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INTRODUCED BY COUNCILMEMBER _____


CITY ATTORNEY'S OFFICE

AMENDED IN PUBLIC SAFETY COMMITTEE DECEMBER 14, 2015

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

ORDINANCE ESTABLISHING THE PRIVACY ADVISORY COMMISSION, PROVIDING FOR THE APPOINTMENT OF MEMBERS THEREOF, AND DEFINING THE DUTIES AND FUNCTIONS OF SAID COMMISSION

WHEREAS, on June 2, 2015, City Council approved, in concept, the creation of a standing community advisory board on privacy issues, and further requested that City Administration prepare an ordinance establishing said commission; and

WHEREAS, Section 601 of the City Charter entitled "Boards and Commissions," reserves to the City Council the authority to create boards and commissions by ordinance, and to prescribe their function, duties, powers, jurisdiction and the number of board and commission members, their terms, compensation and reimbursements for expenses, if any; now, therefore

THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. ESTABLISHMENT

Pursuant to Section 601 of the Charter of the City of Oakland, there is hereby created an Oakland Privacy Advisory Commission (hereinafter referred to as the "Privacy Commission" or "Commission").

SECTION 2. DUTIES AND FUNCTIONS

It shall be the duty and function of the Privacy Commission to:

- a. Provide advice and technical assistance to the City of Oakland on best practices to protect citizen privacy rights in connection with the City's purchase and use of surveillance equipment and other technology that collects or stores citizen data.
- b. Conduct meetings and use other public forums to collect and receive public input on the above subject matter.
- c. Draft for City Council consideration, model legislation relevant to the above subject matter, including a Surveillance Equipment Usage Ordinance.

- d. Review and make recommendations to the City Council regarding any proposed changes to the operations of the Domain Awareness Center ("DAC") and/or proposed changes to the City's Policy for Privacy and Data Retention for the Domain Awareness Center ("DAC Policy") as specified in Resolution 85638 C.M.S.
- e. Submit annual reports and recommendations to the City Council regarding: (1) the City's use of surveillance equipment, and (2) whether new City surveillance equipment privacy and data retention policies should be developed or such existing policies be amended.
- f. Provide analyses to the City Council of pending federal, state and local legislation relevant to the City's purchase and/or use of technology that collects, stores, transmits, handles or processes citizen data.
- g. The Privacy Commission shall make reports, findings and recommendations either to the City Administrator or the City Council, as appropriate. An annual report will be presented in writing to the City Council. The Commission may submit recommendations to the City Council following submission to the City Administrator.

SECTION 3. MEMBERSHIP AND QUORUM

- a. The Commission shall consist of nine (9) members, at least six (6) of whom are Oakland residents. Pursuant to Section 601 of the Charter, members of the Commission shall be appointed by the Mayor subject to confirmation by the affirmative vote of five members of the Council. Each Councilperson ~~may recommend~~ shall nominate for to the Mayor's consideration his/her own recommendation selection for Commission member. Notwithstanding such recommendation, the Mayor retains full appointment authority pursuant to the Charter.
- b. Five (5) members shall constitute a quorum.
- c. Each commission member shall serve as a volunteer without pay.
- d. The members shall be appointed to overlapping terms of three (3) years beginning on March 15th of each year and ending on March 15th three years later, or until a successor is appointed and confirmed pursuant to Section 601 of the City Charter. An appointment to fill a vacancy shall be for the unexpired term only. To assure that terms overlap, appointments shall be as follows: three (3) initial members will serve a three-year initial term, three (3) initial members will serve a two-year initial term, and the other three (3) initial members will serve a one-year initial term.
- e. In the event an appointment to fill a vacancy has not occurred by the expiration of a member's term, that member may remain in a holdover capacity for up to one year only following the expiration of his or her term or until a replacement is appointed, whichever is earlier.

- f. No member of the Privacy Commission shall serve more than three (3) consecutive terms.
- g. All members of the Privacy Commission shall be persons who have an interest in privacy rights as demonstrated by work experience, civic participation, and/or political advocacy. No member may be an elected official. Members of the Privacy Commission may ~~shall~~ represent the following criteria, with no more than two (2) members representing any one criteria and at least one from each criteria to the extent possible:
 - 1. an attorney, legal scholar, or activist with expertise in privacy, civil rights, or a representative of an organization with expertise in the same ~~such as but not limited to the American Civil Liberties Union, the Electronic Frontier Foundation, and the National Lawyers Guild;~~
 - 2. a past or present member of member of law enforcement who has worked with surveillance equipment and other technology that collects or stores citizen data;
 - 3. an auditor or certified public accountant;
 - 4. a hardware, software, or encryption security professional;
 - 5. a member of an organization which focuses on government transparency and openness ~~such as but not limited to the League of Women Voters or Open Oakland~~ or an individual, such as a former government employee, with experience working on government transparency and openness.
- h. No member may have a financial interest, employment, or policy-making position in any commercial or for profit facility, research center, or other organization that sells surveillance equipment or profits from decisions made by the Commission.

SECTION 4. VACANCY AND REMOVAL

- a. A vacancy on the Privacy Commission will exist whenever a member dies, resigns, or is removed, or whenever an appointee fails to be confirmed by the Council within 60 days of appointment. Vacancies shall be filled for any unexpired term provided, however, that if the Mayor does not submit for confirmation a candidate to fill the vacancy within 90 days of the date the vacancy first occurred, the Council may fill the vacancy. If the Mayor does submit for confirmation a candidate to fill a vacancy within the 90-day time frame and the Council does not confirm the candidate, the 90-day period shall commence anew. For purposes of this Section, a seat filled by a holdover appointment will be considered vacant as of the expiration of the holdover's prior term of office.

- b. Pursuant to Charter Section 601, a member may be removed for cause, after a hearing, by the affirmative vote of at least six (6) Council members.

SECTION 5. COMMISSION GOVERNANCE

a. OFFICERS AND ELECTIONS

At the first regular meeting, and subsequently at the first regular meeting of each year, members of the Privacy Commission shall elect a chairperson and a vice chairperson

b. MEETINGS AND VOTING

The Privacy Commission shall meet at an established regular interval, day of the week, time and location suitable for its purpose. Such meetings shall be designated regular meetings. Other meetings scheduled for a time or place other than the regular day, time and location shall be designated special meetings. Written notice of special meetings shall be provided to the Privacy Commission members and all meetings of the Commission shall comport with the Ralph M. Brown Act and the City's "Sunshine Ordinance" (Chapter 2.20 of the Oakland Municipal Code).

The Privacy Commission shall, in consultation with the City Administrator, establish bylaws, rules and procedures for the conduct of its business by a majority vote of the members present. Voting shall be required for the adoption of any motion or resolution.

Any action by the Commission shall be approved by a majority of members present provided a quorum exists.

c. STAFF

Staff assistance may be provided to the Privacy Commission as determined by the City Administrator pursuant to his or her authority under the Charter to administer all affairs of the City under his or her jurisdiction.

SECTION 6. SEVERABILITY

If any section, subsection, sentence, clause or phrase of this Ordinance 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 Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 7. CODIFICATION

The City Clerk shall codify this ordinance upon approval of the code numbering as to form by the City Attorney.

SECTION 8. EFFECTIVE DATE

This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall be effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

Date of Attestation: _____

NOTICE AND DIGEST

AN ORDINANCE ESTABLISHING OAKLAND PRIVACY ADVISORY COMMISSION, PROVIDING FOR THE APPOINTMENT OF MEMBERS THEREOF, AND DEFINING THE DUTIES OF SAID COMMISSION

This Ordinance establishes the Oakland Privacy Advisory Commission in accordance with the requirements of Oakland City Charter section 601, which provides that the City Council shall create all advisory boards and commissions by Ordinance and that the Mayor shall appoint all board members subject to confirmation by the City Council.

This ordinance establishes the jurisdiction, duties, and powers of the Commission to provide advice and technical assistance on best practices to protect privacy concerns in the City's use of surveillance equipment and other technology that collects or stores citizen data. It further provides for the appointment, term, composition, membership qualifications, and the general rules and procedures for the Commission's meetings and deliberations.

FILED
OFFICE OF THE CITY CLERK
OAKLAND

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