

Arnold S. [Signature]
City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. 86586 C.M.S.

Introduced by Councilmember _____

RESOLUTION ESTABLISHING THE CITY OF OAKLAND'S CELLULAR SITE SIMULATOR USAGE AND PRIVACY POLICY

I. BACKGROUND AND OVERVIEW

WHEREAS, the Oakland Police Department (OPD) is committed to reducing crime and serving the community through fair, quality policing; and

WHEREAS, cellular site simulator technology is available at no cost to OPD from the Alameda County District Attorney (ACDA); and

WHEREAS, OPD can more effectively investigate such crimes when provided with additional resources including the use of advanced technology; now therefore be

RESOLVED: That the Purpose and Scope of the of the City of Oakland's Cellular Site Similar Usage and Privacy Policy (Policy) is as follows:

II. PURPOSE AND SCOPE

The purpose of the Cellular Site Simulator Usage and Privacy Policy is to set guidelines and requirements pertaining to cellular site simulator technology usage and privacy. Any changes to this policy – including authorized uses of the cellular site simulator technology by the Oakland Police Department – will be made in consultation with the Oakland Privacy Commission; and be it

FURTHER RESOLVED: That the general policy considerations shall be as follows:

III. POLICY

- A. It is the policy of OPD to respect the privacy rights and civil liberties of individuals and to follow the Constitution, particularly the First and Fourth Amendments, the California Constitution, and all applicable laws.
- B. Cellular site simulator technology will be used only in a manner consistent with the United States Constitution – particularly the First and Fourth Amendments – the California Constitution, and applicable statutory authorities.
- C. OPD is committed to honor and respect civil liberties.
- D. OPD has developed a policy governing use of cellular site simulator technology in collaboration with the Privacy Advisory Commission and will follow this policy as written; and be it

FURTHER RESOLVED: That the basis for the policy is as follows:

IV. BASIS FOR POLICY

- A. Pursuant to California Government Code Section 53166, a local law enforcement agency shall not acquire cellular communications interception technology unless approved do so by its legislative body by a resolution or ordinance authorizing the acquisition and the usage and a privacy policy. Government Code § 53166(b) requires all law enforcement organizations that use cellular communications interception technology, including cellular site simulator technology, to:
 - 1. Maintain reasonable security procedures and practices, including operational, administrative, technical, and physical safeguards, to protect information gathered through the use of cellular communications interception technology from unauthorized access, destruction, use, modification, or disclosure.
 - 2. Implement a usage and privacy policy to ensure that the collection, use, maintenance, sharing, and dissemination of information gathered through the use of cellular communications interception technology complies with all applicable law and is consistent with respect for an individual's privacy and civil liberties. This usage and privacy policy shall be available in writing to the public, and, if the local agency has an Internet Web site, the usage and

privacy policy shall be posted conspicuously on that Internet Web site. The usage and privacy policy shall, at a minimum, include all of the following:

- a. The authorized purposes for using cellular communications interception technology and for collecting information using that technology.
 - b. A description of the job title or other designation of the employees who are authorized to use, or access information collected through the use of, cellular communications interception technology. The policy shall identify the training requirements necessary for those authorized employees.
 - c. A description of how the local agency will monitor its own use of cellular communications interception technology to ensure the accuracy of the information collected and compliance with all applicable laws, including laws providing for process and time period system audits.
 - d. The existence of a memorandum of understanding or other agreement with another local agency or any other party for the shared use of cellular communications interception technology or the sharing of information collected through its use, including the identity of signatory parties.
 - e. The purpose of, process for, and restrictions on, the sharing of information gathered through the use of cellular communications interception technology with other local agencies and persons.
 - f. The length of time information gathered through the use of cellular communications interception technology will be retained, and the process the local agency will utilize to determine if and when to destroy retained information.
- B. Members shall use only department-approved devices and usage shall be in compliance with department security procedures, the department's usage and privacy procedures and all applicable laws; and be it

FURTHER RESOLVED: That the following definitions apply to this policy:

V. DEFINITIONS

“Cellular Site Simulator Technology,” as governed by this policy, functions by transmitting as a cell tower. In response to the signals emitted by the simulator, cellular devices in the proximity of the simulator identify it as the most attractive cell tower in the area and thus transmit signals to the simulator that identify the device in the same way that they would a networked tower. A cellular site simulator receives signals and uses an industry standard unique identifying number assigned by a device manufacturer or cellular network provider to distinguish between incoming signals until the targeted device is located. Once the cellular site simulator identifies the specific cellular device for which it is looking, it will obtain the signaling information relating only to that particular phone, rejecting all others. Although the cellular site simulator initially receives signals from multiple devices in the vicinity of the simulator while attempting to locate the target device, it does not display the unique identifying numbers of those other devices for the operator except when deployed in registration mode. Registration mode may only be used for mass casualty incidents. If the cellular site simulator equipment or software is modified or capable of displaying unique identifiers other than in registration mode, Oakland Police personnel are prohibited from making use of, or saving, such information. To the extent that any unique identifier for the non-targeted device might exist in the software or simulator itself, it will be purged at the conclusion of operations in accordance with this policy. Cellular site simulators do not function as Global Positioning System (GPS) locators, as they will not obtain or download any location information from the device or its applications;

“Mass casualty incident” is a natural disaster such as an earthquake or fire; a terrorist attack; or any other event resulting in imminent loss of life or injury;

“Exigency” is defined as an imminent threat of death or bodily injury;

“Search warrant” is a court order that a magistrate, judge or Court official issues to authorize law enforcement officers to conduct a search of a person, location, or vehicle for evidence of a crime and to confiscate related evidence that they find; and be it

FURTHER RESOLVED: That the authorized purposes of the policy shall be as follows:

VI. AUTHORIZED PURPOSES

- A. When used in a mass casualty event, the cellular site simulator will obtain signaling information from all devices in the simulator’s target vicinity for the limited purpose of locating persons in need of assistance or to further recovery efforts. Any information

received from the cellular devices during this time will only be used for these limited purposes and all such information received will be purged at the conclusion of the effort in accordance with this policy.

- B. Cellular site simulator technology will not be used at crowd management events.
- C. By transmitting as a cell tower, cellular site simulators acquire identifying information from cellular devices. As employed by OPD, this information is limited. Cellular site simulators employed by OPD will be limited to providing only: a) azimuth (an angular measurement in a spherical coordinate system); b) signal strength; and c) device identifier for the target device when locating a single individual or all device identifiers for a mass casualty incident.
- D. Cellular site simulators used by OPD shall not be used to collect the contents of any communication, in accordance with 18 U.S.C. § 3121(c).
- E. The cellular site simulator employed by OPD shall not capture emails, texts, contact lists, images or any other data contained on the phone. In addition, the cellular site simulators shall not be used OPD to collect subscriber account information (for example, an account holder's name, address, or telephone number).
- F. That the authorized purposes for using cellular communications interception technology and for collecting information using that technology to:
 - 1. Locate missing persons;
 - 2. Locate at-risk individuals;
 - 3. Locate victims of mass casualty incidents;
 - 4. Assist in investigations involving danger to the life or physical safety of an individual; and
 - 5. Apprehend fugitives.
- G. That cellular site simulator technology may only be used by OPD with a search warrant or for an identified exigency, with a concurrent application for a search warrant. A search warrant application shall be made no later than 48 hours after use in an identified exigency. When using cellular site simulator technology to assist in an investigation, Oakland Police personnel may only attempt to locate cellular devices whose unique identifiers are already known to law enforcement unless used for a mass casualty event.
- H. That when making any application to a court, members of OPD shall disclose appropriately and accurately the underlying purpose and activities for which an order or authorization is sought. Oakland Police Department personnel must consult with prosecutors when using a cell-site simulator and applications for the use of a cell- site simulator must include sufficient information to ensure that the courts are aware that the technology is being used.

1. Regardless of the legal authority relied upon, at the time of making an application for use of a cell-site simulator, the application or supporting affidavit shall describe in general terms the technique to be employed. The application or supporting affidavit shall indicate that investigators plan to send signals to the cellular phone that will cause it, and non-target phones on the same provider network in close physical proximity, to emit unique identifiers. The application or supporting affidavit shall indicate that these unique identifiers will be obtained by the technology, and investigators may only use the information collected to determine the physical location of the target cellular device;
 2. An application or supporting affidavit shall inform the court that the target cellular device (e.g., cell phone) and other cellular devices in the area might experience a temporary disruption of service from the service provider. The application or supporting affidavit may also note, if accurate, that any potential service disruption to non-target devices would be temporary and all operations will be conducted to ensure the minimal amount of interference to non-target devices;
 3. An application for the use of a cellular site simulator shall inform the court about how law enforcement intends to address deletion of data not associated with the target phone. The application shall state that law enforcement will make no use of any non-target data, except to identify and distinguish the target device from other devices; and be it
- I. If cellular site technology is used based on an exigency, then the above requirements will be met by applying for a search warrant concurrently with use of the device whenever possible and no later than 48 hours after use; and be it

FURTHER RESOLVED: that access to cellular site simulator, internal controls, and reporting metrics shall be as follows:

VII. ACCESS TO CELLULAR SITE SIMULATOR, INTERNAL CONTROLS, AND REPORTING METRICS

- A. Only designated OPD personnel may use cellular site simulator technology.
- B: Each use of cellular site simulator technology by OPD must be approved by the Chief of Police or Assistant Chief of Police and any emergency use must be approved by a Lieutenant of Police or higher-ranking member.
- C. The Chief of Police, the Privacy Advisory Commission, and the Public Safety

Committee will be provided with an annual report that includes information on each use of cellular site simulator technology.

- D. All data contained by the cellular site simulator device shall be deleted at the end of any 24-hour period of use unless needed for a search and rescue operation in which case it will be deleted no less than once every 10 days.
- E. No new cellular site simulator technology capabilities will be installed or used beyond what is initially approved without express City Council approval.

VIII. SEVERABILITY

FURTHER RESOLVED: That if any section, subsection, sentence, clause or phrase of this Policy is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Policy. The City Council hereby declares that it would have adopted this Policy and each section, subsection, clause, or phrase thereof irrespective of the fact that one or more sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

FEB 07 2017

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

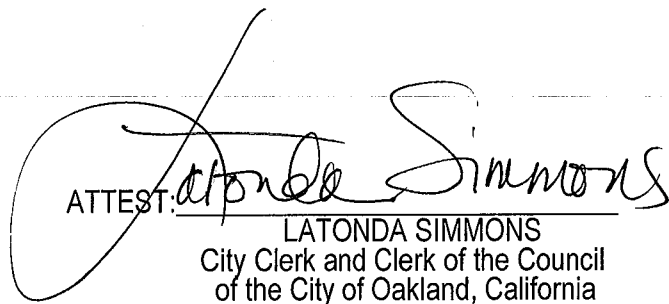
AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID AND PRESIDENT GIBSON MCELHANEY - 7

Excused - Campbell Washington - 1

NOES -

ABSENT -

ABSTENTION -

ATTEST: 

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California