elected officials and appointed officials; expressed support for considering expanding it to staff; requested staff to consider and come back with a recommendation.

Mayor Ezzy Ashcraft stated that she respectfully disagrees; it is not the City Council's place to implement policies for the staff; especially under the current item, which is a City Council handbook.

The City Attorney stated the Council's concerns have been heard; that he and the City Manager will work together to bring back an appropriate item.

Vice Mayor Knox White continued the motion to include that direction for consideration, but it also includes the direction to include social media language that does not prohibit, but does highlight Brown Act considerations.

Mayor Ezzy Ashcraft inquired whether the direction is to bring back a staff fraternization policy.

Vice Mayor Knox White responded the direction is to consider whether to return with a fraternization policy.

In response to Mayor Ezzy Ashcraft's inquiry whether it is appropriate, Vice Mayor Knox White stated the direction is not to implement; staff may return to Council and state a policy currently exists.

Mayor Ezzy Ashcraft questioned referring to City staff when the item being discussed is a City Council handbook.

Vice Mayor Knox White stated it refers to elected and appointed officials, but also could be broadened to include City staff; there has been no indication that the minor amendment to include City staff is inappropriate; everyone should abide by the same rules.

The City Attorney stated that he and the City Manager understand there is interest in bringing information back; the information will be brought forth in whatever appropriate form.

Councilmember Oddie seconded the motion.

Under discussion, Councilmember Daysog stated that he will support the motion based on the importance of language returning to Council for determination; expressed support for language regarding interference in the appointment process; stated the City Council does have a role with Department Heads in the Charter; Council determines the offices of the departments and the City Manager then fills the offices; Council may change the composition at its pleasure; there is a review process listed under Item 2-3.

Mayor Ezzy Ashcraft stated that she would like to remain consistent with the recommendations of the civil Grand Jury.

Councilmember Oddie requested parts of the Alameda Charter and Sunshine Ordinance not be cut and pasted, rather it should be incorporated by reference.

On the call for the question, the motion carried by unanimous voice vote – 5.

CITY MANAGER COMMUNICATIONS

(19-709) The City Manager announced that people can pin areas where they have felt unsafe walking or biking in Alameda at: www.ActiveAlameda.org; expressed appreciation for the Alameda Firefighters Toy Drive program; announced the last toy pickup is December 18th; announced a cannabis operating permit has been sent out; wished everyone happy holidays.

ORAL COMMUNICATIONS, NON-AGENDA

None.

COUNCIL REFERRALS

(19-710) Consider Resolution No. 15626, “Supporting the Alameda Unified School District’s (AUSD) “Alameda Teacher/Staff Retention” Measure.” Adopted. (Vice Mayor Knox White/Councilmember Oddie).

Vice Mayor Knox White and Councilmember Oddie made brief comments regarding the referral.

Mayor Ezzy Ashcraft stated that she met with the School Board President to express her support; there is a need to attract and retain teachers.

Mayor Ezzy Ashcraft moved adoption of the resolution supporting the AUSD Alameda Teacher/Staff Retention Measure.

Councilmember Vella seconded the motion, which carried by unanimous voice vote – 5.

COUNCIL COMMUNICATIONS

(19-711) Councilmember Vella announced an upcoming Lead Abatement meeting; outlined a previous Lead Abatement meeting; stated the Healthy Homes Department is looking at eventually increasing its assessment.

(19-712) Vice Mayor Knox White announced that he met with the Earhart School Parent Teacher Association (PTA) about traffic safety concerns; stated that he is continuing to look for bold and new implementation ideas for traffic safety.

(19-713) Councilmember Oddie announced Stop Waste’s desire for adoption of a model ordinance regarding take-out food containers being compostable; stated the matter will be placed on the next Council agenda under Council Communication to seek Council feedback; made an announcement regarding the Shop with a Cop event.

(19-714) Mayor Ezzy Ashcraft made announcements regarding an Association for Bay Area Governments (AGBAG) meeting, which discussed the Regional Housing Needs Allocation (RHNA) numbers, a meeting in Napa hosted by the League of California Cities, which discussed the top priorities of housing and homelessness, an interview with KRON 4 about Alameda Point, and a Jammie [pajama] Drive; expressed appreciation for the Assistant City Manager attending a meeting related to homelessness; announced Alameda would be hosting the Alameda County Mayor’s Conference February 12, 2020 at Penumbra.

(19-715) Councilmember Vella made an announcement regarding the tree lighting and the annual holiday home tour.

(19-716) Mayor Ezzy Ashcraft announced two upcoming menorah lightings.

ADJOURNMENT

(19-717) There being no further business, Mayor Ezzy Ashcraft adjourned the meeting with a moment of silence in memory of Ann Bartalini at 10:19 p.m.

Respectfully submitted,

Lara Weisiger
City Clerk

The agenda for this meeting was posted in accordance with the Sunshine Ordinance.



December 13, 2019

VIA EMAIL ONLY

Mayor Marilyn Ezzy Ashcraft (mezzyashcraft@alamedaca.gov)
Jim Oddie (joddie@alamedaca.gov)
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Alameda City Council
Alameda City Hall
2263 Santa Clara Avenue
Alameda, CA 94501

Re: SUPPORT for the Surveillance Ordinance + Face Surveillance Ban

Dear Mayor and City Council Members:

We are a coalition of civil rights organizations writing to express support for Vice Mayor Knox White’s proposed surveillance equipment and face surveillance prohibition ordinance(s), part of multiple proposals in Item 6-C on your December 17, 2019 agenda. This legislation will improve public safety by creating a transparent process for considering surveillance technology proposals, safeguard against dangerous and biased surveillance practices, and provide the public and City Council with a necessary voice in important surveillance decisions affecting Alameda residents. We urge you to support the motion by Vice Mayor Knox White, and the ordinance when it returns.

From our discussions with the Vice Mayor, it is our understanding that on December 17, he will move the City Council to direct staff to return with an ACLU model surveillance ordinance and

facial recognition ban, like those adopted in San Francisco, Oakland, and Berkeley. Exhibit 1 in Item 6-C contains the ACLU modeled San Francisco Ordinance adopted in May 2019 by a 10-1 vote of the Board of Supervisors. As Oakland and Berkeley had previously and unanimously enacted ACLU model surveillance ordinances in 2018, both City Councils subsequently amended their respective ordinances to include a prohibition on the city's use of facial recognition technology, following San Francisco's lead. The amendments were adopted by unanimous vote. Emeryville's City Council has also directed its staff to return with a face surveillance ban ordinance, also by unanimous vote. We expect to see that ordinance in January.

This letter explains the purpose of the ordinance and how it helps protect the privacy and safety of all Alameda residents. First, the letter outlines the problems addressed by the Ordinance. Second, the letter explains why Alameda should prevent the deployment of face surveillance technology that poses a threat to the community regardless of its accuracy.

1. The Ordinance Ensures Diverse Community Members Are Part of Important Safety Decisions

Surveillance technologies collect sensitive personal information that can record where people go, who they associate with, and even how they feel. All too often, surveillance systems operate out of public view and collect information without the knowledge or consent of residents. When used by public agencies, technologies such as automated license plate readers, camera-equipped drones, and predictive policing software can fundamentally change the relationship between governments and residents, influencing decisions about who receives a government service, who is monitored and subjected to potentially dangerous encounters with the police, and whether people feel comfortable organizing and engaging in activism. Alameda should not deploy surveillance technology on its residents without public debate about how these technologies work and their potential harms, and clear guidelines for how the technology can be used.

Public scrutiny of surveillance technology is essential because the impacts of surveillance technology are not equitably distributed – all too often, data collection and processing systems focus their digital gaze on immigrants, people of color, and the poor. As a result, errors resulting from flawed data or operator misuse are biased and disproportionately harm these communities as well. Without adequate public debate or safeguards to prevent misuse, surveillance technology will harm community members. We know this because it has already happened in the Bay Area.

Many Bay Area police departments secretly deploy surveillance system without policies to govern their use, provide accountability, and ensure people's safety. This has put our immigrant and Black community members in harm's way. In San Francisco, SFPD officers held a Black woman at gunpoint outside her car after misusing an automated license plate reader that they operated without a policy to prevent potentially grave mistakes. According to a 2015 report, Oakland police's use of license plate readers was effectively concentrated in low-income and Black communities.¹ In San Jose, police secretly purchased a drone without meaningfully consulting Muslim community members and other residents who have been targeted by the

¹ Dave Maass, *What You Can Learn From Oakland's Raw ALPR Data*, Electronic Frontier Foundation, Jan. 21, 2015, <https://www.eff.org/deeplinks/2015/01/what-we-learned-oakland-raw-alpr-data>.

government for their religious affiliation.² And in Fresno, the police department used social media surveillance software from a vendor that encouraged police to spy on Black Lives Matter activists.³

Information about residents in local surveillance systems is also vulnerable to efforts by federal agencies such as ICE, who may seek to exploit it to fuel inhumane policies. This is not a hypothetical threat – we recently learned that Immigrations and Customs Enforcement has purchased access to a database of driver locations from a vendor that sells automated license plate readers to many Bay Area communities.⁴ We know that ICE can use that database to assist its efforts to locate and deport community members. The potential vulnerability of local surveillance databases to agencies such as ICE threatens Alameda’s commitment to be a sanctuary city for all residents. This Ordinance would require proposals for such databases be subject to City Council and public scrutiny, and strict safeguards to prevent abuse.

The secretive and unaccountable use of surveillance technology not only harms residents, it damages community trust in local governments.⁵ Other cities have experienced this first hand, such as when Oakland’s City Council faced a public backlash after the public learned about secret plans to build a DHS-funded “Domain Awareness Center” that aggregated surveillance feeds from around the city.⁶ Likewise, when citizens and the Seattle City Council discovered that the police department had acquired drones three years earlier, the ensuing protests led the Mayor to shelve the program, stating that Seattle needed to focus on “community building.”⁷ In both cases, the absence of public debate and a process for evaluating technologies triggered an avoidable public controversy that sapped staff time and taxpayer resources.

2. The Ordinance Ensures Democratic Debate and Oversight for Surveillance Technology Decisions

This proposed Ordinance is straightforward and ensures proper democratic debate, transparency, and oversight of surveillance technologies. The Ordinance requires that a city department seeking surveillance technology explain to the public how it works, what community goals it will accomplish, and what rules will exist to protect the public. Second, the Ordinance requires that

² Thomas Mann Miller, *San Jose Police Department's Secret Drone Purchase: Where's the Accountability?*, ACLU-NorCal, July 30, 2014, <https://www.aclunc.org/blog/san-jose-police-departments-secret-drone-purchase-wheres-accountability>.

³ Justin Jouvenal, *The new way police are surveillance you: calculating your threat 'score*, Wash. Post, Jan. 10, 2016, https://www.washingtonpost.com/local/public-safety/the-new-way-police-are-surveilling-you-calculating-your-threat-score/2016/01/10/e42bccac-8e15-11e5-baf4-bdf37355da0c_story.html?utm_term=.3514f883ceeb.

⁴ Vasudha Talla, *Documents Reveal ICE Using Driver Location Data from Local Police for Deportations*, ACLU.org, Mar. 13, 2019, <https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/documents-reveal-ice-using-driver-location-data>.

⁵ A 2014 ACLU of California survey found that at least 90 California communities were in possession of various surveillance technologies, and that public debate rarely occurred when technologies were proposed. State of Surveillance in California – Findings & Recommendations, January 2015, www.aclunc.org/sites/default/files/201501-aclu_ca_surveillancetech_summary_and_recommendations.pdf.

⁶ Brian Wheeler, *Police Surveillance: The US city that beat Big Brother*, Sept. 29, 2016, www.bbc.com/news/magazine-37411250.

⁷ *Seattle Mayor ends police drone efforts*, USA Today, Feb. 7, 2013, www.usatoday.com/story/news/nation/2013/02/07/seattle-police-drone-efforts/1900785/.

the proposal be heard by the City Council at a regular public meeting. If the Board approves a new surveillance technology at that meeting, the Ordinance ensures the Board and public will be able to understand how it will be used. The Ordinance also ensures that existing surveillance technologies are subject to the same safeguards.

The Ordinance appropriately requires that the local democratic process play a role in evaluating new surveillance technologies before they are acquired or used. And by requiring straightforward safeguards and an annual report, the Ordinance ensures technology community members are not harmed and that the City council fully understands how approved technologies are used. This has produced better outcomes in other Northern California communities with similar laws. Since 2016, Santa Clara County, Oakland, Berkeley, Davis, Palo Alto, BART, and San Francisco have all passed similar ordinances to the one now contemplated by Vice Mayor Knox White. On repeated occasions, these communities have come to better decisions about surveillance technology – whether it was Santa Clara’s imposition of safeguards on body cameras or Oakland’s scrutiny of a relationship with a federal “fusion center” – because of the process put in place by their local surveillance ordinance. We urge Alameda to adopt the same common-sense process for considering new surveillance.

3. The Ordinance Protects Alameda from Dangerous and Biased Face Surveillance

We also fully endorse the prohibition on the use of facial recognition technology by city departments. This is a technology that poses a threat to people of color and facilitates biased government surveillance of our communities. The use of this technology by government agencies poses a unique threat to public safety and the well-being of people in Alameda, regardless of the system’s accuracy. Alameda should refuse to allow government agencies to acquire or use it for at least three reasons: first, due to flaws in face surveillance systems; second, because such systems are frequently built upon biased datasets; and finally, because face surveillance would supercharge invasive and discriminatory government surveillance.

The biased algorithms and processes that power face surveillance technology pose a threat to people of color. Multiple tests of this technology indicate it is less accurate for darker-skinned people. Peer-reviewed academic research by researchers at MIT has demonstrated that prominent facial recognition technology products perform more poorly for people with darker skin and women.⁸ Last year, a test of Amazon’s Rekognition facial surveillance product by the ACLU of Northern California falsely matched 28 members of Congress with arrest booking photos.⁹ Of those false matches, 39 percent were people of color, even though people of color only constitute 19 percent of Congress. In practice, an erroneous face surveillance system could misinform and influence a decision about how to approach a person, including the decision of whether to use force. These kind of flawed systems should not be used to make decisions about Alameda residents’ lives.

⁸ Joy Buolamwini & Timnit Gebru, *Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification*, Proceedings of Machine Learning Research 81: 1-15, 2018, [*****proceedings.mlr.press/v81/buolamwini18a/buolamwini18a.pdf](https://proceedings.mlr.press/v81/buolamwini18a/buolamwini18a.pdf); Natasha Singer, *Amazon Is Pushing Facial Technology That a Study Says Could Be Biased*, New York Times, Jan 24, 2019, <https://www.nytimes.com/2019/01/24/technology/amazon-facial-technology-study.html>.

⁹ Jacob Snow, *Amazon’s Face Recognition Falsely Matched 28 Members of Congress With Mugshots*, ACLU Free Future Blog, July 26, 2018, <https://www.aclu.org/blog/privacy-technology/surveillance-technologies/amazons-face-recognition-falsely-matched-28>.

The databases the underlie facial recognition systems are frequently biased as well. Facial recognition systems are commonly connected to databases of mugshot photos. These photos are then used as a reference point when the system searches for matches of individuals in the world. But because mugshot databases reflect historical over-policing of communities of color, facial recognition “matching” databases are disproportionately made up of people of color arrested in our communities. If such systems are connected to officer body cameras or surveillance cameras, these communities may be unfairly targeted simply because they appeared in another database.

Finally, face surveillance gives the government unprecedented reach into our lives and will fuel discriminatory government surveillance. People should be free to go about their daily lives without the government knowing whether they visit a bar or an abortion clinic, march at a political rally, or attend a religious service. Yet with the flip of a switch, Alameda could add face surveillance to public CCTV cameras, sensor-equipped smart street lights, or even officer-worn body cameras, creating a citywide surveillance network that could track and recognize residents as they move across town. Face surveillance technology makes it easy for the government to learn these and other details of private lives, all with little to no human effort. And like the surveillance systems that came before, the harms will fall hardest on people of color, religious minorities, and immigrants.

If Alameda builds a face surveillance database, it might also invite requests from other governmental entities such as ICE, in effect entangling local agencies in the federal government’s deportation machine. At a time when public protest is at an all-time high and the federal government is attacking immigrants and activists, Alameda should refuse to build face surveillance systems that could easily be misused for dangerous, authoritarian surveillance.

Face surveillance will not make the Alameda community safer and could lead to grave harm. It would subject residents and visitors to continuous monitoring and potentially violent contacts with law enforcement if it produces erroneous results. Regardless of accuracy, systems built on face surveillance will amplify and exacerbate historical and existing bias that harms immigrants, religious minorities, activists, and people of color. An identification—whether accurate or not—could cost people their freedom or even lives. Alameda should refuse to go down this road.

4. Conclusion

Thank you for your consideration of this essential Ordinance designed to protect public safety and ensure that the City Council and Alameda community have a voice in decisions about surveillance technology in Alameda. We look forward to working with the staff and City Council to pass and implement this Ordinance. Please let us know if you have any questions.

Sincerely,

ACLU of Northern California
Asian Americans Advancing Justice – Asian Law Caucus
Council on American-Islamic Relations – San Francisco Bay Area
Electronic Frontier Foundation
Ella Baker Center
ESG Transparency Initiative
Fight For The Future
Greenlining Institute

San Francisco Public Defender – Racial Justice Committee
Secure Justice
Support Life Foundation
Wellstone Democratic Renewal Club