



SURVEILLANCE ORDINANCE FACTS IN CALIFORNIA - AS OF JANUARY 6, 2022

- Each of the seven existing California surveillance technology vetting ordinances follows a similar approval process. **The first six existing ordinances were adopted by unanimous vote of the governing body. The most recent (San Francisco) was adopted by a 10-1 vote.** San Diego has received a unanimous yes vote for an Oakland-style surveillance ordinance and PAC and is presently in meet and confer with its unions.
- Under this model, **one proposal has been permanently rejected** (several have been sent back to staff for additional analysis or draft policy amendments), and **no directive to cease use of existing equipment** has been issued¹. What we are seeing in practice is that various stakeholders, including the general public and outside subject matter experts, provide feedback to the staff's proposed use policy which usually results in several amendments, before eventual and subsequent adoption by the governing board.
- As the first entity to adopt this model in the country (June 2016), Santa Clara County has had sufficient time to do a formal review of the ordinance. Only minor amendments were proposed in September 2018 (edits to several headings and re-arranging several sections for ease of reference). **No amendments to the framework or process were formally proposed by any department. No formal challenges to the governance structure have occurred. No department formally requested relief from compliance, nor requested additional staffing.** We have seen no evidence of an undue administrative burden or increased staffing costs in these seven jurisdictions². Oakland also recently amended its ordinance in January 2021 – the overall structure did not change, no departments were excluded, and no evidence was introduced that would suggest the administrative burden was creating a negative impact.
- **No disciplinary action has occurred** under this model in the seven above jurisdictions pursuant to a complaint from a member of the public (or otherwise, to our knowledge), suggesting that staff is able to comply and that the heightened scrutiny and transparency around both the policy rules and equipment use is ensuring that operators stay within the approved guidelines.
- **Three legal actions have commenced** in the seven above jurisdictions since June 2016, again suggesting that the model is pragmatic.
- **Outside of California, fifteen** jurisdictions have adopted similar surveillance technology vetting ordinances. An additional twenty-one jurisdictions are working on or have formally introduced a similar model, including San Diego which is expected to follow Oakland with a surveillance ordinance/privacy

¹ The bans on city use of facial recognition in San Francisco, Oakland, and Berkeley were pre-emptive and not in response to a proposal.

² Santa Clara County has introduced the most use policies of the seven jurisdictions, covering 130+ types of technology. The average number of policies in the other 6 jurisdictions is approximately 10, although future Smart City proposals are expected to increase this number. San Francisco has identified 180+, but after completing its survey, it is generally agreed that dozens of technologies were never subject to its ordinance.

advisory commission framework. The San Diego City Council has unanimously voted its approval, and we are now awaiting the second required vote before the ordinances become effective.³

- Oakland, San Francisco, Davis, and Berkeley each **involve a citizen’s commission** in the ordinance vetting process⁴. Pending the second required vote, San Diego is expected to follow Oakland by establishing a citizen’s advisory body to help with the technology vetting.

WHY DOES PORTLAND NEED THIS FRAMEWORK?

- Californians strongly support this kind of legislation, and it’s likely that Oregon voters do as well. A March 2019 David Binder Research poll conducted by the ACLU of likely 2020 voters revealed that over 76% of likely statewide voter’s **support** having a vetting framework.

Three-quarters of voters statewide and in the Bay Area support a law to require public debate and a vote by lawmakers before any surveillance technology is obtained or used by government and law enforcement. Half of voters statewide and in the Bay Area strongly support this proposal.

Please tell support or oppose this proposal relating to limiting and requiring oversight for government and law enforcement surveillance.				
<i>Pass a law to require public debate and a vote by lawmakers before any surveillance technology is obtained or used by government and law enforcement.</i>				
	Statewide, Likely voters		Bay Area, Likely Voters	
Support, strongly	50%	→76%	51%	→76%
Support, Somewhat	26		25	
Oppose, Somewhat	9	→19%	7	→17%
Oppose, Strongly	10		10	
Don't know	5		7	

- In 2016, the City of San Diego rolled out what some are calling the largest installation of smart streetlights (capable of capturing video and audio, among other sources of data) in the world, telling taxpayers they could expect to save \$2.8MM a year from lower energy costs. It was subsequently revealed that costs were double the projected amount, including an additional \$1.1MM hit for unanticipated “operational costs” that were not considered during the vetting process, and that the expected energy savings were vastly overstated.⁵

³ <https://www.aclu.org/issues/privacy-technology/surveillance-technologies/community-control-over-police-surveillance> (last reviewed January 19, 2020)

⁴ The Davis Police Commission is not formally incorporated into their surveillance ordinance. However, the commission has become part of the review process and amendments are in play that will likely formally incorporate them into the ordinance.

⁵ <https://www.nbcsandiego.com/news/local/memo-reveals-huge-cost-overruns-for-san-diegos-smart-streetlights/2264320/>

Video From Smart Streetlights Goes Dark

By Eric S. Page, Omari Fleming, Dorian Hargrove, Tom Jones and Paul Krueger ·
Published September 10, 2020 · Updated on September 10, 2020 at 1:29 pm



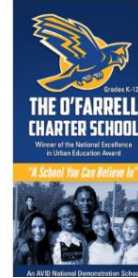
Smart Streetlights Aren't Delivering the Data Boosters Promised

More than three years into San Diego's \$30 million investment, the project is failing to live up to its hype and members of the public trying to work with the data are encountering problems that throw the project's early promotional claims into question.

Jesse Marx
Apr 28, 2020



Streetlight camera in downtown San Diego / Photo by Megan Wood



NBC 7 Investigates also reported on a Feb. 12 city memo which found the smart streetlight program would cost taxpayers millions more than expected.

In that memo, Erik Caldwell, the deputy chief operating officer for San Diego's Smart and Sustainable Communities Division revealed that the program suffered from a "lack of oversight," a failure to conduct "proper due diligence" and that city staff in charge of the program had "limited technological expertise."

Caldwell also said his department had uncovered "errors and missing information" in the program's accounting, revealing that his department found that the energy savings expected by converting to LED street lights were exaggerated by about \$800,000 a year. City staff had used the energy savings as an incentive for the city council to approve entering into the initial contract for the streetlights.

In addition to the lower savings, Caldwell said there were hundreds of thousands of dollars in "unanticipated operational expenses," including \$500,000 annually for a computer interface for each node, \$140,000 a year for "data connectivity" and \$446,000 for maintenance, data analysis and lighting issues.

- Warrantless tracking of cellphone location data at a labor union protest, in the absence of any criminal predicate.⁶
- Oregon's Attorney General forced to publicly apologize after her department used software to target Twitter users that posted #BlackLivesMatter.⁷
- Third-party analysis of the Oakland Police Department's use of automated license plate readers revealed that even after controlling for property and automobile related crime, use disproportionately impacted historically African American and Latinx neighborhoods.⁸

⁶ <https://www.newsweek.com/fbi-tracks-suspects-cell-phones-without-warrant-75099>

⁷ <https://www.reuters.com/article/us-oregon-race-idUSKCN0T104N20151112>

⁸ <https://www.eff.org/deeplinks/2015/01/what-we-learned-oakland-raw-alpr-data>

What You Can Learn from Oakland's Raw ALPR Data

BY DAVE MAASS AND JEREMY GILLULA | JANUARY 21, 2015



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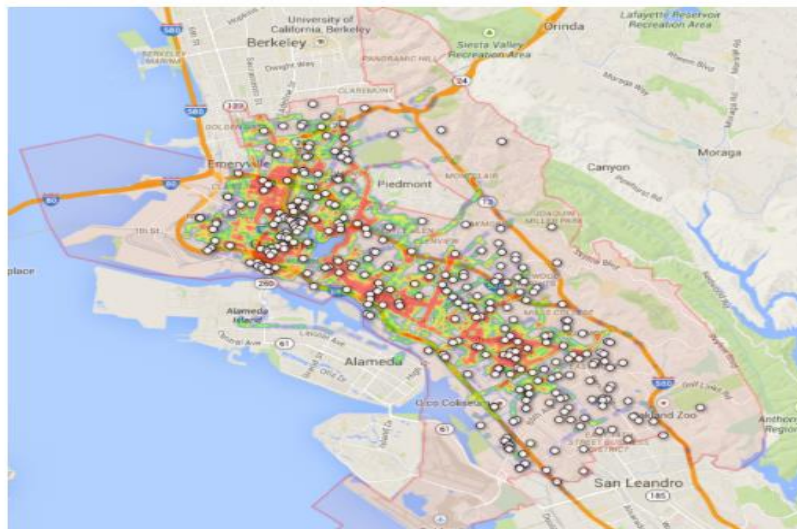
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SUBMIT



Per Capita Income: The data indicates lower-income neighborhoods are disproportionately captured by ALPR patrols, with police vehicles creating a grid of license plates in the city's poorest neighborhoods.

To see if perhaps OPD was just focusing its ALPR use in areas with high incidents of automobile-related crime, we decided to map only the auto-related crime:



The result is the same—ALPRs are clearly not being used to deter automobile-related crimes.

- After the Los Angeles Sheriff's secret aerial surveillance system over Compton was discovered, the residents and elected leaders of Compton became outraged, further causing distrust of law enforcement and the government.⁹
- The New York police department paid \$2 million in attorney fees to settle civil rights lawsuits alleging baseless surveillance of the Muslim community. Stronger civilian oversight was created as part of the settlement.¹⁰
- Forty-seven-year-old African American Denise Green is pulled from her car and thrown on the ground by seven officers pointing their guns at her. The license plate reader that alerted the officers misread her

⁹ <https://www.latimes.com/local/lanow/la-me-ln-sheriffs-surveillance-compton-outrage-20140423-story.html>

¹⁰ https://www.washingtonpost.com/world/national-security/nypd-settles-lawsuits-over-muslim-monitoring/2016/01/07/bdc8eb98-b3dc-11e5-9388-466021d971de_story.html

plate by one digit, and no officers verified accuracy. The taxpayers of San Francisco paid Green \$495,000.¹¹



The City is expected to settle a \$495,000 lawsuit with a woman who claimed to be wrongfully arrested by police who thought she was driving a stolen car. (MIKE KOZMIN/S.F. EXAMINER FILE PHOTO)

City set to approve wrongful arrest suit settlement

JOSHUA SABATINI / Sep. 7, 2015 12:00 a.m. / NEWS / THE CITY



About six years after San Francisco police officers placed a woman at gunpoint over wrongfully suspecting her of driving a stolen Lexus in the Mission, The City is expected to settle the lawsuit she filed for \$495,000, city documents show.

Privacy advocate held at gunpoint after license plate reader database mistake, lawsuit alleges

The rental car was allegedly reported as stolen

By Colin Leuner | @colleuner | Feb 21, 2016, 1:55pm EST



Photo by Justin Sullivan/Getty Images

Bay Area police pulled over a California privacy advocate and held him at gunpoint after a database error caused a license plate reader to flag a car as stolen, a lawsuit alleges.

Brian Hofer, chair of Oakland's Privacy Advisory Commission, said in a suit filed in December that he had rented a car and was traveling with his brother in November when he was pulled over by a Contra Costa Sheriff's Office deputy, and more police cars joined. Hofer alleges that an officer held a gun drawn and told him and his brother to exit the rental car, and that a deputy injured his brother by throwing him to the ground.



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- After spending hundreds of hours of valuable staff time planning a city-wide surveillance system in secret from 2008-2013, the City Council of Oakland was forced to dramatically scale back the project due to public outrage after the item was finally presented at a public hearing. Millions of dollars in federal grant money and staff time were squandered.¹³
- After secretly applying for federal grant money and acquiring a drone, the San Jose police department was forced to publicly apologize to the public when the drone was discovered, subsequently promising greater transparency and community input into use before the drone might be used.¹⁴
- More than 2,000 cases could be overturned in Baltimore due to an alleged conspiracy between the state's attorney and police department to withhold discovery evidence pertaining to use of a Stingray cellphone tracking device from defense counsel.¹⁵
- An audit of Walnut Creek, CA's use of red-light traffic enforcement cameras revealed that the use of the technology led to a dramatic increase in rear-end collisions (71%) and broadside collisions (100%), finding that the "use of red-light cameras appears to have decreased safety and put roadway users at increased risk."¹⁶
- Saying that the police need to focus on community building, City of Seattle Mayor pulls plug on controversial secret drone program before it even begins, due to community concerns after the plan was discovered.¹⁷

For more information: https://www.aclunc.org/docs/20160325-making_smart_decisions_about_surveillance.pdf

¹¹ <https://www.techdirt.com/articles/20140513/07404127218/another-bogus-hit-license-plate-reader-results-another-citizen-surrounded-cops-with-guns-out.shtml>

¹² <https://www.theverge.com/2019/2/21/18234785/privacy-advocate-lawsuit-california-license-plate-reader>

¹³ <https://www.sfgate.com/bayarea/article/Oakland-to-limit-surveillance-center-to-port-5290273.php#>

¹⁴ <https://www.mercurynews.com/2014/08/05/san-jose-police-apologize-for-drone-secrecy-promise-transparency/>

¹⁵ <https://www.theguardian.com/us-news/2015/sep/04/baltimore-cases-overturned-police-secret-stingray-surveillance>

¹⁶ <https://www.dailynews.com/2014/01/21/red-light-cameras-being-stopped/>

¹⁷ <https://www.seattletimes.com/seattle-news/seattle-grounds-police-drone-program/>

BENEFITS TO PARTICIPATING IN A SURVEILLANCE EQUIPMENT & PRIVACY COMMISSION VETTING FRAMEWORK

A preliminary analysis by Secure Justice of the seven Bay Area jurisdictions reveals that each of the problems that the surveillance ordinance (by itself) was expected to solve, *will remain* if Portland does not also create a Privacy Advisory Commission of subject matter experts to make recommendations to the City Council. A surveillance ordinance by itself will not create more capacity for research or greater understanding by elected city council members or administrative staff, nor will it ensure that those same electeds or staffers become surveillance technology or privacy law experts.

A public review process at the commission also provides more opportunity for public input, greater transparency, and more collaboration with city staff. In Oakland, the Privacy Advisory Commission's endorsement of potentially controversial equipment has provided comfort to both the public and city council that the technology was properly vetted, and that appropriate guardrails were put into place in the corresponding use policy. By performing its due diligence, the Commission has also revealed policy violations and worked with staff to take corrective measures.

“As a long-time resident of Oakland, I understood the intent and recognized the importance of the City’s Privacy Advisory Commission's (PAC) proposed surveillance vetting ordinance, so much so that I showed up and expressed strong support when the City Council considered and then adopted it. As a manager in Oakland’s Department of Transportation responsible for over a dozen parking and mobility programs that all use various types of technology with clear or possible surveillance capabilities, I have gone through the PAC’s process on a number of occasions and believe that the model is delivering on its promises.

For example, I appreciate that the surveillance ordinance required topics of discussion that prompt myself, my staff and our vendors to address areas we might have overlooked, and the feedback we receive from the Commissioner's on our proposed use policies has been most helpful. Additionally, the framework afforded by the ordinance clearly helped our proposals sail through the City Council with unanimous votes, this after we received the PAC's endorsement and further instilling confidence in our work. Once newly procured technologies have been implemented, the PAC approved use policies have proven to be a touchstone for guiding our work and responding to questions or concerns from the community or responding to requests from other departments or agencies. As a result, I now recognize the work that goes into meeting staff’s obligations under the City’s surveillance ordinance is most welcome as it protects privacy and builds trust and confidence in staff’s work while improving efficiencies. This was entirely unexpected but most welcomed!” - *Michael Ford, Manager – Parking & Mobility Division, City of Oakland Department of Transportation*

Especially in 2020, when trust in law enforcement is at an all-time low and people all across the country are demanding that we “reimagine public safety”, it is critical that the police participate in the public review process and collaborate with the Privacy Advisory Commission to repair relationships, provide greater transparency into the use of powerful technology, and regain the public’s trust with hopefully demonstrated good behavior via the annual reporting mechanism.

“It goes without saying that change can be difficult to achieve for large organizations. However, working alongside the Privacy Advisory Commission and its Commissioners, I have seen positive change occur. The Privacy Commission and the Oakland Police Department collaborate in a transparent process that aims to both protect the civil liberties of Oakland community members and increase understanding about the need to use technology in a responsible manner to provide public safety. The Privacy Commission and the Department together work toward improving public trust by providing a platform that allows for the opportunity to dispel rumors or suspicions about technology used in modern policing, identification of potential impact to the community from using the technology and monitoring the overall effectiveness of the technology. Although change can be difficult, the Department welcomes the opportunity to continue to work collectively with the Privacy Commission to make Oakland a city safer for all.” - *Deputy Chief Roland Holmgren, City of Oakland Police Department*

“Oakland was a very different place in 2013, when we submitted the Domain Awareness Center proposal for City Council approval. We had no privacy policies in place, and with Edward Snowden dominating the news, the project understandably tapped into the public's fear around mass surveillance and unfettered data sharing. The creation of the Privacy Commission in 2015 was one of the smartest things the City of Oakland has done - it's led to greater trust in law enforcement and created a culture of "mindfulness" in the staff, so that we think about the potential impact before putting surveillance technology out into the wild.

"As Chief Privacy Officer for the City of Oakland, and liaison between the City Administrator and the Privacy Commission, I've had a front row seat to watching the interaction between various city departments and the commissioners as they vet surveillance technology together. The benefits to such a framework are becoming readily apparent, and the City Council has easily and unanimously approved each recommendation put forth by the commission. I feel that the commissioners have done a good job deferring to city staff when appropriate, while still ensuring that they defend the civil liberties and privacy interests of Oaklanders." - *Joe DeVries, City of Oakland Chief Privacy Officer and Assistant to the City Administrator*

The public vetting and information supplied in the required up-front analysis will help dispel rumors and conspiracy theories, leading to greater community trust and input.

“From my perspective, the process itself is fine and I don't really have any issues. So far council has approved most of what we've asked for and to them we accomplished what the real goal was, which was to disclose what we do have, and by default what we don't have.” - *Chief Darren Pytel, City of Davis Police Department*