



# AGENDA REPORT

**TO:** Steven Falk  
Interim City Administrator

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

**SUBJECT:** OPD Live Stream Transmitter  
Privacy Policy

**DATE:** March 27, 2020

City Administrator Approval

Date:

4-15-2020

## RECOMMENDATION

**Staff Recommends That The City Council Adopt A Resolution Approving The Oakland Police Department (OPD) Live Stream Transmitter Use Policy And Surveillance Impact Report.**

## EXECUTIVE SUMMARY

For several years, OPD has used live stream transmitters to transmit live video from various events to Police Commanders. The technology allows commanders to watch real time events as they proceed. This visual oversight allows OPD to deploy an adequate number of officers while ensuring that officers at specific events are following OPD policies and procedures.

Ordinance No. 13489 C.M.S. (Surveillance Ordinance) requires City Council approval for new and existing surveillance technology, after review by the Privacy Advisory Commission (PAC). OPD and the PAC discussed and negotiated OPD's proposed Live Stream Transmitter Use Policy and Surveillance Impact Report during several publicly advertised PAC meetings. The PAC voted unanimously to recommend City Council adoption of this Use Policy (**Attachment A**) and Surveillance Impact Report (**Attachment B**) after use thresholds were specified (e.g. only used with full or partial activation of the Emergency Operations Center). Additionally, OPD added additional language about case law related to protecting the right of the public to free speech.

## BACKGROUND / LEGISLATIVE HISTORY

OPD utilizes different types of cameras to capture single image and video data. Cameras that are strictly manually operated are not considered "surveillance technology" under the Oakland Surveillance Ordinance No. 13489 C.M.S. However, handheld live stream transmitters modify the traditional cameras when affixed to them, to allow the live stream transmission to a different locations. The camera and transmitter are operated by a team of two or more uniformed officers, referred to as Video Teams who utilize cameras attached to handheld live stream transmitters that allow an officer to transmit a live view of what they see to the City's Emergency Operations Center (EOC) or to the Police Administration Building (PAB).

City Council  
April 21, 2020

### ***Oakland's Surveillance Ordinance***

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) covering 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."

### **ANALYSIS AND POLICY ALTERNATIVES**

Live stream camera transmitters allow OPD to deploy a minimal level of police presence while providing critical situational awareness to OPD commanders. A small number of officers can monitor events and provide real-time footage to Command. This information helps OPD Command to make efficient deployment decisions. OPD at times must otherwise deploy ten or more officers and sergeants to events where crowds or large events (or Special Events, as defined by the Oakland Municipal Code, which occur in public places) are occurring – so that officers can adequately convey local information to remote-stationed commanders. Furthermore, these transmitters allow OPD Commanders to see how officers are interacting and observing different events. Therefore, transmitters can serve as an accountability tool for OPD command by ensuring situational awareness of patrol officer activity. Furthermore, transmitters allow OPD to maintain needed information with a minimal police footprint.

The third paragraph of the Surveillance Impact Report (see **Attachment B** on page 2) explains how live stream transmitters serve as a management tool for OPD:

*Live stream transmitters offer situational awareness in numerous ways that challenge measurement. OPD commanders need real time situational awareness to ensure public safety in public spaces. Real-time information regarding events (e.g. crowd management facilitation, coordinated response to catastrophic unplanned events) provides critical information for OPD commanders when making resource deployment decisions; OPD needs to see where people present in order to adjust resources in real-time to better ensure public safety is maximized.*

Section 10 of the Surveillance Impact Report "Alternatives Considered" (page 5) explains that an alternative to this technology would be to use more officers and personnel deployments during every mass-event. However, staff believe that such deployments would be ineffective, create greater budget impacts, and may even negatively impact events by creating a larger police presence when such a footprint is unneeded.

OPD staff first presented a draft Live Stream Use Policy (see **Attachment A** for final version of Department General Order (DGO) I-23: "Live Stream Transmitter Use Policy") and Surveillance Impact Report (see **Attachment B**) to the PAC at the September 5, 2019, November 7, 2019,

and January 8, 2020 meetings. The Use Policy covers several relevant areas required by OPD as well as the Surveillance Ordinance, including the following area:

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

The Surveillance Impact Use Report 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 (along with area crime data);
- Privacy Impact of the technology;
- Mitigations to prevent privacy impacts;
- Data Types and Sources;
- Data Security;
- Costs;
- Third Party Dependence;
- Alternatives Considered; and
- Track Record of Other Entities

DGO I-23, Part III.A “General Guidelines, Authorized Use” lists situations where OPD is authorized to use live stream transmitters:

- Large gatherings of people on city streets (Special Events, as defined by the Oakland Municipal Code, which occur in public places);
- Sporting events;
- Large parades or festivals; and
- Natural disasters.
- Live stream transmitters shall only be deployed with authorizations from an incident commander (Captain or higher-rank).
- Personnel authorized to use live-stream cameras or access information collected through the use of such equipment shall be specifically trained in such technology and authorized by the Chief of Police or designee. Any sworn officer may utilize hand-held live-stream cameras with the approval of OPD’s Information Technology (IT) Unit Coordinator.

During the September 5, 2019, November 7, 2019, and January 8, 2020 meetings, PAC commissioners expressed support for the use of live stream transmitters during sporting events, large parades or festivals; and during natural disasters. The PAC also expressed approval of the fact that public privacy is supported as the transmitters themselves do not record any data, and transmissions to the EOC or PAB are not recorded – only live-streamed. However, the commissioners did express particular concern for using the technology for the first bulleted use above: “Large gatherings of people on city streets (Special Events, as defined by the Oakland Municipal Code, which occur in public places). Commissioners expressed concern that OPD

would use the technology to surveil peaceful protests or others types conditionally protected free speech. Staff explained that OPD only uses live stream transmitters during situations where situational awareness is needed – whether very large protests or other planned or unplanned events where on the street conditions could change and command needs to maintain situational awareness. Staff also presented OPD’s 2018 4th Quarter Crowd Control Report (see **Attachment C**) to provide relevant data on events where OPD may use live stream transmitters for crowd situational awareness. The Crowd Control Report shows that Oakland regularly sees many sporting events as well as concerts, parades and street fairs, and vehicle “sideshows,” in addition to marches and protests.

The process of bringing the privacy policy and impact report to the PAC over several meetings allowed for staff to develop a Use Policy with sufficient restrictions and privacy mitigations in consideration of the PAC’s concerns. In particular, the DGO I-23 and the Surveillance Impact Report (pages 2,3) now explain that Live stream transmitters are authorized, only by an OPD commander (rank of captain or above) when exigent circumstances exist – and when the City Administrator has authorized a partial or full activation of the City’s Emergency Operations Center (EOC). Staff explained that the main EOC (see EOC section below) or EOC at the Police Administration Building is only activated when public safety has a greater likelihood of being negatively impacted, and where there is a need to provide an Incident Commander as well as the City Administrator real time information to manage resources for a given situation. Additionally, this section now contains language defining “protected activity” from the cases *White v. Lee* (9th Cir. 2000) 227 F.3d 1214, 1227; *Brandenburg v. Ohio* (1969) 395 U.S. Furthermore, the “Protected Activity” Section under “Restricted Use” now also articulates:

*OPD shall articulate the facts and circumstances surrounding the use in a written statement filed with the Chief Privacy Officer and/or Chair of the Privacy Advisory Commission within 72 hours. This statement (and the use itself) shall be included in the required Annual Report.*

The PAC voted unanimously at their March 5, 2020 meeting to recommend City Council adoption of OPD’s Livestream Transmitter Use Policy and Surveillance Impact Report with these updates – as provided here in **Attachment A** and **B**.

## **FISCAL IMPACT**

The City Council adopted Resolution No. 87664 C.M.S. on May 7, 2019. This Resolution allowed the City to Accept And Appropriate The Fiscal Year 2017 And 2018 Edward Byrne Memorial Justice Assistance Grant (JAG) Funds In The Amounts Of Five Hundred Thirty-Five Thousand, Three Hundred Twenty-Four Dollars (\$535,324) For October 1, 2016 Through September 30, 2020, And Four Hundred Seventy-Three Thousand Nine Hundred Ninety-Two Dollars (\$473,992) For October 1, 2017 Through September 30, 2021. The Resolution allows OPD to use these grant funds to upgrade equipment and technology and fund department-wide training. OPD plans to use some of these funds (approximately \$100,000) to purchase new live stream transmitters to replace older outdated models.

### **PUBLIC OUTREACH / INTEREST**

No public outreach was conducted other than the required posting on the City's website. The PAC reviewed the attached Use Policy and Surveillance Impact Report.

### **COORDINATION**

The Office of the City Attorney and Budget Bureau reviewed this report for accuracy and legality.

### **SUSTAINABLE OPPORTUNITIES**

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

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

***Race and Equity:*** All Oakland residents and visitors have a right and an expectation of privacy. Additionally, OPD strives to ensure the public safety of all Oakland residents and visitors. OPD has developed its Livestream Use Policy and Surveillance Impact Report with the goals of utilizing technology to maintain situational awareness and ultimately public safety; all Oakland residents and visitors benefit from efforts to maintain public safety with a minimal police footprint. Atonally, all Oakland residents and visitors benefit from OPD use of accountability tools to ensure that officers interact in appropriate, constitutionally just, and effective manners to support public safety.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff Recommends That The City Council Adopt A Resolution Approving The Oakland Police Department (OPD) Live Stream Transmitter Use Policy And Surveillance Impact Report.

For questions regarding this report, please contact Bruce Stoffmacher, Management Assistant at 510-238-6976.

Respectfully submitted,

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Susan E. Manheimer  
Chief of Police  
Oakland Police Department

Reviewed by:  
Roland Holmgren, Deputy Chief  
OPD, Bureau of Field Operations

Reviewed by:  
Philip Best, Police Services Manager  
OPD, Training Division, Research and Planning

Prepared by:  
Bruce Stoffmacher, Management Assistant  
OPD, Training Division, Research and Planning

**Attachments (3):**

- A:** DGO I-23: Live Stream Transmitter Use Policy
- B:** Live Stream Transmitter Surveillance Impact Statement
- C:** OPD 2018 4th Quarter Crowd Control Report