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# AGENDA REPORT

**TO:** Sabrina B. Landreth  
City Administrator

**FROM:** Joe DeVries  
Chief Privacy Officer

**SUBJECT:** Adoption of Citywide Privacy  
Principles

**DATE:** February 3, 2020

City Administrator Approval

Date:

*2/10/2020*

## RECOMMENDATION

**Staff Recommends That The City Council Adopt A Resolution Establishing As City Policy Seven Principals To Assist City Departments Develop And Implement Internal Policies That Protect The Privacy Of All Oakland Residents, Visitors, And The Public As Follows: (1) To Design And Use Equitable Privacy Practices; (2) To Limit Collection And Retention Of Personal Information; (3) To Manage Personal Information With Diligence; (4) To Distribute Personal Information With Third Parties Only When Necessary And Consistent With These Principals; (5) To Safeguard Individual Privacy In Public Record Disclosures; (6) To Be Transparent And Open; And (7) And To Be Accountable To Oakland Residents, Visitors, And The Public.**

## EXECUTIVE SUMMARY

The Resolution and Privacy Principals (Principals), (**Attachment A**) seek to safeguard the privacy of every Oakland resident in order to promote fairness and protect civil liberties across Oakland's diverse communities. The Principals were adopted by the Oakland Privacy Advisory Commission in May 2019, and will guide City Departments in how to handle personal information in a manner that builds trust and preserves Oaklanders' privacy and safety.

Adoption of the Resolution will be followed by an implementation process that will inform the work of City Departments. The PAC has drafted an Implementation Roadmap that is divided into phases that detail concrete and pragmatic steps the City of Oakland can take to integrate and institutionalize the Principles into various City department workflows. The recommendations provided are based on the guidance and examples provided by the Samuelson Law, Technology & Public Policy Clinic at UC Berkeley's School of Law, paying particular attention to departments that 1) operate surveillance technologies and/or 2) collect Personally Identifiable Information (PII) to provide services.

Public Safety Committee  
February 25, 2020

## **BACKGROUND / LEGISLATIVE HISTORY**

In 2015, the City of Oakland created the first-of-its kind Privacy Advisory Commission (PAC) to 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. The work included the drafting of model legislation relevant to the above subject matter, including a Surveillance Equipment Usage Ordinance. The PAC was an outcome of the controversial process the City underwent while developing the Port-Domain Awareness Center (DAC). That project led to the creation of an Ad Hoc Privacy and Data Retention Policy Advisory Committee (Advisory Committee) to establish a Privacy and Data Retention Policy for the DAC.

The Advisory Committee met for over a year and developed the Policy which was adopted as Resolution No.85638 C.M.S. on June 2, 2015. Section II. A. of the Resolution states that "The City Council shall establish a citywide Permanent Privacy Policy Advisory Committee. The Privacy Advisory Commission was established by the adoption of Ordinance No. 13349 C.M.S. on January 19, 2016.

Because the PAC was born out of the immediate need to develop a use policy for a particular piece of surveillance technology, the primary task of the newly formed PAC was to develop a Surveillance Technology Ordinance for the entire City. The Surveillance Technology Ordinance (No. 13489 CMS) was adopted by the City Council on May 15, 2018. The PAC has dutifully been working with various City departments to adopt Impact Statements and Use Policies for all existing and new surveillance technologies. Since October 3, 2017, with the adoption of Ordinance No.13547 C.M.S. the PAC also has advisory authority over City participation in Federal law enforcement activities.

The foundational work of establishing an overarching set of Privacy Principals has not yet been completed due to the PAC's important work on specific surveillance technologies and Federal Task Force Memorandums of Understanding (MOUs). This Resolution allows Oakland to embrace a broad set of Privacy Principals across all Departments, not just when associated with surveillance technologies. This is especially important in developing policies for the handling, collection, use, and retention of all PII data, via any process. This would include data gathered on the phone, via email, and data which is given voluntarily for a particular City purpose (such as making a park reservation, or reporting a street maintenance or parking problem). It is expected that as the City move to become a "Smart City" like other Bay Area municipalities, the amount of data collected and number of third parties having access to the data, will increase. The Principals are designed to see that in those types of circumstances, the City is transparent about how it will use information, only use it for the purpose stated, and avoid retaining unnecessary PII to protect Oaklanders' privacy.

## **ANALYSIS AND POLICY ALTERNATIVES**

### ***Implementation***

The Roadmap proposes several projects that the Chief Privacy Officer (CPO) and PAC can advise and support departments on implementing including:

- Working with the City Clerk's Office to refresh the retention schedules for all applicable data collected by surveillance technologies and the programs and services provided by City departments;
- Encourage City Departments to search for obsolete, dormant, and unnecessary data;
- Continue to encourage City Departments to be proactive in preparing impact statements and use policies for all surveillance technologies or data collection practices;
- Create boilerplate privacy language that City Departments can use on public-facing documents, service forms, and surveys --particularly those that request Oaklanders' PII;
- Create best practices for City Departments when sharing data with other City Departments or other governmental agencies which creates duplicate/multiple records;
- Create best practices for City Departments when working with third party contractors and vendors to safeguard against the misuse of any data or PII visible to the third-party; and
- Develop Privacy training for relevant City staff that includes an introduction to the Privacy Principles, Ordinance, and the City's privacy record

These projects will be implemented incrementally dependent on available City resources. Currently the Privacy work is done by the CPO in partnership with department staff and the development of Impact Statements and Use Policies are added to existing workloads which are time consuming. As these Principles are applied, all departments will have some privacy-related work to do, not just those with surveillance technology. Much of the effort to lead this work will fall to the City Administrator's Office and particularly to the City Clerk due to their lead role in Records Management. As the number of approved policies, requisite annual reports, community outreach, and continued interaction with all departments, contractors, and stakeholders increases, it is anticipated that like Seattle, Portland, San Jose, and San Francisco, additional City staff will need to be allocated to work with the CPO and PAC.

### ***Other Jurisdictions***

On a similar track to Oakland's privacy work, the City of Seattle Privacy Principles were adopted as City Council Resolution No.31570 on February 23, 2015. Seattle adopted its principals before adopting surveillance technology rules which took place two years later on September 1, 2017, with the passage of Ordinance No.125376. Both Oakland and Seattle share national praise for their forward thinking and progressive work protecting Privacy and many other local jurisdictions have been following suit.

In San Jose, City leaders adopted Privacy Principals on September 17, 2019 and along with a Digital Privacy Working Group and Digital Privacy Advisory Taskforce, they validate and provide input to the City, and identify effective ways to engage with all stakeholders in the community.

In San Francisco, city voters supported Proposition B during the November 2018 election, a "Privacy First" charter amendment that directs all departments to first consider the privacy interests of San Francisco residents in contracting, distribution of benefits, data collection and retention, and all interactions between city staff and residents. On June 4, 2019, the city enacted Ordinance No. 107-19, a surveillance procurement ordinance framework similar to Oakland's, including a commission of subject matter experts in the vetting process. On December 19, 2019, San Francisco enacted Ordinance No. 291-19, creating an Office of Emerging Technology, to create policies and adopt and enforce safeguards to mitigate risks and impacts that new technologies pose for residents and city resources and infrastructure. Although not yet filled, San Francisco has allocated funding for a stand-alone Chief Privacy Officer and deputy staff position.

On June 19, 2019, the City of Portland adopted its Privacy and Information Protection Principles and is now considering a surveillance ordinance like Oakland's. Portland has also created a Smart City PDX team, and a Privacy Working Group involving the Bureau of Planning and Sustainability, Office of Equity and Human Rights, and the Mayor's Office to validate and advise on future Smart City and law enforcement surveillance technology proposals.

### **FISCAL IMPACT**

Currently City Administrator staff support to the work of the PAC is about 10-15 staff hours per month. Additionally, departmental staff prepare Impact Statements and Use Policies to present to the PAC. This work is absorbed by existing staff, so there is no additional cost now. However, implementation of these Principals will require additional staff time and it is anticipated that like Seattle, Portland, San Jose, and San Francisco, additional City staff will need to be allocated to work with the CPO and PAC.

### **PUBLIC OUTREACH / INTEREST**

The Samuelson Law Clinic team met with multiple department staffers, Director Darlene Flynn of the Department of Race & Equity, Hector Dominguez from SmartCity PDX, Judith Mowry from Portland's Equity and Human Rights Bureau, and Oakland's Media Justice. The PAC met publicly and discussed the Privacy Principals on several occasions and received public comments. In addition, all PAC Meetings are televised on KTOP.

### **COORDINATION**

The CPO and PAC currently coordinate with several departments, especially the Oakland Police Department (OPD) and Department of Transportation (DOT) on surveillance technology issues. Adoption of this resolution will expand that coordination to all City Departments, however, this report and resolution were reviewed by the City Attorney's office, as well as the Budget Bureau.

### **SUSTAINABLE OPPORTUNITIES**

**Economic:** The adoption of these Privacy Principles is expected to have a positive economic impact on the City as the CPO and PAC work with all City Departments to limit liability from data breaches and other misuse of data; reduce storage costs from unnecessary keeping of data; ensure that an equitable distribution of "Smart City" features benefit all Oaklanders; limit liability from civil rights lawsuits; and following the cost-benefit analysis model of the current surveillance ordinance, ensure that the City does not misspend scarce taxpayer dollars.

**Environmental:** There are no environmental opportunities identified in this report.

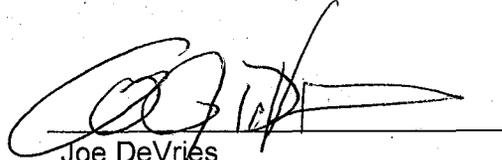
**Race & Equity:** The adoption of Privacy Principles provides residents with assurance that the City has processes that protect civil liberties and privacy during a time of rapidly evolving technology. By establishing safeguards to protect people's privacy, the City strengthens residents' faith in local government and allows for robust public dialogue and increased trust. The CPO and PAC will work with the Department of Race & Equity to ensure equitable distribution of benefits from technology, while mitigating the potential for disparate impact from misuse of technology or data sharing, which could be used to surveil and harm targeted communities.

### **ACTION REQUESTED OF THE CITY COUNCIL**

Staff Recommends That The City Council Adopt A Resolution Establishing As City Policy Seven Principles To Assist City Departments Develop And Implement Internal Policies That Protect The Privacy Of All Oakland Residents, Visitors, And The Public As Follows: (1) To Design And Use Equitable Privacy Practices; (2) To Limit Collection And Retention Of Personal Information; (3) To Manage Personal Information With Diligence; To (4) To Distribute Personal Information With Third Parties Only When Necessary And Consistent With These Principles; (5) To Safeguard Individual Privacy In Public Record Disclosures; (6) To Be Transparent And Open; And (7) And To Be Accountable To Oakland Residents, Visitors, And The Public.

For questions regarding this report, please contact Joe DeVries, Chief Privacy Officer, at (510)238-3083.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Joe DeVries', is written over a horizontal line.

Joe DeVries  
Chief Privacy Officer, Office of the City  
Administrator

Attachments (1): A: Privacy Principals

# City of Oakland Privacy Principles

Oakland is a diverse city with a history of active civic participation on issues of privacy and surveillance. As we evolve, it is imperative that we learn from both the positive and negative aspects of our past to build our future. Progress at the expense of personal privacy and safety is unacceptable. We recognize the need to protect Oaklanders' privacy as city services incorporate emerging technologies.

Privacy is a fundamental human right, a California state right, and instrumental to Oaklanders' safety, health, security, and access to city services. We seek to safeguard the privacy of every Oakland resident in order to promote fairness and protect civil liberties across all of Oakland's diverse communities. In all situations, we pledge to handle personal information in a manner that builds trust and preserves Oaklanders' privacy and safety. The following Privacy Principles guide our actions.

## **DESIGN AND USE EQUITABLE PRIVACY PRACTICES**

Community safety and access to city services should not come at the expense of any Oaklander's right to privacy. We recognize that our collection and use of personal information has disadvantaged marginalized communities at different periods during Oakland's history. We aim to avert future inequities by collecting information in ways that do not discriminate against any Oaklander or Oakland community. When possible, we will offer clearly communicated alternatives to the collection of personal information at the time of collection.

## **LIMIT COLLECTION AND RETENTION OF PERSONAL INFORMATION**

We believe that we should collect and store personal information only when and for as long as is justified to directly serve the specific purpose for which it is collected, such as to protect Oaklanders' safety, health, or access to city services. We will continue our practice of reaching out to Oaklanders for their views on the information we collect and how we use it. We also will look for new opportunities for outreach.

## **MANAGE PERSONAL INFORMATION WITH DILIGENCE**

The personal information of Oaklanders should be treated with respect. We handle all personal information in our custody with care, regardless of how or by whom it was collected. To maintain the security of our systems, we review and regularly update software and applications that interact with Oaklanders' personal information. Further, we recognize that deletion, encryption, minimization, and anonymization can reduce misuse of personal information. We aim to make effective use of these tools and practices. Additionally, we combine personal information gathered from different departments only when we must.

**EXTEND PRIVACY PROTECTIONS TO OUR RELATIONSHIPS WITH THIRD PARTIES**

Our responsibility to protect Oaklanders' privacy extends to our work with vendors and partners. Accordingly, we share personal information with third parties only when necessary to provide city services, and only when doing so is consistent with these Principles. When the law permits, we will disclose the identity of parties with whom we share personal information.

**SAFEGUARD INDIVIDUAL PRIVACY IN PUBLIC RECORDS DISCLOSURES**

Open government and respect for privacy go hand-in-hand. Providing relevant information to interested parties about our services and governance is essential to democratic participation and civic engagement. We will protect Oaklanders' individual privacy interests and the City's information security interests while still preserving the fundamental objective of the California Public Records Act to encourage transparency.

**BE TRANSPARENT AND OPEN**

Oaklanders' right to privacy is furthered by the ability to access and understand explanations of why and how we collect, use, manage, and share personal information. To that end, we aim to communicate these explanations to Oakland communities in plain, accessible language on the City of Oakland website. We also aim to communicate this information at a time when it is relevant and useful.

**BE ACCOUNTABLE TO OAKLANDERS**

Trust in our stewardship of personal information requires both that we collect and manage personal information appropriately, and that we create opportunities for active public participation. We publicly review and discuss departmental requests to acquire and use technology that can be used for surveillance purposes. We encourage Oaklanders to share their concerns and views about any system or department that collects and uses their personal information, or has the potential to do so. We also encourage Oaklanders to share their views on our compliance with these Principles.

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City Attorney's Office

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# OAKLAND CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_ C.M.S.

**RESOLUTION ESTABLISHING AS CITY POLICY SEVEN PRIVACY PRINCIPALS TO ASSIST CITY DEPARTMENTS DEVELOP AND IMPLEMENT INTERNAL POLICIES THAT PROTECT THE PRIVACY OF ALL OAKLAND RESIDENTS, VISITORS, AND THE PUBLIC AS FOLLOWS: (1) TO DESIGN AND USE EQUITABLE PRIVACY PRACTICES; (2) TO LIMIT COLLECTION AND RETENTION OF PERSONAL INFORMATION; (3) TO MANAGE PERSONAL INFORMATION WITH DILIGENCE; (4) TO DISTRIBUTE PERSONAL INFORMATION WITH THIRD PARTIES ONLY WHEN NECESSARY AND CONSISTENT WITH THESE PRINCIPLES; (5) TO SAFEGUARD INDIVIDUAL PRIVACY IN PUBLIC RECORD DISCLOSURES; (6) TO BE TRANSPARENT AND OPEN; AND (7) TO BE ACCOUNTABLE TO OAKLAND RESIDENTS, VISITORS, AND MEMBERS OF THE PUBLIC**

**WHEREAS**, Oakland is a diverse city with a history of active civic participation on issues of privacy and surveillance and as we evolve, it is imperative that we learn from both the positive and negative aspects of our past to build our future; and

**WHEREAS**, progress at the expense of personal privacy and safety is unacceptable. The City of Oakland (City) recognizes the need to protect the privacy of residents, visitors, and the public as city services incorporate emerging technologies; and

**WHEREAS**, Privacy is a fundamental human right, a California state right, and instrumental to for the safety, health, security, and access to City services for residents, visitors, and members of the public; and

**WHEREAS**, The City seeks to safeguard the privacy of every Oakland resident, visitor, and member of the public in order to promote fairness and protect civil liberties across all of Oakland's diverse communities; now, therefore, be it

**RESOLVED:** That in all situations, the City of Oakland (City) shall handle personal information in a manner that builds trust and preserves privacy and safety for residents, visitors, and members of the public. Accordingly, the City Council hereby establishes as City Policy seven (7) principals to assist the City, by and through its departments, agencies, bureaus and any subsequent subdivision thereof, to develop and implement internal policies to protect the privacy of all Oakland residents, visitors, and members of the public as follows:

- (1) That the City of Oakland Shall Design and Use Equitable Privacy Practices.** Recognizing that community safety and access to City services should not come at the expense of the right to privacy of residents, visitors, and members of the public. The City recognizes that collection and use of personal information has disadvantaged marginalized communities at different periods during Oakland's history. The City intends to avert future inequities by collecting information in ways that do not discriminate against any Oaklander or Oakland community. When possible, the City will offer clearly communicated alternatives to the collection of personal information at the time of collection; and
- (2) That the City Shall Limit Collection and Retention Of Personal Information.** The City will collect and store personal information only when and for as long as is justified to directly serve the specific purpose for which it is collected, such as to protect the safety, health, or access to city services for residents, visitors, and members of the public. The City will continue its practice of reaching out to the public for their input on its actions, the information it collects, and how it is used; and
- (3) That the City Shall Manage Personal Information With Diligence.** The personal information of residents, visitors, and members of the public should be treated with respect. The City handles all personal information in its custody with care, regardless of how or by whom it was collected. To maintain the security of its systems, the City reviews and regularly updates software and applications that interact with the personal information of residents, visitors, and members of the public. Further, the City recognizes that deletion, encryption, minimization, and anonymization can reduce misuse of personal information. The City intends to make use of these tools and practices. Additionally, the City combines personal information gathered from different departments only when necessary; and
- (4) That The City Shall Distribute Personal Information To Third Parties Only When Necessary To Provide City Services, And Only When Doing So Is Consistent With These Principles.** When the law permits, the City will disclose the identity of parties with whom it shares personal information; and
- (5) That The City Shall Safeguard Individual Privacy in Public Records Disclosures.** Open government and respect for privacy coexist. Providing relevant information to interested parties about City services and governance is essential to democratic participation and civic engagement. The City will protect individual privacy interests for residents, visitors, and members of the public and the City's information security interests while still meeting the fundamental objective of the California Public Records Act to encourage transparency; and
- (6) That The City Shall Be Transparent and Open.** The right to privacy for residents, visitors, and members of the public is advanced by the public's ability to access and understand explanations of why and how the City collects, uses, manages, and shares personal information. To that end, the City will communicate these explanations to residents, visitors, and members

of the public in plain, accessible language on the City of Oakland website and at times when it is relevant and useful; and

**(7) That The City Shall be Accountable to Residents, Visitors, and Members Of The Public.** Trust in the City's stewardship of personal information requires both that it collect and manage personal information appropriately, and that it create opportunities for active public participation. The City publicly reviews and discusses departmental requests to acquire and use technology that can be used for surveillance purposes. The City encourages the public to share concerns and views about any City system or department that collects and uses their personal information, or has the potential to do so. The City also encourages Oaklanders to share their views on its compliance with these Principles; and be it

**FURTHER RESOLVED:** That this resolution and any policies and procedures adopted by the City pursuant to said resolution, shall not impose liability on the City nor create a cause of action by a third party, and the City expressly does not now waive any legal rights, defenses, or statutory immunities provided by law.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND PRESIDENT KAPLAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_

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