

2024 JUN 26 PM 12:48

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OFFICE OF THE CITY CLERK
OAKLAND

Approved as to Form and Legality

Amadi Sath

City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. 90365 C.M.S.

RESOLUTION: (1) RECEIVING THE ANNUAL SURVEILLANCE REPORT ON THE OAKLAND POLICE DEPARTMENT'S CRIMINALISTIC'S LABORATORY (CRIME LAB) BIOMETRICS DNA TECHNOLOGY DNA INSTRUMENTATION AND ANALYSIS SOFTWARE BIOMETRIC TECHNOLOGY; AND (2) APPROVING PROPOSED AMENDMENTS TO THE CRIME LAB DNA INSTRUMENTATION AND ANALYSIS SOFTWARE BIOMETRIC USE POLICY AS RECOMMENDED BY THE PRIVACY ADVISORY COMMISSION (PAC)

WHEREAS, the advent of Deoxyribonucleic Acid (DNA) technology and automation equipment has revolutionized law enforcement's ability to analyze biological evidence at a genetic level; and

WHEREAS, Oakland's Surveillance Technology Ordinance (Ordinance No.13489 C.M.S.), adopted by the City Council on May 15, 2018, added Chapter 9.64 to the Oakland Municipal Code (OMC), and established rules governing City's staff's acquisition and use of Surveillance Technology; and

WHEREAS, pursuant to the Surveillance Technology Ordinance process, the Oakland City Council approved the Oakland's Police Department's Crime Lab DNA Instrumentation and Analysis Software Biometric Use Policy (Use Policy) on December 1, 2020 pursuant to City Council Resolution No. 88388 C.M.S.; and

WHEREAS, pursuant to OMC Sections 9.64.020 and 9.64.030, following City Council's initial approval, the following approval process must occur for OPD to continue to use and make modifications to the Crime Lab Surveillance Use Policy:

- City staff submits an Annual Surveillance Report with information on the DNA Instrument and Analysis Software biometric use policy to the Privacy Advisory Commission (PAC);
- City staff submits proposed changes in the Use Policy on the DNA Instrument and Analysis Software Biometric Use Policy to the PAC for feedback;
- After review by the PAC, City staff submits the Annual Surveillance Report, the proposed new Use Policy changes, and the PAC's recommendations, to the City Council for review and approval;

- The PAC makes a recommendation by voting its approval to proceed to City Council, object to the proposal, recommend that the City staff modify the proposal, or takes no action;
- Based upon information provided in City staff's Annual Surveillance Report and after considering the recommendation of the PAC, the City Council makes a determination that the benefits to the community of the DNA Instrument and Analysis Software outweigh the costs; that the proposal will safeguard civil liberties and civil rights; and that, in the City Council's judgment, no alternative with a lesser economic cost or impact on civil rights or civil liberties would be as effective, and approves of the continuing use of the DNA Instrument and Analysis Software and proposed modifications to the Use Policy; and

WHEREAS, since City Council's 2020 approval of the Use Policy, staff has followed this process and presented its 2023 Annual Report and covered updates to its Use Policy (SUP, *Attachment A*) and Analysis Software Biometric Technology Surveillance Impact Report at the May 2, 2024 PAC meeting; and

WHEREAS, at this May meeting, the PAC unanimously voted to recommend acceptance of the Annual Report and SIR (*Attachment B*) and that changes to the SUP (*Attachment A*) be approved; and

WHEREAS, the SUP (*Attachment A*) 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;
- System Training; and

WHEREAS, the Crime Laboratory is a full-service forensic science laboratory accredited to ISO/IEC 17025:2017 (ISO) by the American National Standards Institute National Accreditation Board (ANAB); and

WHEREAS, the Crime Laboratory must adhere to all applicable accreditation standards and requirements to successfully maintain and renew accreditation every four years; and

WHEREAS, the Crime Laboratory has implemented validated methods across all its forensic disciplines and those validated methods specify supplies, instrumentation, and other analytical conditions necessary to produce reliable results; and

WHEREAS, the Crime Laboratory's Forensic Biology Unit is required to adhere to the Federal Bureau of Investigation (FBI) DNA Quality Assurance Standards (QAS) in order to maintain access to the Combined DNA Index System (CODIS); and

WHEREAS, the FBI QAS requires the Forensic Biology Unit to use rigorously validated DNA typing methods that use specific quality-controlled reagents and instruments from specific vendors; and

WHEREAS, ANAB requires the Crime Laboratory to use only suitable external providers of specific supplies, instruments, equipment, instrument service, equipment service, proficiency testing, and evidence collection kits to perform its casework using its validated methods; now therefore be it

RESOLVED: That pursuant to OMC Section 9.64.030.2.B, the City Council has considered the PAC's recommendation in favor of City Council authorizing the proposed modifications to the OPD Crime Lab DNA Instrumentation and Analysis Software Biometric Technology Surveillance Use Policy; and be it

FURTHER RESOLVED: That pursuant to OMC Section 9.64.030.2.B, for the reasons referenced above by City staff and addressed in the agenda report and Annual Surveillance Report accompanying this resolution, the City Council finds that the benefits to the community of the Crime Lab DNA Instrumentation and Analysis Software Biometric Use Policy outweigh the costs (cost benefit determination); that the Crime Lab DNA Instrumentation and Analysis Software Biometric Use Policy 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; and so authorizes City's staff's proposed modifications to the Oakland's Police Department's Crime Lab DNA Instrumentation and Analysis Software Biometric Use Policy, as provided in *Attachment A*, and so authorizes continued use; and be it

FURTHER RESOLVED: That pursuant to Oakland Municipal Code Section 9.64.030.2, the City Council approves City's staff's Annual Surveillance Report for the Crime Lab DNA Instrumentation and Analysis Software Biometric Use Policy, as provided in *Attachment B*.

IN COUNCIL, OAKLAND, CALIFORNIA,

JUL 16 2024

PASSED BY THE FOLLOWING VOTE:

AYES - FIFE, GALLO, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID, AND
PRESIDENT FORTUNATO BAS - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST:



ASHA REED

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