



CITY OF OAKLAND

# AGENDA REPORT

**TO:** Edward D. Reiskin  
City Administrator

**FROM:** Susan E. Manheimer  
Interim Chief of Police

**SUBJECT:** OPD Crime Lab Surveillance Use  
Policy

**DATE:** November 12, 2020

City Administrator Approval  
Approval

Date  
Nov 19, 2020

## **RECOMMENDATION**

**Staff Recommends That The City Council Adopt A Resolution: (1) Approving The Oakland Police Department (OPD) Crime Lab Criminalistics Laboratory DNA Instrumentation And Analysis Software Biometric Technology Use Policy And Report; And (2) Approving OPD's Surveillance Impact Report For Its Use Of DNA Instrumentation, Analysis And Software.**

## **EXECUTIVE SUMMARY**

The Oakland Police Department (OPD) requests the approval of the Biometric Technology Use Policy for DNA Instrumentation and Analysis software policy that was voted by the Privacy Advisory Committee (PAC) to favor City Council authorization at the PAC meeting on October 1, 2020 on the basis that the Surveillance Impact Report (**Attachment A**) allows Council to determine that the benefits to the community of the biometric technology outweigh the costs (cost benefit determination); that the proposal will safeguard civil liberties and civil rights, and that, no alternative with a lesser economic cost or impact on civil rights or civil liberties would be as effective.

## **BACKGROUND AND LEGISLATIVE HISTORY**

### ***Oakland Crime Lab + Oakland Privacy Advisory Commission***

Oakland's Surveillance Ordinance No.13489 C.M.S., adopted by the City Council on May 15, 2018 adds Chapter 9.64 to the Oakland Municipal Code (OMC), and covers policy areas related to surveillance technology. OMC 9.64.030.1.C requires City Council approval for new and existing surveillance technology; additionally, OMC Section 9.64.020.1 requires that, "Prior to seeking City Council approval for existing city surveillance technology under Section 9.64.030, city staff shall submit a Surveillance Impact report and Surveillance Use Policy to the Privacy Advisory Commission (PAC) for its review at a regularly noticed meeting. The surveillance impact report and surveillance use policy must address the specific subject matter specified for such reports as defined under 9.64.010."

City Council  
December 1, 2020

The OMC 9.64 “surveillance technology” definition<sup>1</sup> refers to “biometric identification hardware or software.” PAC Commissioners have stated that this reference necessitates that all Crime Lab technology that utilizes “biometric identification hardware or software” shall be considered as covered by all OMC 9.64 requirements, including bringing a Surveillance Impact Report (SIR) and Surveillance Use Policy (SUP) to the PAC for review before bringing to the City Council for adoption consideration.

OPD Crime Lab personnel brought an earlier version of the resolution accompanying this report to the July 28, 2020 City Council. This resolution would have provided the Crime Lab with a waiver from the City’s Advertising And Competitive Bidding Requirements And Waiving The Request For Proposals/Qualifications (RFP/Q) Process Requirements – not from the OMC 9.64 Surveillance Technology Ordinance. PAC commissioners did explain to the City Council that the Crime Lab had not yet provided a Surveillance Impact Report (SIR) or Surveillance Use Policy (SUP) to the PAC. The City Council’s motion was to adopt Resolution No. 88262 C.M.S, which granted a waiver of \$300,000 from the City’s Advertising And Competitive Bidding Requirements And Waiving The Request For Proposals/Qualifications (RFP/Q) Process Requirements for a period of six months, and bring forth a list of all technology used by the Crime Lab to the PAC by September 2020 (provided to PAC August 2020) to develop an appropriate SIR (**Attachment A**) and SUP (**Attachment B**) for these items in order to allow the PAC to make a recommendation to the City Council before the end of the calendar year. Both Attachment A and B were presented to PAC on October 1 and were favorably voted to recommend to City Council that they be adopted.

## **ANALYSIS AND POLICY ALTERNATIVES**

OPD Crime Lab staff presented its DNA Instrumentation and Analysis and Software Surveillance Impact Report (SIR, **Attachment A**) and DNA Instrumentation and Analysis Software Biometric Technology Surveillance Use Policy (SUP, **Attachment B**) at the October 1, 2020 PAC meeting. The SIR (**Attachment A**) covers the following areas as required by the Surveillance Ordinance:

- Information describing the system and how it works;
- Purpose of the technology;
- Locations where, and Situations in which the technology may be used;
- Privacy Impact of the technology;
- Mitigations to prevent privacy impacts;
- Data Types and Sources;

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<sup>1</sup> "Surveillance Technology" means any software, electronic device, system utilizing an electronic device, or similar technological tool used, designed, or primarily intended to collect, retain, analyze, process, or share audio, electronic, visual, location, thermal, olfactory, biometric, or similar information specifically associated with, or capable of being associated with, any individual or group. Examples of surveillance technology include, but is not limited to the following: cell site simulators (Stingrays); automatic license plate readers; gunshot detectors (ShotSpotter); facial recognition software; thermal imaging systems; body-worn cameras; social media analytics software; gait analysis software; video cameras that record audio or video, and transmit or can be remotely accessed. It also includes software designed to monitor social media services or forecast criminal activity or criminality, **biometric identification hardware or software.**

- Data Security;
- Costs;
- Third Party Dependence;
- Alternatives Considered; and
- Track Record of Other Entities; and

The SUP (**Attachment B**) covers relevant areas required by OMC 9.64.030, including the following areas:

- Technology Description;
- Authorized Use;
- Use Restrictions;
- Data Access, Data Collection and Retention, and Security;
- Monitoring and Reporting; and
- System Training; and

City staff recommends approving the OPD Crime Lab DNA Instrumentation and Analysis Software Biometric Technology Use Policy. The PAC voted unanimously at the October 1, 2020 PAC meeting to recommend City Council adoption. There are potential negative repercussions that the use of DNA biometrics as a scientifically supported investigative tool launched retrospectively implies to a resident or victim of crime that they were prospectively surveilled by use of DNA technology as employed by the Crime Lab. It is the position of the Crime Laboratory that use of current laboratory DNA technologies to investigate crime in an attempt to solve it is not surveillance. However, staff understands that OMC 9.64 clearly identifies all biometric technology as surveillance technology. Staff also appreciates the confidential nature of the work performed and data collected, the value of treating these data confidentially and therefore welcomed the opportunity to work with the PAC to achieve the October 1, 2020 unanimous vote.

### **FISCAL IMPACT**

There is no fiscal impact associated with approval of the OPD Crime Lab Criminalistics Laboratory DNA Instrumentation And Analysis Software Biometric Technology Use Policy.

### **PUBLIC OUTREACH / INTEREST**

The PAC reviewed the OPD Criminalistics Laboratory DNA Instrumentation And Analysis Software Biometric Technology Surveillance Impact Report (**Attachment A**) and Surveillance Use Policy (**Attachment B**) at the publicly noticed October 1, 2020 meeting. This report also complies with standard legislative noticing requirements.

### **COORDINATION**

The Budget Bureau and the Office of the City Attorney were consulted in the production of this report as well as the accompanying resolution.

### **SUSTAINABLE OPPORTUNITIES**

**Economic:** There are no economic opportunities associated with this report.

**Environmental:** There are no environmental opportunities associated with this report.

**Race and Social Equity:** The public has a significant interest in ensuring that the OPD Crime Lab can effectively process evidence; successfully processed evidence helps OPD with investigations that bring leads to effective criminal prosecutions. The public safety for all Oakland residents and visitors is enhanced through greater OPD investigative capacity.

**ACTION REQUESTED OF THE PUBLIC SAFETY COMMITTEE**

Staff Recommends That The City Council Adopt A Resolution Approving The Oakland Police Department (OPD) Crime Lab Criminalistics Laboratory DNA Instrumentation And Analysis Software Biometric Technology Use Policy.

For questions regarding this report, please contact Sandra Sachs, Crime Laboratory Manager, at (510) 238-3386.

Respectfully submitted,



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Susan E. Manheimer  
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Oakland Police Department

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***Attachments (2)***

**A:** *DNA Instrumentation and Analysis and Software Surveillance Impact Report*

**B:** *DNA Instrumentation and Analysis Software Biometric Technology Surveillance Use Policy*