



Privacy Advisory Commission
November 7, 2019 5:00 PM
Oakland City Hall
Hearing Room 1
1 Frank H. Ogawa Plaza, 1st Floor
Regular Meeting Agenda

Commission Members: District 1 Representative: Reem Suleiman, District 2 Representative: Chloe Brown, District 3 Representative: Brian M. Hofer, District 4 Representative: Lou Katz, District 5 Representative: Raymundo Jacquez III, District 6 Representative: Gina Tomlinson, District 7 Representative: Robert Oliver, Council At-Large Representative: Henry Gage III, Mayoral Representative: Heather Patterson

Each person wishing to speak on items must fill out a speaker's card. Persons addressing the Privacy Advisory Commission shall state their names and the organization they are representing, if any.

1. Call to Order, determination of quorum
2. Open Forum/Public Comment
3. Review and approval of the draft October 3 meeting minutes
4. Surveillance Equipment Ordinance – OPD – Live Stream Camera Impact Report and proposed Use Policy – review and take possible action
5. Surveillance Equipment Ordinance – OFD – Data Collection for Wildfire District and Fire Safety Inspections – review and take possible action
6. Federal Task Force Transparency Ordinance – OPD – FBI’s Joint Terrorism Task Force MOU – review and take possible action
7. Adjournment at 7:00pm



Privacy Advisory Commission
October 3, 2019 5:00 PM
Oakland City Hall
Hearing Room 1
1 Frank H. Ogawa Plaza, 1st Floor
Regular Meeting Minutes

Commission Members: *District 1 Representative: Reem Suleiman, District 2 Representative: Chloe Brown, District 3 Representative: Brian M. Hofer, District 4 Representative: Lou Katz, District 5 Representative: Raymundo Jacquez III, District 6 Representative: Gina Tomlinson, District 7 Representative: Robert Oliver, Council At-Large Representative: Henry Gage III, Mayoral Representative: Heather Patterson*

Each person wishing to speak on items must fill out a speaker's card. Persons addressing the Privacy Advisory Commission shall state their names and the organization they are representing, if any.

1. Call to Order, determination of quorum

Members present: Suleiman, Brown, Hofer, Katz, Tomlinson, Oliver, Gage, Patterson.

2. Open Forum/Public Comment

There were no open forum speakers.

3. Review and approval of the draft September 5 meeting minutes

The September Minutes were approved unanimously.

4. Surveillance Equipment Ordinance – OPD – ShotSpotter Impact Report and proposed Use Policy – review and take possible action

The Chair called for Public Speakers at the beginning of the item and there was one speaker: J.P. Masser spoke about two concerns he has with the Shotspotter Technology, neither of which are privacy-related. The first was a concern about the company itself and litigation it is involved in from New York State. He questioned whether the City of Oakland should be doing business with Shotspotter. The second was a desire to see a cost-benefit analysis to determine if the cost is worth it. He raised concern that there is not enough data to show the real benefits of the technology.

Chairperson Hofer opened up Commission discussion and had several edits to share with the staff present. One was involving efficacy and reporting requirements for officers. Lt. Shavies discussed the reporting process and the fact that officers treat every Shotspotter activation as a priority one call and Deputy Chief Holmgren added that the Computer Automated Dispatch System (CAD) is being upgraded in a manner that will allow easier tracking when Shotspotter is part of the disposition report when responding to an incident by ensuring it is part of a drop-down menu in the system.

Member Oliver asked for details about the response and Lt. Shavies noted that officers go to the area, search for evidence, canvass homes and businesses in the vicinity, and even leave behind door hangers if people don't answer the door in case they wish to report information later from the privacy of their home.

Member Gage proposed that language be included in the policy "that it is the policy of OPD to treat all Shotspotter activations as priority one calls." OPD agreed to this addition.

There was additional conversation about the need to track the efficacy of the technology and both Member Brown and Tomlinson acknowledged that capturing efficacy falls to the department's internal process improvements (as opposed to changes in the actual technology).

Member Katz raised the issue of the litigation in New York and Chairperson Hofer noted that the problem had more to do with the Rochester Police Department's actions than those of Shotspotter, also since it is pending litigation, he noted that asking Shotspotter to comment on it was not appropriate.

With a strong emphasis that the department make every effort to show the usefulness of the technology when they return with an Annual Report, the group unanimously approved the Use Policy to be forwarded to the Oakland City Council.

5. Adjournment

The meeting adjourned at 6:30.

OAKLAND POLICE DEPARTMENT

Surveillance Impact Report for Live Stream Transmitter

1. **Information Describing Live-Stream Transmitters and How They Work**

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. Handheld Live stream transmitters are affixed to handheld video cameras are manually operating cameras connected to a transmitter to allow the live stream transmission to a different location such as OPD and the City of Oakland have Emergency Operations Centers (EOC). The camera and transmitter are operated by a team of two or more uniformed officers, referred to as Video Teams. OPD and the City of Oakland have Emergency Operations Centers (EOC). Cameras attached to handheld live stream transmitters “handheld live stream cameras” allow an officer to transmit a live view of what they see to the EOC.

2. **Proposed Purpose**

OPD will 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 are occurring – so that officers can adequately convey local information to remote-stationed commanders. At times people in crowds and large events might not appreciate or understand the need for a large police presence – the transmitters allow OPD to maintain needed information with a minimal police footprint.

3. **Locations Where, and Situations in which Live Stream Transmitters may be deployed or utilized.**

Live stream transmitters may be used anywhere in the public right of way within the City of Oakland – under conditions outlined in Department General Order (DGO) I-23 Live Stream Transmitter Use Policy, III.A ‘Authorized Use’: “Live stream transmitters are authorized by OPD...when such exigent circumstances exist – and when a city commander (lieutenant or above) has authorized a

partial or full activation of the City's Emergency Operations Center (EOC) as well as the use of the live-stream transmitters." Personnel may use transmitters within in the public right of way within the City of Oakland; however, these cameras are generally only used for mass-person events to as to provide situational awareness during events where public safety must be monitored (e.g. large protests or parades. ***OPD's 2018 4th Quarter Crowd Control Report is provided as an attachment*** to this report to provide relevant data on events where OPD may use live stream transmitters for crowd situational awareness.

4. Privacy Impact

OPD recognizes that the use of live stream transmitters in the public right of way raises civil liberties concerns. There is concern that the use of this technology can be utilized to identify the activity, behavior, and/or travel patterns of random individuals, and that this usage may have a chilling effect on protected activity; however, OPD only proposes to use live stream transmitters under specific conditions – DGO I-23 III: "General Guidelines, A. Authorized Use" explains that a critical use restriction as: "Large events with numerous people pose challenges to public safety. Live stream transmitters are authorized, by OPD when exigent circumstances exist – and when a city commander (lieutenant or above) has authorized a partial or full activation of the City's Emergency Operations Center (EOC) as well as the use of the live-stream transmitters.

OPD does not randomly employ this technology throughout the City. Rather, these transmitters are only used during events where public safety has a greater likelihood of being negatively impacted, or where there is a need to provide an Incident Commander real time information to manage resources for a given situation.

Live stream transmitters offer situational awareness in numerous ways that challenge measurement. Events where many people gather require a police presence; OPD needs to see where people are moving in real-time to better ensure that resources are provided as needed to ensure public safety.

5. Mitigations

"Protected Activity" means all rights including without limitation: speech, associations, conduct, and privacy rights including but not limited to expression, advocacy, association, or participation in expressive conduct to further any political or social opinion or religious belief as protected by the United States Constitution and/or the California Constitution and/or applicable statutes and regulations. The First Amendment does not permit government "to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." *White v. Lee* (9th Cir. 2000) 227 F.3d 1214, 1227; *Brandenburg v. Ohio* (1969) 395 U.S.

In respect to honoring protected activity, OPD's DGO I-23: Live Stream Transmitter Use Policy restricts the use of the technology as follows:

1. Department members shall not use or allow others to use handheld live-stream cameras, software or data for any unauthorized purpose.
2. Personnel shall not affix a live-stream camera to any fixed structure and not remain present at the same location; livestream cameras shall not be used for any remote surveillance.
3. Live stream transmitters shall not be except when authorized by the Chief of Police or designated commander.

All live-stream transmitters shall be housed and secured within the Police Administration Building only accessible to authorized personnel. Regular camera data, if the camera attached to a live stream transmitter is recording data, shall be uploaded onto a secure computer at the with user and email password protection, stored with OPD's IT Unit within the Police Administration Building (PAB). For data that is captured and used as evidence, such data shall be turned in and stored as evidence pursuant to existing policy. Otherwise, camera data will be destroyed after 30 days.

OPD will monitor its use of live stream transmitters to ensure the accuracy of the information collected and compliance with all applicable laws. The IT Unit Coordinator and/or designated staff shall provide the Chief of Police, Privacy Advisory Commission, and Public Safety Committee with an annual report that contains activity usage information for the following for the previous 12-month period. This report shall be compliant with reporting aspects outlined in Ordinance No. 13489 C.M.S.

6. Data Types and Sources

Live stream transmitters attached to cameras that record directly onto an internal memory device (e.g. secure digital (SD) card) and operate similar to consumer digital video cameras. These types of cameras contain an internal storage device for storing audio and video data – an integrated element that can be connected to a computer for data downloads, or a removable device (e.g. SD card) which can be connected to a computer for digital downloads.

Live stream transmitters can use different technologies (e.g. cellular 3G/4G LTE, WiFi, Ethernet, and Microwave) to transmit the video stream. Transmitters allow the live-stream images or video to be viewed on a screen with the appropriate data connection and reception technology. The transmitters specifically transmit the data to a receiver where the data can then be viewed (OPD only has receivers at the EOC).

7. Data Security

Live stream transmitters shall be housed and secured within the Police Administration Building and not accessible with to the public or to personnel

without permission to use such equipment. Regular camera data shall be uploaded onto secure computer with user and email password protection, stored with OPD's IT Unit within the Police Administration Building. For data that is captured and used as evidence, such data shall be turned in and stored as evidence pursuant to existing policy. Otherwise, camera data will be destroyed after 30 days.

8. Costs

OPD currently has four transmitters from TVU networks that allow standard single shot or video cameras to live-stream data to OPD's Administration Building or the City's Emergency Operations Center (this data is not recorded). These transmitters are approximately eight years old. OPD does not currently pay for ongoing maintenance service; the cost to upgrade the unsupported system would cost about \$120,000 for a two-year maintenance contract and then \$12,000 for additional years. OPD is planning to use approximately \$130,000 from the Justice Assistance Grant (JAG) Program¹ to pay for four new modern TVU Networks transmitters.

9. Third Party Dependence

OPD uses TVU Networks-brand transmitter and receiver equipment for live-stream video transmission. This is an encrypted point-to-point data stream, only accessible via the receiver.

10. Alternatives Considered

OPD officers and personnel rely primarily on traditional policing techniques to monitor large events and to gather evidence related to criminal investigations. For decades evidence gathering also includes the use of cameras, sometimes with live-stream transmitters, to record images, video and audio. Police personnel must maintain some level of situational awareness when hundreds and thousands of people gather on public streets and threats to public safety increase. Alternatives to live-stream cameras would include having more officers and personnel deployed during every mass-event. Such a deployment extends beyond OPD budget capacity.

11. Track Record of Other Entities

OPD has not yet found others agencies using live stream transmitters with mobile cameras to live stream crowd-control events. However, OPD will continue to research the use of the technology by other agencies.

¹ <https://www.bja.gov/jag/>



DEPARTMENTAL GENERAL ORDER

I-23: LIVE STREAM TRANSMITTER USE POLICY

Effective Date:

Coordinator: Information Technology Unit, Bureau of Services Division

HANDHELD LIVESTREAM CAMERA

The purpose of this order is to establish Departmental policy and procedures for the use of Live Stream Transmitters.

I. VALUE STATEMENT

The protection of human life and the general safety of the public shall be the primary consideration when deciding to use handheld live stream cameras.

II. DESCRIPTION OF THE TECHNOLOGY

A. Live Stream Transmitter Components

Transmitters can send a wireless signal to a specific location such as the City's Emergency Operation Center (EOC).

B. Purpose

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.

C. How the System Works

Live stream transmitters support real-time transmission and remote live-stream viewing. Transmitters can use different formats (e.g. cellular 3G/4G LTE, WiFi, Ethernet, and Microwave). Transmitters can be connected to static single image digital video cameras. Transmitters allow the live-stream video to be viewed on a screen with the appropriate data connection and reception technology (receiver). The transmitters specifically transmit the stream to a receiver where the video can then be viewed.

III. GENERAL GUIDELINES

A. Authorized Use

There are different situations that can occur in the City of Oakland which will justify the use of live-stream transmitters. Large events with numerous people pose challenges to public safety. Live stream transmitters are authorized, by OPD when exigent circumstances exist – and when a city commander (lieutenant or above) has authorized a partial or full activation of the City’s Emergency Operations Center (EOC) as well as the use of the live-stream transmitters. The following use cases are examples where EOC full or partial activation may occur and where a commander may authorize the use of live-stream transmitters:

- Large gatherings of people on city streets;
- Protests;
- Sporting events;
- Large parades or festivals; and
- Natural disasters

OPD needs situational awareness to ensure that at such events police personnel are efficiently and properly deployed. Authorized personnel utilizing cameras with live-streaming transmitters can provide important situational awareness to OPD without the need to deploy many officers. Live stream transmitters shall only be deployed with authorizations from an incident commander.

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.

B. Restricted Use

1. Department members shall not use or allow others to use handheld live-stream transmitters, software or data for any uses not enumerated above in III.A.
2. Personnel shall not affix a handheld live-stream camera to any fixed structure and not remain present at the same location; livestream cameras shall not be used for any remote surveillance.
3. The Handheld Live Stream Camera (Lieutenant or higher rank) shall not

Commented [PD1]: Define threshold for EOC / partial EOC activation ask EOC manager

Commented [SB2R1]: Still waiting to hear back from OFD / EOC mgr

be used to except when approved by a police commander

C. Communications

For clarity of communications, radio traffic should identify the units using such device as a "Video Team." Video Teams are made up of two to three uniformed officers. An equipment officer (videographer) and security officers.

IV. LIVE STREAM CAMERA DATA

A. Data Collection

Live stream transmitters do not store data. Regular camera data, if the camera attached to a live stream transmitter is recording data, shall be uploaded onto a secure computer at the with user and email password protection, stored with OPD's IT Unit within the Police Administration Building (PAB).

B. Retention

Handheld live stream cameras can send the digital stream wirelessly. The EOC does not record this data; data recorded by the handheld cameras is maintained by the OPD IT Unit within in the Bureau of Services (BOS). Personnel using live-stream cameras shall return them at the end of their shift to the IT Unit.

For data that is captured and used as evidence, such data shall be turned in and stored as evidence pursuant to existing policy. Otherwise, camera data will be destroyed after 30 days.

C. Data Access

OPD's IT unit shall be responsible for the maintenance and storage of live-stream cameras. Members approved to access live-stream camera data under these guidelines are permitted to access the data for administrative or criminal investigation purposes.

Live-stream camera data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law, using the following procedures:

4. The agency makes a written request for the data that includes:
 - a. The name of the requesting agency.
 - b. The name of the individual making the request.
 - c. The basis of their need for and right to the information.

5. The request is reviewed by the Bureau of Services Deputy Chief/ Deputy Director or designee and approved before the request is fulfilled.
6. The approved request is retained on file, and incorporated into the annual report pursuant to Oakland Municipal Code Section 9.64.010 1.B.
7. A request from the public to access handheld camera data shall follow standard public records request protocols. The EOC does not record livestream camera footage.

D. Third Party Data Sharing

OPD currently uses TVU Networks-brand transmitters; however, no data is shared with TVU networks. Data is only transmitted from OPD equipment to the City's and/or OPD's EOC.

E. Data Protection and Security

All live-stream transmitters shall be housed and secured within the Police Administration Building only accessible to authorized personnel.

Live-stream camera data will be closely safeguarded and protected by both procedural and technological means. All live-stream cameras shall be housed and secured at the Police Administration Building only accessible by authorized personnel within IT Unit or lockers.

V. LIVE STREAM TRANSMITTER ADMINISTRATION

A. System Coordinator / Administrator

The Oakland Police Department will monitor its use of the live stream cameras to ensure the accuracy of the information collected and compliance with all applicable laws, including laws providing for process, and time period system audits.

The IT Coordinator, or other designated OPD personnel shall provide the Chief of Police, Privacy Advisory Commission, and City Council with an annual report that covers use of the technology during the previous year. The report shall include all report components compliant with Ordinance No. 13489 C.M.S.

The IT Unit Coordinator is responsible for ensuring systems and processes are in place for the proper collection, accuracy and retention of live-stream camera system data.

DEPARTMENTAL GENERAL ORDER
OAKLAND POLICE DEPARTMENT

Effective Date _____

B. Maintenance

There is no data created by use of live stream camera transmission. The cameras transmitters encrypt data during transit to ensure the security and integrity of the data feed.

C. Training

The Training Section shall ensure that members receive department-approved training for those authorized to use or access live-stream cameras.

D. Auditing and Oversight

The Project Coordinator will be responsible for coordinating audits every year to assess system use. A summary of user access and use will be made part of an annual report to the City's Privacy Advisory Commission and City Council.

By Order of

Anne E. Kirkpatrick
Chief of Police

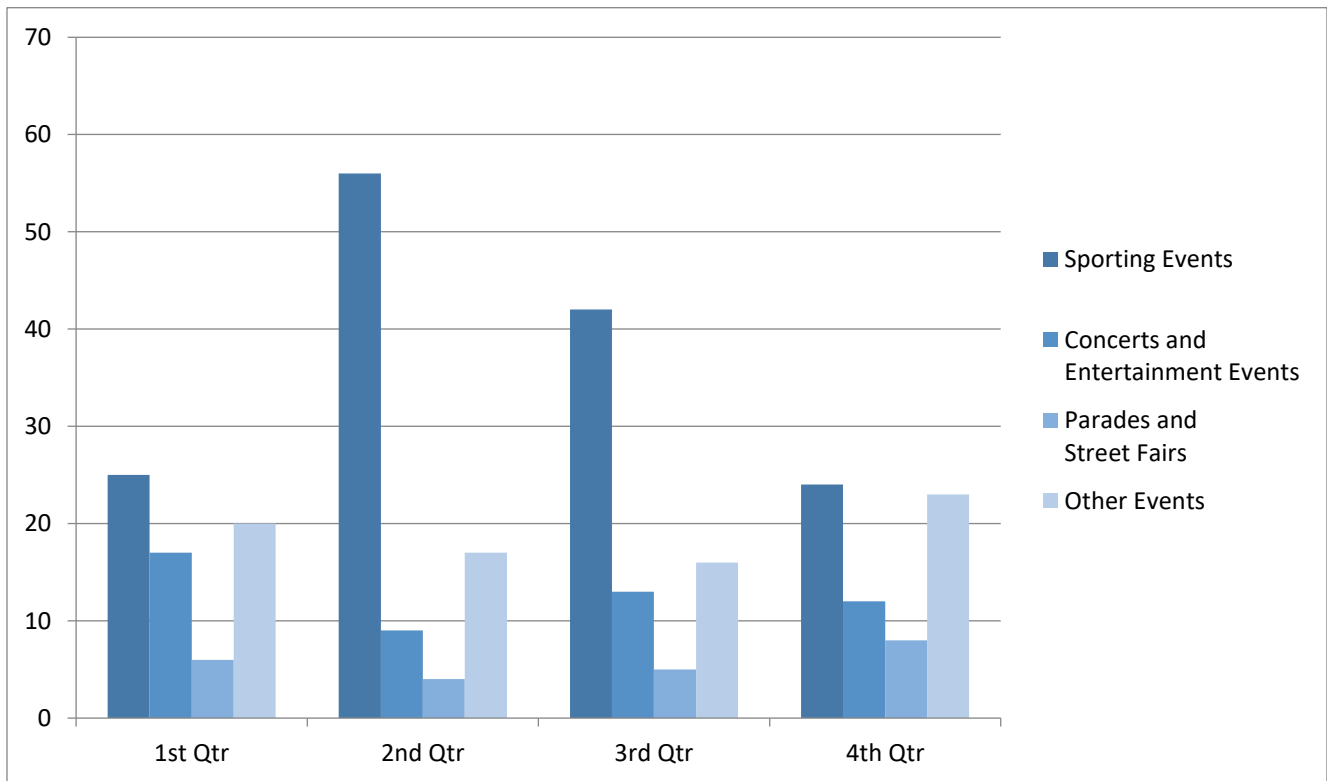
Date Signed:

Oakland Police Department

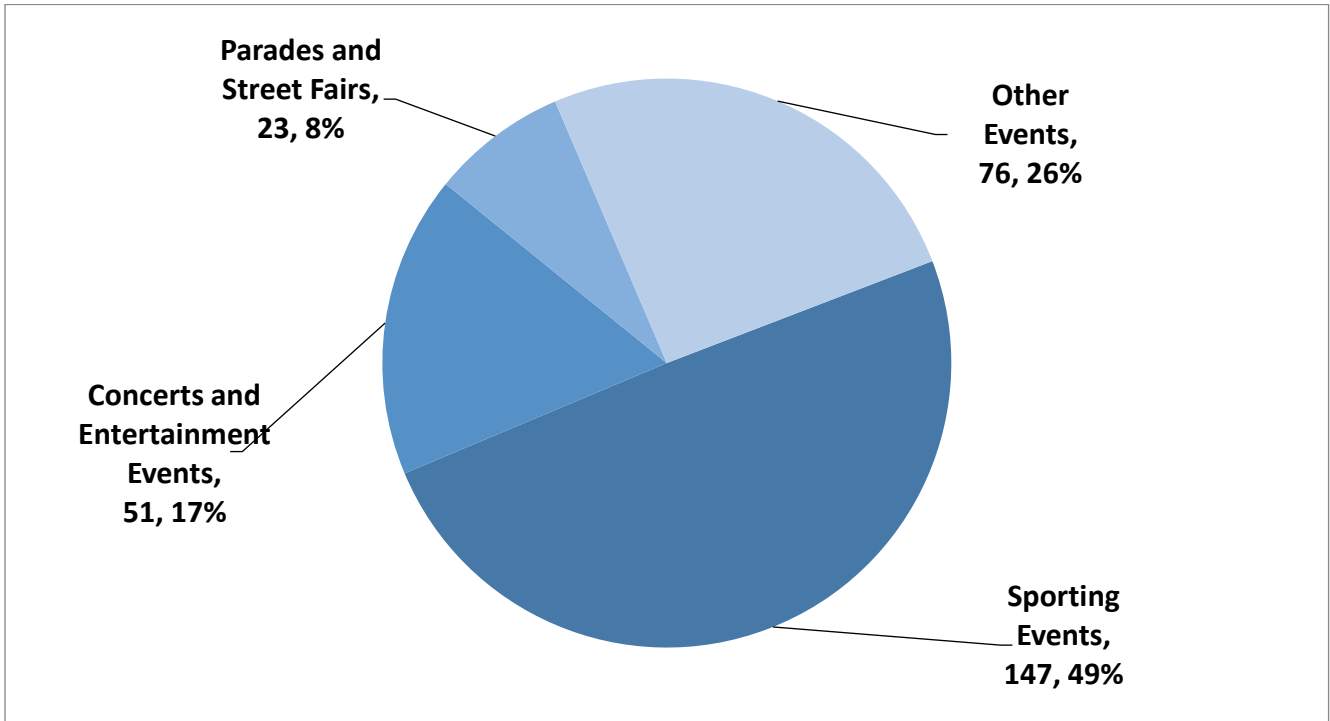
2018 4th Quarterly Crowd Control Report **Reporting Period: 01 Oct 18 – 31 Dec 18**

This document is the Annual and 4th Quarterly report for all City of Oakland crowd control/management events of 2018.

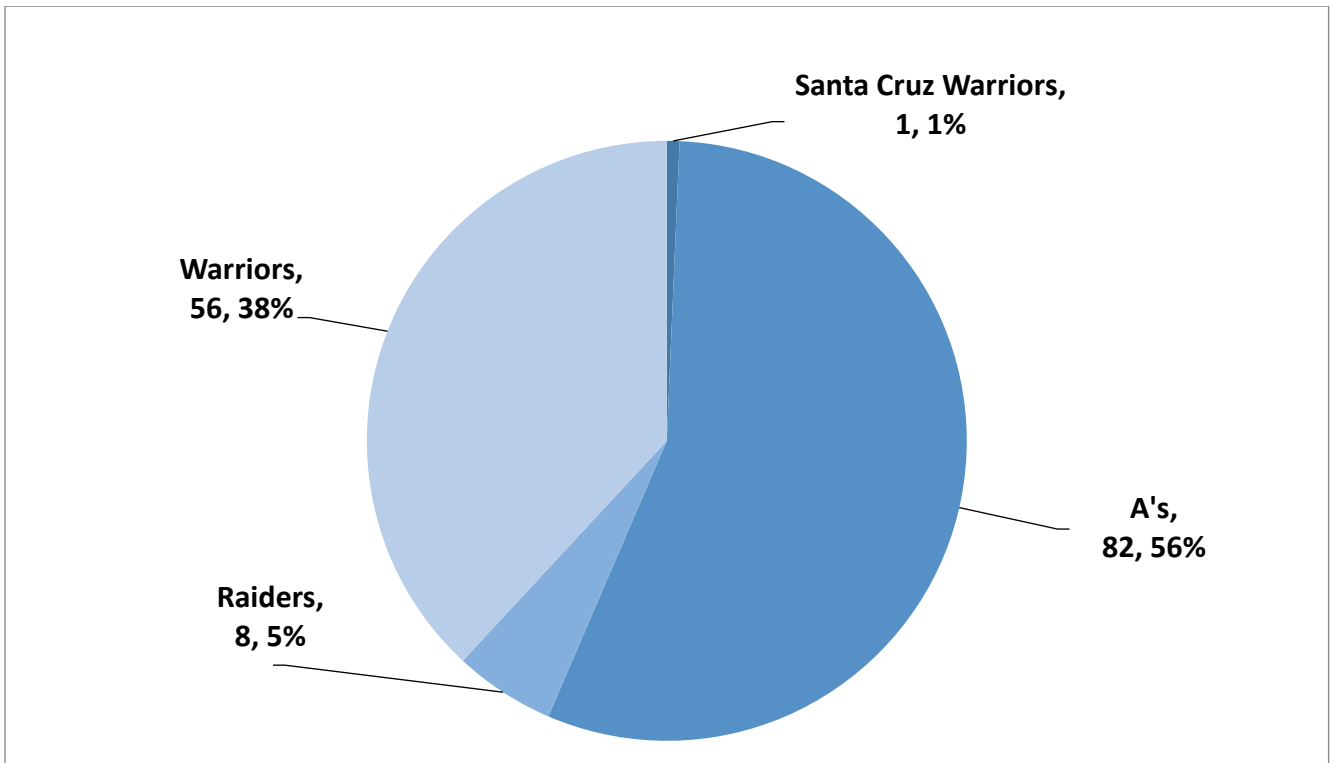
2018					
Event Type	1 st QTR	2 nd QTR	3 rd QTR	4 th QTR	TOTAL
Sporting Events (Raiders/Warriors/A's)	25	56	42	24	147
Concerts and Entertainment Events	17	9	13	12	51
Parades and Street Fairs	6	4	5	8	23
Other Events (Protests, Marches, etc.)	20	17	16	23	76
TOTAL EVENTS	68	86	76	67	297



2018 EVENT TYPE TOTALS



2018 SPORTING EVENT TOTALS



TOTAL PERFORMANCE DATA: 2018 Year in Review

Event Type	Events	Attended	OPD	Complaints	Arrests	Citations	Ejections	Uses of Force
Sporting Events	147	2,834,284	5,984	4	50	70	177	4
Concerts and Entertainment Events	51	657,297	1,444	3	26	65	39	2
Parades and Street Fairs	23	1,280,900	1,331	1	15	202	1	0
Other Events	76	83,202	1,386	3	2	13	0	8
TOTALS	297	4,855,683	10,145	11	93	350	217	14

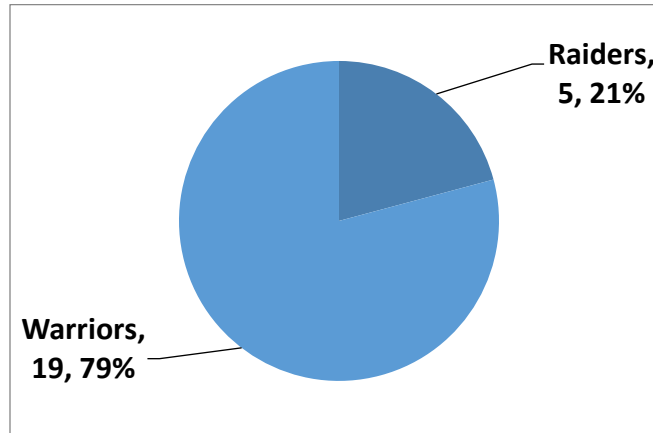
2017

Event Type	1 st QTR	2 nd QTR	3 rd QTR	4 th QTR	TOTAL
Sporting Events (Raiders/Warriors/A's)	21	60	44	27	152
Concerts & Entertainment Events	18	10	24	20	72
Parades & Street Fairs	3	6	21	5	35
Other Events (Protests, Marches, etc.)	22	11	25	18	76
TOTAL EVENTS	64	87	114	70	335

TOTAL PERFORMANCE DATA: 2017

Event Type	Events	Attended	OPD	Complaints	Arrests	Citations	Ejections	Uses of Force
Sporting Events	152	2,621,971	5,702	4	72	96	223	5
Concerts and Entertainment Events	72	641,642	1,081	3	35	31	15	0
Parades and Street Fairs	35	1,384,550	1,112	1	7	14	7	1
Other Events	76	137,747	4,353	0	12	126	0	5
TOTALS	335	4,785,910	12,248	8	126	267	245	11

SPORTING EVENTS: RAIDERS/WARRIORS/A'S



Date	Event Type	Attended	OPD	Complaints	Arrests	Citations	Ejections	Uses of Force
16-Oct-18	Warriors vs Thunder	19,052	36	0	1	0	1	0
22-Oct-18	Warriors vs Suns	19,000	36	0	0	0	0	0
24-Oct-18	Warriors vs Wizards	18,000	36	0	0	0	4	0
28-Oct-18	Raiders vs Colts	43,776	140	0	5	11	12	0
31-Oct-18	Warriors vs Pelicans	17,400	36	0	0	0	1	0
05-Nov-18	Warriors vs Grizzlies	16,893	36	0	0	0	2	0
08-Nov-18	Warriors vs Bucks	18,000	36	0	0	0	0	0
10-Nov-18	Warriors vs Nets	18,000	36	0	0	0	0	0
11-Nov-18	Raiders vs Chargers	40,245	140	0	3	5	8	0
13-Nov-18	Warriors vs Hawks	18,000	36	0	0	0	0	0
21-Nov-18	Warriors vs Thunder	18,000	36	0	0	0	0	0
23-Nov-18	Warriors vs Trail Blazers	17,931	36	0	0	0	0	0
24-Nov-18	Warriors vs Kings	18,000	36	0	0	0	0	0
26-Nov-18	Warriors vs Magic	18,000	36	0	1	0	0	0
02-Dec-18	Raiders vs Chiefs	42,412	140	0	0	4	11	0
09-Dec-18	Raiders vs Steelers	48,424	154	0	3	1	28	0
10-Dec-18	Warriors vs Timberwolves	17,500	36	0	0	0	0	0
12-Dec-18	Warriors vs Raptors	18,000	36	0	0	0	0	0
17-Dec-18	Warriors vs Grizzlies	17,817	35	0	0	0	0	0
22-Dec-18	Warriors vs Mavericks	18,400	35	0	1	0	0	0
23-Dec-18	Warriors vs Clippers	18,000	35	0	0	0	0	0
24-Dec-18	Raiders vs Broncos	48,000	160	0	0	2	18	2
25-Dec-18	Warriors vs Lakers	18,000	35	0	1	0	0	0
27-Dec-18	Warriors vs Trail Blazers	18,000	35	0	0	0	0	0
SPORTING EVENTS TOTALS		Attended	OPD	Complaints	Arrests	Citations	Ejections	Uses of Force
		564,850	1413	0	15	23	85	2

CONCERTS AND ENTERTAINMENT EVENTS

Date	Event Type	Attended	OPD	Complaints	Arrests	Citations	Ejections	Uses of Force
26-Oct-18	Aubrey & the Three Migos Tour	17,000	27	0	0	0	0	0
27-Oct-18	Aubrey & the Three Migos Tour	13,000	28	0	0	0	2	0
29-Oct-18	Aubrey & the Three Migos Tour	16,156	35	0	2	0	7	0
31-Oct-18	Halloween Takeover Sideshow	0	23	0	0	0	0	0
11-Nov-18	Twenty One Pilots Concert	14,000	29	0	0	0	0	0
17-Nov-18	Kevin Hart Irresponsible Tour	10,000	22	0	2	0	0	0
25-Nov-18	Fleetwood Mac Concert	13,000	23	0	0	0	0	0
28-Nov-18	Trans-Siberian Orchestra	5,972	23	0	0	0	0	0
11-Dec-18	Childish Gambino	11,000	27	0	1	1	2	0
15-Dec-18	WWE Live Holiday Tour	7,000	9	0	0	0	0	0
16-Dec-18	Travis Scott: Astroworld Tour	12,000	32	0	0	0	5	0
31-Dec-18	New Year's Eve Deployment	20,000	50	0	2	0	0	1
CONCERTS AND ENTERTAINMENT EVENTS TOTALS		Attended	OPD	Complaints	Arrests	Citations	Ejections	Uses of Force
		139,128	328	0	7	1	16	1

PARADES AND STREET FAIRS

Date	Event Type	Attended	OPD	Complaints	Arrests	Citations	Ejections	Uses of Force
05-Oct-18	First Friday	15,000	41	0	3	5	0	0
13-Oct-18	DC Wonder Woman Running Series 5K and 10K	1,500	52	0	0	0	0	0
13-Oct-18	Treasure Island Music Festival	6,000	18	0	0	0	0	0
14-Oct-18	Treasure Island Music Festival	7,000	18	0	0	0	0	0
02-Nov-18	Postponed First Friday	1,000	23	0	1	87	0	0
04-Nov-18	Día De Los Muertos	80,000	38	0	0	0	0	0
22-Nov-18	Oakland Turkey Trot	3,000	17	0	0	0	0	0
07-Dec-18	First Friday	10,000	51	0	3	28	0	0
PARADES AND STREET FAIRS TOTALS		Attended	OPD	Complaints	Arrests	Citations	Ejections	Uses of Force
		123,500	258	0	7	120	0	0

OTHER EVENTS: PROTESTS, MARCHES, ETC.

Date	Event Type	Attended	OPD	Complaints	Arrests	Citations	Ejections	Uses of Force
02-Oct-18	All Eyes on the Sheriff	75	4	0	0	0	0	0
06-Oct-18	Anti-Confirmation: Judge Kavanaugh "Oakland Does Not Consent"	100	8	0	0	0	0	0
07-Oct-18	Sonny's 80th Birthday Party – Hell's Angels	Unknown	0	0	0	0	0	0
08-Oct-18	Oakland Marriott City Center	50	1	0	0	0	0	0
09-Oct-18	Oakland Marriott City Center	50	4	0	0	0	0	0
10-Oct-18	Oakland Marriott City Center	50	8	0	0	0	0	0
11-Oct-18	Oakland Marriott City Center	50	6	0	0	0	0	0
12-Oct-18	Oakland Marriott City Center	50	6	0	0	0	0	0
13-Oct-18	Oakland Marriott City Center	50	5	0	0	0	0	0
14-Oct-18	Oakland Marriott City Center	50	6	0	0	0	0	0
15-Oct-18	Oakland Marriott City Center	50	9	0	0	0	0	0
16-Oct-18	Oakland Marriott City Center	50	6	0	0	0	0	0
17-Oct-18	Oakland Marriott City Center	50	6	0	0	0	0	0
18-Oct-18	Oakland Marriott City Center	50	6	0	0	0	0	0
20-Oct-18	Oakland Marriott Protest	100	6	0	0	0	0	0
23-Oct-18	Pack the Courtroom for Whole Foods Suit	30	2	0	0	0	0	0
08-Nov-18	Nobody Is Above the Law – Mueller Protection Rapid Response	200	6	0	0	0	0	0
03-Dec-18	Stop the Tows, We Won't Go! Protest at Oakland City Hall Against Mass Towing of RVs	12	3	0	0	0	0	0

04-Dec-18	End Criminal Justice Fines and Fees in Alameda County	10	2	0	0	0	0	0
05-Dec-18	Edes Ave Encampment Operation	75	29	0	0	0	0	0
06-Dec-18	Edes Ave Encampment Operation	30	33	0	0	0	0	0
10-Dec-18	Oakland High School Teacher Walkout	100	5	0	0	0	0	0
11-Dec-18	School Protest	100	2	0	0	0	0	0
OTHER EVENTS TOTALS		Attended	OPD	Complaints	Arrests	Citations	Ejections	Uses of Force
		1,382	163	0	0	0	0	0

TOTAL PERFORMANCE DATA: 2018 4th Quarter	Attended	OPD	Complaints	Arrests	Citations	Ejections	Uses of Force
	828,860	2,162	0	29	144	101	3

CITY OF OAKLAND
OAKLAND FIRE DEPARTMENT

**SURVEILLANCE IMPACT STATEMENT FOR
WILDFIRE DISTRICT AND FIRE SAFETY INSPECTIONS**

Information Describing the Technology and How It Works

The Oakland Fire Department (OFD) is transitioning to a new inspection and permitting database called Accela which has been used by the Planning and Building Department for several years. This transition involves moving from paper/pen documentation to compiling inspection data with electronic devices (iPads and iPhones). An essential piece of this conversion includes the documentation of inspections with photo images collected with electronic devices. By capturing images of the property/site at the time of inspection, OFD can document Compliance or Non-Compliance, ensure inspections are completed in accordance to inspection requirements, respond to complaints, use photos for inspection training and provide transparent inspection data to registered property owners and their authorized agents.

Digital images of the inspection site and status at the time of the inspection allows OFD to compile an accurate account of the inspection details. This information can then be reviewed to ensure quality inspection and training; and give a transparent account of the inspection. In combination with the use of the citizen facing portal called ACA (Accela Citizen Access), a registered user can access the record details in the Accela database. This project is a complete renovation of the current manual inspection system to the use of new software and hardware to document inspection details with real time data. The technology will provide clearer documentation of the inspections completed. It also allows inspection documentation to take place much more quickly and be linked to other vital information about the property through the Accela system.

Locations Where, and Situations in which the Technology May Be Deployed

OFD began using the technology in May of 2018 to process vegetation inspections in the Wildfire Protection areas of Oakland (predominantly in the hills above Highway 580). These inspections are completed by firefighters and vegetation inspectors on an annual basis. The technology was deployed out of the Fire Marshal's office with joint staff from the Fire Prevention Bureau and Fire Department command staff. The technology is used daily by the engine company staff or inspectors from the Fire Prevention Bureau.

OFD is in the process of converting all of its fire inspections to the Accela system which will mean that any code, commercial, or other type of inspection will be tracked and stored in this system. This will create efficiencies that will improve fire safety citywide by allowing for more inspections to occur on an annual basis and will help identify problem properties where an elevated fire hazard may exist. Fire Department personnel including but not limited to firefighters and inspectors will be involved in deployment and use of the technology.

Potential Impact on Civil Liberties & Privacy

The technology may collect information that is personal in nature and digital images of property

CITY OF OAKLAND
OAKLAND FIRE DEPARTMENT

**SURVEILLANCE IMPACT STATEMENT FOR
WILDFIRE DISTRICT AND FIRE SAFETY INSPECTIONS**

that is not typically seen from normal street views. Photos taken during inspections will include images taken in and around a building or residence; and vacant lots. This information will be stored in the Accela database to document the inspections completed by the Fire Department.

Mitigations

Access to this data is limited to users with active credentials in Accela and verified property owners and their authorized agents through ACA. All data collected will be stored in the Accela database. All departments using the Accela database will have limited access, dependent on credentials, to each department's dataset. Access is limited to users with active credentials and there is regular review of users by departmental administrators.

ACA registration process includes a verification of the applicant against the assessor record to ensure only the property owner or their agent can have access to the stored photos.

Data Types and Sources

The CityGov app has been loaded onto each device and is used to collect data and images during the inspections. This application is helpful in that it can capture the data, even when an inspector's tablet is not connected to the internet as is often the case in remote areas of the Wildfire Prevention District. The inspector will use the CityGov app to go through the associated checklist and enter the data or take photos. The CityGov app processes the checklist entries to determine the inspection result. The results and photos are uploaded into Accela. The Accela database will store all the data collected. The information is processed and digitally sent to the Accela database. The CityGov app does not store any of the data collected, once the data is sent to Accela, the data collected cannot be accessed on the CityGov app.

The Accela system does allow Data Sharing with other City Departments (primarily Building and Planning) with access to the Accela Information and digital images are collected by

Data Security

Data collected for ACA registration is not stored or printed. Once authorization for access has been reviewed and granted or denied, the information is deleted. The City operates "secure data networks" protected by industry standard firewalls and password protection systems. Only authorized individuals have access to the information provided by our users.

Data collected for inspection purposes are stored in the Accela database. This information is kept indefinitely as archival information that may be retrieved for future inspection reports or inspection review. Only person(s) with an active user credential can access the data. The Accela database also has a visible audit log to track changes to the inspection checklist and record. The log documents user, date, time of access and what was changed. The log is visible to all users but cannot be altered or changed.

Accela is a FISMA-NIST (Federal Information Security Management Act--National Institute of Standards and Technology) compliant provider and incorporates security and privacy into

CITY OF OAKLAND
OAKLAND FIRE DEPARTMENT

**SURVEILLANCE IMPACT STATEMENT FOR
WILDFIRE DISTRICT AND FIRE SAFETY INSPECTIONS**

the framework of their cloud-based government solutions.

Fiscal Cost

The set-up cost for this technology was \$414,000, including the full build-out. The savings in staff efficiencies by accelerating the number of inspections that can be conducted on a daily basis has not been calculated at this time.

Third Party Dependence

Other City departments using the Accela database or individuals that have been given Accela credentials will have access to Fire records. As citywide direction to move toward interdepartmental transparency, departments using Accela have read-only access to all other department records in Accela that are not of a sensitive nature.

Alternatives Considered

Non-Surveillance technology was used for many years during these inspections but could not accurately document the status of property at the time of the inspection. This led to misunderstandings for property owners about what needed to be mitigated on their property which had the potential to lead to fines charged for re-inspection of non-compliant properties. Additionally, auditing of the quality of inspections was difficult as there was no photographic record of what the inspector witnessed for a supervisor to review without visiting the property. Inputting records into a desktop, sometimes hours after an inspection occurred, also created inefficiencies in the processing of inspection results, bills for re-inspection being sent late, or non-compliant owners being overlooked causing an increase in fire hazards.

Track Record of Other Entities

In researching different Automated Inspection Systems, OFD reviewed other jurisdictions and systems and found the system that Roseville, CA used was the most promising. An added benefit was the fact that the City already has Accela in place in the Planning and Building Department. During the build-out phase, OFD found that certain features of Accela limited its effectiveness in the field, in particular when there was no internet connection. The CityGov application on top of the Accela database fixed many of those user problems creating efficiency.

Questions or comments concerning the Collection and Use of Digital Images for Wildfire District and Fire Safety Inspections should be directed to the Assistant Fire Marshal, Emmanuel Watson via e-mail to ewatson@oaklandca.gov or phone at (510) 238-6559.

OAKLAND FIRE DEPARTMENT

DATA COLLECTION AND USE POLICY FOR WILDFIRE DISTRICT AND FIRE SAFETY INSPECTIONS

Purpose

The City of Oakland, Fire Department is transitioning to a new inspection and permitting database called Accela. This transition involves moving from paper/pen documentation to compiling inspection data with electronic devices (iPads and iPhones). An essential piece of this conversion includes the documentation of inspections with photo images collected with electronic devices.

By capturing images of the property/site at the time of inspection, we can document Compliance or Non-Compliance, ensure inspections are completed in accordance to inspection requirements, respond to complaints, use photos for inspection training and provide transparent inspection data to registered property owners and their authorized agents.

Authorized Use

Use of the data collected from Fire Department inspections are limited to:

- a) Determination of inspection status results
- b) Permit issuance
- c) Quality assurance verification
- d) Review of inspection record
- e) Fire Department inspection training

Data Collection

Data is collected with handheld electronic devices using an Accela approved third-party app (CityGov App) which is downloaded onto the devices. The app will query the Accela database to retrieve inspections based on the search criteria entered by the inspector (station, district, date or date range) and return the inspection list to be completed. The inspector collects data by updating the inspection checklist with data and images related to the inspection checklist item. Once the inspection is complete, the inspection data is submitted from the app to Accela. The app does not store any data but will hold the inspection in its queue to upload to Accela if there is not WiFi connection to submit. Once the queue is cleared, the data can only be accessed in the Accela database.

Photos taken with the handheld device are automatically stored to the device photo log. This log is deleted on a regular basis to provide storage capacity for future inspections. One compliant inspection requires the need to document at least 5 photos and an unlimited number of photos to document non-Compliance.

Accela has a citizen facing portal called Accela Citizen Access (ACA). As part of the online registration process, the applicant must e-mail a copy of their state issued ID to verify their identity against the assessor record of ownership. This information is sent to a shared e-mail account used for Accela support.

Data Access

CITY OF OAKLAND
OAKLAND FIRE DEPARTMENT

**DATA COLLECTION AND USE POLICY FOR
WILDFIRE DISTRICT AND FIRE SAFETY INSPECTIONS**

Access to the data collected is limited to employees of the City (City of Oakland) who have active user credentials to log into the Accela database and registered users who have provided proper documentation to indicate a need or a right to see the data. Users have a unique username and password.

Data collected and stored in Accela can be viewed by users in all departments that have active Accela credentials and have access rights.

Data Protection

Data collected for ACA registration is not stored or printed. Once authorization for access has been reviewed and granted or denied, the information is deleted. The City operates “secure data networks” protected by industry standard firewalls and password protection systems. Only authorized individuals have access to the information provided by our users.

Data collected for inspection purposes are stored in the Accela database. This information is kept indefinitely as archival information that may be retrieved for future inspection reports or inspection review. Only person(s) with an active user credential can access the data. The Accela database also has a visible audit log to track changes to the inspection checklist and record. The log documents user, date, time of access and what was changed. The log is visible to all users but cannot be altered or changed.

Accela is a FISMA-NIST (Federal Information Security Management Act--National Institute of Standards and Technology) compliant provider and incorporates security and privacy into the framework of their cloud-based government solutions.

Data Retention

Data collected from inspections are stored indefinitely within the Accela database.

Data collected for ACA registration is not stored. The information is deleted immediately after verification for registration purposes.

Public Access

ACA provides a public facing portal. To provide transparency, any public user may access the ACA portal to gain general information about a property and inspections. By searching an address or parcel number, a public user can check for inspection schedule date and see general inspection results such as Compliant, Non-Compliant or No Access.

If the user has been verified and registration enabled, the user will be able to access detailed information on their records such as photos, letters and fees associated with their property. The verified owner may authorize agents to have access to this information.

The public may also make a public records request. The Fire Department will release information according to the policies set forth by the Public Records Act.

OAKLAND FIRE DEPARTMENT

DATA COLLECTION AND USE POLICY FOR WILDFIRE DISTRICT AND FIRE SAFETY INSPECTIONS

Third Party Data Sharing

Other City departments using the Accela database or individuals that have been given Accela credentials will have access to Fire records. As citywide direction to move toward interdepartmental transparency, departments using Accela have read-only access to all other department records in Accela that are not of a sensitive nature.

Training

Annual training is provided to staff using Accela and the inspection app as well as regular training sessions scheduled as needed throughout the year. The trainings focus on an overview of the inspection app and Accela system related to the user group being trained.

Auditing and Oversight

Adherence to the City's Electronic Media Policy as well as the Rules and Regulations set forth by the Oakland Fire Department is expected of personnel with access to data and records collected by the Fire Department. Reported violations will be investigated accordingly.

Maintenance

Data collected will be stored and maintained by Accela in the cloud.

Questions or comments concerning the Collection and Use of Digital Images for Wildfire District and Fire Safety Inspections should be directed to the Assistant Fire Marshal, Emmanuel Watson via e-mail to ewatson@oaklandca.gov or phone at (510) 238-6559.



AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Anne E. Kirkpatrick
Chief of Police

SUBJECT: OPD JTTF MOU

DATE: October 25, 2019

City Administrator
Approval

Date

RECOMMENDATION

Staff Recommends That The City Council Approve A Resolution Authorizing The City Administrator Or Designee To Enter Into A Memorandum Of Understanding (MOU) With The United States Department Of Justice, Federal Bureau Of Investigation (FBI) To Authorize The Oakland Police Department (OPD) To Participate In The Bay Area FBI Joint Terrorism Task Force (JTTF) To Fight Terrorism And Terrorism Planning Activity Which May Occur In, Or Relate To, The City Of Oakland, From January 1, 2018 Through December 31, 2019.

Commented [PD1]: Concern on training...racist tropes from FBI training docs. OPD would see the syllabus. We would be able to question if not appropriate. Wingate – add into on FBI civil rights division...

Commented [BS2]: Date will be updated – assume for 5 years

Commented [PD3R2]: 3 to 5

EXECUTIVE SUMMARY

The JTTF serves as an information hub for JTTF members and other agencies that have a right to know and need to know about sensitive information that could save lives. All JTTF operational and investigative activity, including the collection, retention and dissemination of personal information, is conducted in a manner that protects and preserves the constitutional rights and civil liberties of all persons in the United States. The resolution allows OPD personnel with FBI Top Secret/Sensitive Compartmented Information Security Clearance to participate in the JTTF to support anti-terrorism investigations related to the City of Oakland. The MOU has been reviewed by the City's Privacy Advisory Commission (PAC), as the City's Transparency and Accountability for City Participation in Federal Surveillance Operations Ordinance (13457 C.M.S.) requires the initial PAC review.

BACKGROUND AND LEGISLATIVE HISTORY

The FBI¹ defines international terrorism as violence “perpetrated by individuals and/or groups inspired by or associated with designated foreign terrorist organizations or nations (state-sponsored).” The FBI defines domestic terrorism as “perpetrated by individuals and/or groups inspired by or associated with primarily United States (U.S.)-based movements that espouse extremist ideologies of a political, religious, social, racial, or environmental nature.” The New

¹ <https://www.fbi.gov/investigate/terrorism>

Item: _____
Public Safety Committee
December 3, 2019

York Times², after the October 1, 2017 Las Vegas mass shooting, wrote that terrorism generally "requires that the violence have a political, ideological or religious motive."

Commented [BS4]: Terrorism fully explained...PAC said there was no formal definition. Adding to the resolution

The FBI has created multiple regional JTTFs to embody the objectives of U.S. counterterrorism efforts. According to the FBI³, the designated mission for each JTTF is to leverage the collective resources of the member agencies for the prevention, preemption, deterrence and investigation of terrorist acts that affect the United States interests, and to disrupt and prevent terrorist acts and apprehend individual who may commit or plan to commit such acts. The JTTF serves as an information hub for JTTF members. All JTTF operational and investigative activity, including the collection, retention and dissemination of personal information, will be conducted in a manner that protects and preserves the constitutional rights and civil liberties of all person in the United States (see "[Transparency and Accountability for City Participation in Federal Surveillance Operations Ordinance](#)" Section below). The FBI is authorized to coordinate an intelligence, investigative, and operation response to terrorism, and by virtue of that same authority pursuant to numerous federal statutes⁴. The FBI formed JTTFs composed of other federal, state, local, and tribal law enforcement agencies acting in support of the above listed statutory and regulatory provisions.

Rationale for Oakland / San Francisco-based JTTF

The San Francisco Bay Area is an internationally famous area, and thus, unfortunately, an attractive terrorist target. The Bay Area contains iconic landmarks like the Golden Gate Bridge and the San Francisco-Oakland Bay Bridge. The area also contains numerous professional sports teams and venues, such as the Oakland Coliseum and Oracle Arena, which may realistically be attractive targets for terrorist attacks. Silicon Valley, with its many famous companies, may also be a location for a terrorist attack.

Several large business and government organizations are in Oakland (e.g. Bay Area Rapid Transit (BART), Clorox, Kaiser, Pandora, Southwest Air, University of California Office of the President). Oakland is also home to the fifth busiest container port in the United States. All these sites are potential high-profile targets. Additionally, as high-profile targets became hardened or more secure, terrorist actors may change their tactics and aim for softer targets such as event spaces, museums, theatres and restaurants. Oakland is also home to several gay bars and clubs, as well as houses of religious worship⁵. Oakland has many such spaces in different neighborhoods (e.g. Acorn, Castlemont, Downtown, Dimond, Elmhurst, Fruitvale, Mosswood, Piedmont Avenue, Uptown, Rockridge, Sobrante Park, Temescal...) and any of these physical spaces can become the target of a future terrorist attack plan.

Commented [BS5]: PAC mentioned "vandalism" as outside scope of terrorism, but mentioned here as a form of terrorism

² <https://www.nytimes.com/2017/11/01/reader-center/readers-debate-what-is-or-isnt-terrorism.html>

³ <https://www.fbi.gov/investigate/terrorism/joint-terrorism-task-forces>

⁴ 28 U.S.C. § 533, 28 C.F.R. § 0.85, Executive Order 12333, Presidential Decision Directives (PDD) 39, PDD 62, National Security Presidential Directive (NSPD) 46, and Homeland Security Presidential Directive (HSPD) 15

⁵ Temple Sinai was recently vandalized although fortunately the damage was minor and there is no known connection to actual terrorism

Mass transit has been a target of terrorism throughout the world. Oakland houses an international airport in addition to the Port of Oakland. The City also has BART and Amtrak which passes through all parts of our city. In other words, the Oakland has a significant number of potential targets. OPD does not have enough resources to address the threat of terrorism to these numerous potential sites. Therefore, the residents and visitors of Oakland are best served when Oakland can collaborate with local, state, and federal partners to proactively try to prevent terrorism. The JTTF provides OPD with critical additional resources, knowledge, and experience to protect all our residents, employees and visitors against the threats of terrorism.

Recent National Cases of U.S. Domestic Terrorism

The following list highlights recent national examples of domestic terrorism:

1. [Boston Marathon Bombing](#)⁶ - On April 15, 2013, Tamerlan Tsarnaev and younger brother Dzhokhar Tsarnaev both Russian immigrants of Chechen ethnicity, detonated bombs near the finish line of the Boston Marathon, killing 3 and injuring more than 180 people. Dzhokhar stated that he and his brother were motivated by opposition to the U.S. involvement in Iraq and Afghanistan.
2. [2013 Los Angeles International Airport shooting](#)⁷ - On November 1, 2013, Paul Anthony Ciancia entered the checkpoint at the Los Angeles International Airport and killed a Transportation Security Administration (TSA) Officer and injured six others with a rifle. Mr. Ciancia later expressed to authorities his hatred towards TSA officers.
3. [Charleston Church Shooting](#)⁸ - On June 17, 2015, 21-year old Dylann Roof entered Emanuel African Methodist Episcopal Church in downtown Charleston, South Carolina, shot 10 people and killing nine of them. Mr. Roof claimed he committed the shooting to initiate a race war.
4. [Orlando Nightclub Shooting](#)⁹ - On June 12, 2016, Omar Mateen, a 29-year-old security guard, killed 49 people and wounded 58 others at Pulse, a gay nightclub in Orlando, Florida. Mateen swore allegiance to the leader of the Islamic State of Iraq and the Levant (ISIL) during the shooting in a 9-1-1 call. During the stand-off in which he was later killed by local Special Weapons And Tactics (SWAT) officers, he claimed the shooting was in retaliation for the U.S. involvement in Iraq and Syria.
5. [2017 Las Vegas Shooting](#)¹⁰ - On October 1, 2017, 64-year-old Stephen Paddock of Mesquite, Nevada, fired more than 1,100 rounds from a hotel into a crowd of 22,000 people, killing 58 people and injuring 546 people. He was found dead in his room from a self-inflicted gunshot wound, and his motives are unknown.

⁶ <http://edition.cnn.com/2013/04/18/us/boston-marathon-things-we-know>

⁷ <http://www.latimes.com/local/lanow/la-me-ln-lax-shooting-slain-tsa-agent-identified-as-gerardo-i-hernandez-20131101-story.html#axzz2jQAO3Gla>

⁸ <https://www.nytimes.com/2015/06/18/us/the-charleston-shooting-what-happened.html>

⁹ <http://www.cnn.com/2016/06/12/us/orlando-nightclub-shooting/index.html>

¹⁰ https://www.washingtonpost.com/news/morning-mix/wp/2017/10/02/police-shut-down-part-of-las-vegas-strip-due-to-shooting/?utm_term=.67853d8ec043

ANALYSIS AND POLICY ALTERNATIVES

JTTFs cannot possibly deter all acts of terrorism. The United States is a free and open society; the public only supports limited amounts and types of surveillance and investigations. Staff believes that OPD participation in the JTTF allows for critical inter-agency law enforcement information exchange and investigative capacity - without abuse to the public's right to privacy.

The JTTF is comprised of numerous agencies partnering with the FBI to fight terrorism. Local JTTF cells work together to assess threats, investigate leads, gather evidence, and make arrests. JTTFs gather and share intelligence and conduct outreach and training. JTTFs are organized to deploy resources at a moment's notice for threats or major incidents; the JTTF also can provide resources for security at special events. The JTTF establishes a relationship and familiarity between investigators and managers of numerous agencies before a crisis occurs. JTTFs pool talents, skills, and knowledge from across the law enforcement and intelligence communities into a single team that responds together

The Oakland / San Francisco-based JTTF is comprised of numerous agencies throughout the Bay Area:

- United States Secret Service (USSS);
- United States Department of Home Security (DHS);
- United States Marshalls (USM);
- California Highway Patrol (CHP)
- Alameda County Sheriff's Office (ACSO);
- Bay Area Rapid Transit Police Department (BART PD);
- Santa Clara County Sheriff's Office (SCCSO);
- San Mateo County Sheriff's Office (SMCSO);
- Fremont Police Department (FPD);
- Oakland Police Department; and
- San Jose Police Department (SJPD).

Commented [BS6]: Correct exhaustive list

These partner agencies are committed to work with the FBI to fight terrorism. OPD believes in working with these local, state, and federal agencies and the FBI to assess threats, investigate leads, gather evidence, and where warranted – to make arrests. In addition, the JTTF gathers and shares intelligence, and conducts outreach to both law enforcement and local community organizations. The FBI communicates with schools, rail service providers (such as BART PD) and religious institutions (regardless of denomination) and provides training on homegrown violent extremists (HVE), active shooters and other issues of concern.

The primary meeting location of the Oakland / San Francisco-based JTTF is the downtown Oakland FBI office. Only the OPD TF Officer will have access to the investigation data at this location; the TF Officer, however, can share summary information regarding TF activity.

JTTF Anti-Terrorism Investigation Examples

The following examples illustrate recent examples of terrorist plots which occurred in the San Francisco Bay Area.

1. Pipe Bomb Investigation - There was October 2018 pipe bomb investigation in which Bay Area politicians and members of the media received pipe bombs in the mail. OPD was concerned that local figures in Oakland were also targeted. The OPD JTTF Officer coordinated with the Task Force on investigations (the Task Force determined that no Oakland based officials were targeted, and this information was relayed to City officials)¹¹
2. Oakland ISIS Sympathizer¹² - Berkeley High School graduate Amer Sinan Alhaggagi, 22, was indicted in July 2017, for attempting to provide support to the terrorist group ISIS. Federal prosecutors say that Alhaggagi planned to kill thousands of people by bombing gay night clubs, planting bombs on UC Berkeley's campus, and selling drugs laced with poison. He applied for a job as a police officer with OPD, and exchanged bomb-making materials with undercover FBI agents. The FBI and JTTF investigations led to his arrest.
3. FBI thwarts Oakland bank bombing¹³ - A mentally disturbed man who said he believed in violent jihad and hoped to start a civil war in the United States was arrested in the process of trying to detonate a bomb at a bank in Oakland. Matthew Aaron Llana, 28, of San Jose believed he was triggering a cell phone-activated bomb at a crowded Bank of America branch. An undercover FBI agent posed as a go-between with the Taliban in Afghanistan. The FBI created a faux-bomb for Mr. Llana after repeated declarations of wanting to kill Americans, and after past arrest on weapons charges.
4. Pier 39 Christmas Plot¹⁴ - Everitt Aaron Jameson, a 26-year old former U.S. Marine from Northern California was arrested December 22, 2017 for allegedly offering to carry out a terrorist attack on Christmas Day in San Francisco at the Pier 39. He is charged with attempting to provide material support to a foreign terrorist organization (ISIS). He had been investigated by the FBI, according to the unsealed criminal complaint, for espousing "radical jihadi beliefs, including authoring social media posts that are supportive of terrorism, communicating with people he believes share his jihadi views and offering to provide services to such people ..." Jameson had allegedly shared plans for a terrorist attack (involving use of firearms and explosives) with undercover FBI agents.

¹¹ This case occurred before 2018 (the year of this annual report). OPD is including this past information because 2018 is the first reporting year; past information is provided for context as to relevant work related to the JTTF TF.

¹² <https://www.nbcbayarea.com/news/local/Feds-Oakland-ISIS-Sympathizer-Wanted-to-Kill-Thousands-in-String-of-Bay-Area-Terror-Attacks-436633853.html>

¹³ <http://www.sfgate.com/crime/article/FBI-thwarts-Oakland-bank-bombing-4263660.php>

¹⁴ <http://sanfrancisco.cbslocal.com/2017/12/22/fbi-pier-39-christmas-day-terror-plot-arrest/>

Value of FBI JTTF for OPD and City of Oakland

OPD and the City of Oakland benefit from the JTTF partnership in several ways. Firstly, participation allows OPD access to critical information. As presented in the “JTTF Anti-Terrorism Investigation Examples” section above, the FBI notifies OPD via the JTTF Taskforce when credible threats emerge. The 2018 pipe bomb investigation, OPD had reason to be concerned that that local figures in Oakland were being targeted.

Through the JTTF, local agencies can combine different skills and capacities (i.e. SWAT units and different intelligence gathering efforts) across the law enforcement and intelligence communities and blends them into a single team that can respond as one unit. The JTTF agencies, through mutual collaboration, can deploy resources more quickly to respond to threats or during major critical incidents. The JTTF can provide essential security resources at special events. Through mutual collaboration, agencies like OPD are prepared - before a crisis occurs.

Commented [BS7]: DQ - Is this accurate in terms of SWAT and mutual aid? Please amend as you see fit, do we want to delete swat?

As noted in the 2018 OPD – FBI 2018 Joint Terrorism Taskforce (JTTF) Annual Report (see **Attachment A**), the duties and reporting responsibilities of the officer currently assigned to OPD’s Intelligence Unit (and the taskforce) depend upon whether there is any active counter-terrorism investigation as well as the current needs and priorities of the OPD Intelligence Unit.

OPD FBI JTTF Participation Protocols

The supervisor of the Oakland / San Francisco-based JTTF is the FBI Special Agent in Charge (SAIC) or Assistant Director in Charge (ADIC) from the FBI San Francisco Division. OPD personnel participating in the JTTF are subject to all OPD policies and procedures and agree to adhere to the FBI’s ethical standards. OPD personnel assigned to the JTTF are subject to the Supplemental Standards of Ethical Conduct for employees of the United States Department of Justice. Whichever standard or requirement that provides the greatest restrictions as well as organizational protection or benefit will apply where this is a conflict between the standards or requirements of OPD and the FBI.

Commented [BS8]: Added to reso

Participating OPD personnel remain OPD employees and all other JTTF participating personnel remain employees of their respective agencies. Any# OPD personnel participating in the JTTF shall be held responsible for adhering to all OPD policies including Use of Force and City of Oakland and State of California immigration-specific policies. OPD personnel participating in the JTTF shall also adhere to ~~undergo~~ the FBI Top Secret/Sensitive Compartmented Information Security Clearance process.

OPD participation in the Oakland / SF-based JTTF does not require OPD to lose autonomy. Only an OPD TF officer who has been deputized to participate in the JTTF receives detailed investigative information. However, the OPD TF officer can share summary case information with their OPD supervising sergeant such that the sergeant can ensure compliance with OPD policies. Additionally, the FBI SAIC understands that each participating agency has its own polices that govern the behavior and protocols of participating personnel from respective agencies. OPD taskforce officer are trained in all OPD policies and must report to their OPD

Approved as to Form and
Legality

City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

Introduced by Councilmember _____

**RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR OR
DESIGNEE TO ENTER INTO A MEMORANDUM OF
UNDERSTANDING (MOU) WITH THE UNITED STATES DEPARTMENT
OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION (FBI), TO FORM
THE OAKLAND POLICE DEPARTMENT (OPD) FBI JOINT TERRORISM
TASK FORCE (JTTF) TO FIGHT TERRORISM AND TERRORISM
PLANNING ACTIVITY WHICH MAY OCCUR IN, OR RELATE TO, THE
CITY OF OAKLAND, FOR THE PERIOD OF []**

Commented [BS1]: We need an end date!

Commented [BS2]: What is the start and end date? The MOU was signed on April 4, 2007. MOU states no end date, only 60 days termination notice.

WHEREAS, the FBI defines international terrorism as violence “perpetrated by individuals and/or groups inspired by or associated with designated foreign terrorist organizations or nation, and domestic terrorism as “perpetrated by individuals and/or groups inspired by or associated with primarily United States-based movements that espouse extremist ideologies of a political, religious, social, racial, or environmental nature; and

WHEREAS, the policy of the FBI, with regard to domestic and international terrorism, is to deter, defeat, and respond vigorously to all terrorist attacks on U.S. territory and against U.S. citizens, or facilities; and

WHEREAS, OPD and the FBI recognize the need for all federal, state, local, and tribal agencies that are involved in fighting terrorism to coordinate and share information and resources to achieve greater efficiencies and impact; and

WHEREAS, the FBI has created multiple regional JTTFs to embody the objectives of U.S. counterterrorism efforts; and

WHEREAS, the mission of the JTTF is to leverage the collective resources of the member agencies for the prevention, preemption, deterrence and investigation of terrorist acts that affect the United States interests, and to disrupt and prevent terrorist acts and apprehend individual who may commit or plan to commit such acts; and

WHEREAS, OPD can support efforts to prevent, preempt and deter acts of terrorism from occurring in or near the City of Oakland through participation in the JTTF; and

WHEREAS, OPD benefits from access to actionable JTTF data through participation in the JTTF and by assigning a sworn OPD police officer as at JTTF taskforce officer; and

WHEREAS, the JTTF shall serve to facilitate information sharing among JTTF members; and

WHEREAS, all JTTF operational and investigative activity, including the collection, retention and dissemination of personal information, will be conducted in a manner that protects and preserves the constitutional rights and civil liberties of all person in the United States; and

WHEREAS, pursuant to 28 U.S.C. § 533, 28 C.F.R. § 0.85, Executive Order 12333, Presidential Decision Directives (PDD) 39, PDD 62, and pending approval of National Security Presidential Decision Directive (NSPD) 46 and Homeland Security Presidential Directive (HSPD) 15, the FBI is authorized to coordinate an intelligence, investigative, and operation response to terrorism, and by virtue of that same authority, the FBI formed JTTFs composed of other federal, state, local, and tribal law enforcement agencies acting in support of the above listed statutory and regulatory provisions; and

WHEREAS, the JTTF operates under the authority of the Attorney General of the United States; therefore, all JTTF participants must adhere to applicable Attorney General guidelines and directives; and as follows:

1. Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Terrorism Enterprise Investigations;
2. Attorney General's Guidelines for FBI National Security Investigation and Foreign Intelligence Collection;
3. Attorney General's Guidelines on FBI undercover investigations;
4. Attorney General's Guidelines Regarding Prompt Handlin of Reports of Possible Criminal Activity Involving Foreign Intelligence Sources;
5. Attorney General Memorandum dated March 6, 2002, titled "Intelligence Sharing Procedures for Foreign Intelligence and Foreign Counterintelligence Investigations Conducted by the FBI";
6. Attorney General's Guidelines Regarding the Use of Confidential Informants;
7. Attorney General's Guidelines on the Development and Operation of FBI Criminal Informants and Cooperative Witnesses in Extraterritorial Jurisdictions;
8. Attorney General's Guidelines Regarding Disclosure to the Director of Central Intelligence and Homeland Security Officials of Foreign Intelligence Acquired in the course of a Criminal Investigation; and
9. Memorandum from the Deputy Attorney General and the FBI Director re: Field Guidance on Intelligence Sharing Procedures for (Foreign Intelligence) and (Foreign Counterintelligence) Investigations (December 24, 2002).

Commented [BS3]: Brian / PAC made point that we need to speak if there are differences in standards on OPD vs FBI investigations, and that we need to itemize for different State laws in our annual report when we speak of violations or lack thereof

Commented [BS4]: PAC had concerns about this and how this reads in MOU; DC Holmgren explained that OPD always has ability to separate from MOU if these polices ever conflict with OPD policies

WHEREAS, the OPD FBI JTTF shall consist of a combined body of sworn and professional personnel from both OPD and the FBI; and

WHEREAS, the supervisor of the OPD FBI JTTF shall be the FBI Special Agent in Charge (SAIC) or Assistant Director in Charge (ADIC) from the FBI San Francisco Division; and

WHEREAS, participating OPD personnel shall remain OPD employees and all other JTTF participating personnel shall remain employees of their respective agencies; and

WHEREAS, Article IV, Section 401(6) of the Oakland City Charter requires that the City Council approve all inter-agency relationships such as between OPD and the FBI; and

Commented [BS5]: Correct part of charter?

WHEREAS, OPD previously signed an MOU authorizing OPD participation in the OPD FBI JTTF on April 4, 2007 but shall not participate in the OPD FBI JTTF without Council approval; and

WHEREAS; Oakland's Transparency and Accountability for City Participation in Federal Surveillance Operations Ordinance No. 13457 C.M.S. requires the initial review and public comment by the City's Privacy Advisory Commission (PAC); and

WHEREAS; Ordinance No. 13457 C.M.S. also requires the Chief of Police shall provide to the PAC a public report with appropriate public information on the Police Department's work with the JTTF or other federal law enforcement agency task force in the prior year; -therefore be it

RESOLVED: that City Council does hereby authorize the City Administrator or designee to enter into a MOU with the FBI to allow OPD to participate in the OPD FBI JTTF, to support antiterrorism investigation activities; and be it

FURTHER RESOVLED: that non-federal members of the JTTF, including OPD personnel, who are subject to a background inquiry prior to JTTF membership, shall be federally deputized while participating in the JTTF, so that they can assist fully in investigations and remain in compliance with federal statutes and be it

FURTHER RESOVLED: OPD personnel participating in the JTTF are subject to all OPD policies and procedures and agree to adhere to the FBI's ethical standards, and OPD personnel assigned to the JTTF are subject to the Supplemental Standards of Ethical Conduct for employees of the United States Department of Justice, and whichever standard or requirement that provides the greatest restrictions as well as organizational protection or benefit will apply where this is a conflict between the standards or requirements of OPD and the FBI; and be it

FURTHER RESOVLED: OPD personnel participating in the OPD FBI JTTF shall remain subject to all OPD policies as well as applicable State of California law, and procedures, and will additionally agree to adhere to the FBI's ethical standards and will be subject to the Supplemental Standards of Ethical Conduct for employees of the DOJ;

FURTHER RESOVLED: OPD personnel participating in the OPD FBI JTTF shall remain subject to all OPD policies and procedures, including compliance with OPD Departmental General Order (DGO) M-17, Section V "Professional Standards" and DGO M-19, Sections III and VIII (A, C); as well as the following California laws:

- California Sanctuary Law or "California Values Act" (Senate Bill (SB) B54) signed into law as California Government Code §7284 et seq., which requires that local and state law enforcement authorities not use resources, including personnel or facilities, to investigate or arrest people for federal immigration enforcement purposes;
- California Religious Freedom Act (SB 31), signed into law as California Government Code §8310.3 et seq., which prohibits a state or local agency or a public employee acting under color of law from providing or disclosing to the federal government personal information regarding a person's religious beliefs, practices, or affiliation~~requires that prohibits a state agency from including a question regarding an applicant's race, sex, marital status, or religion in any application form for employment;~~

Oakland Sanctuary City Ordinance (code pending);

and where this is a conflict between the standards or requirements of OPD and the FBI, the standard or requirement that provides the most restrictive standard and greatest organizational protection or benefit will apply; and be it

FURTHER RESOVLED: that OPD personnel participating in the OPD FBI JTTF shall additionally agree to adhere to the FBI's ethical standards and will be subject to the Supplemental Standards of Ethical Conduct for employees of the DOJ; and where this is a conflict between the standards or requirements of OPD and the FBI, the standard or requirement that provides the most restrictive standard and greatest organizational protection or benefit will apply; and be it

FURTHER RESOLVED: that the Chief of Police shall provide to the PAC an annual report with appropriate public information on the Police Department's work with the JTTF, which will include an itemized list of compliance with all applicable City and State of California laws; and be it

FURTHER RESOLVED: that all OPD personnel participating in the OPD FBI JTTF shall undergo the FBI Top Secret/Sensitive Compartmented Information Security Clearance process; and be it

Commented [BS6]: State and Oakland laws as discussed at PAC are included

Commented [BS7]: This is from VB5 of actual MOU

Commented [BS8]: Most restrictive standards as discussed at PAC are here.

FURTHER RESOLVED: that OPD personnel participating in the OPD FBI JTTF shall not be permitted to discuss ~~particular JTTF investigation details, but can provide summary information to official JTTF business with~~ OPD supervisors who are not members of the JTTF, unless these same supervisors possess the appropriate security clearance, and the information is specifically approved by the FBI JTTF Supervisor; and be it

Commented [BS9]: This can be revised to showcase how OPD supervisor of TF officer receives sufficient info for transparency, officer just cannot share database or specific intel, but can share in terms of activity alignment w/ all policies; do we have to make participation here contingent on an officer always having clearance and that officer can share enough with non-cleared supervisor to maintain transparency?

FURTHER RESOLVED: that both OPD and the FBI will maintain responsibility for all costs related to normal staffing and operation costs, and there is no promise or guarantee of funding for participation in the JTTF, except that the FBI may pay for travel costs for OPD personnel participating in the JTTF when investigations require travel outside of Oakland; and be it

FURTHER RESOLVED: that OPD personnel participating in the JTTF may be permitted to drive FBI-owned or leased for official JTTF use and in accordance with applicable FBI rules and regulations; and be it

FURTHER RESOLVED: that any civil liability arising from the use of an FBI owned or leased vehicle by OPD personnel, other than for official duties related to the JTTF, shall be the responsibly of OPD; and be it

FURTHER RESOLVED: that any asset forfeitures attributable to the JTTF investigations may be distributed among participating JTTF agencies at the discretion of the FBI; and be it

Commented [BS10]: Needs to be reflective of SB 443

FURTHER RESOLVED: funds paid by the FBI to OPD will be deposited into Fund 2999, Org 102310, Account 46129, Project TBD, and Program PS03; and be it

FURTHER RESOLVED: that this MOU shall be in effect for the period of >>>>>>> unless either party notifies the other party of its intent to end participation in the JTTF with 60 days' written notice; and be it

Commented [BS11]: Duration period...

FURTHER RESOLVED: That the City Administrator or designee is authorized to complete all required negotiations, certifications, assurances, and documentation required to execute, ~~modify, extend and/or amend~~ the MOU without returning to the City Council; and be it

FURTHER RESOLVED: That in accordance with Article IV, Section 401(6) of the City Charter, the MOU authorized by this resolution shall be approved by as to form and legality before execution, and a copy of the fully executed agreement shall be placed on file with the Office of the City Clerk.

Commented [BS12]: Needs to be correct OMC – 504L?

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO-BAS, GALLO, KALB, GIBSON MCELHANEY, 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

sergeant / supervisor regarding overall JTTF activity. Ultimately, OPD would end its participation in the JTTF if an OPD officer was ever asked to participate in activity that violates State of California, City of Oakland, or OPD policies (e.g. SB 54 – California Values ACT, Oakland Police Departmental General Order M-19) – see **Compliance with State of California, City of Oakland, OPD Laws and Policies Section** below. Furthermore, OPD is researching the possibility of OPD executive team members receiving clearance to receive access to TF information.

Both OPD and the FBI will maintain responsibility for all costs related to normal staffing and operation costs. There is no promise or guarantee of funding for participation in the JTTF, except that the FBI may pay for travel costs for OPD personnel participating in the JTTF when investigations require travel outside of Oakland. OPD personnel participating in the JTTF may be permitted to drive FBI-owned or leased vehicles for official JTTF use and in accordance with applicable FBI rules and regulations. Any civil liability arising from the use of an FBI owned or leased vehicle by OPD personnel, other than for official duties related to the JTTF, shall be the responsibility of OPD.

Transparency and Accountability for City Participation in Federal Surveillance Operations Ordinance

The City Council passed Ordinance no. 13457 C.M.S. (Transparency and Accountability for City Participation in Federal Surveillance Operations) on October 3, 2017. This ordinance added Chapter 9.72.010 to Chapter 9 of the Oakland Municipal Code (OMC) to ensure greater transparency and establish a protocol for city participation in federal law enforcement surveillance operations. OMC 9.72.010 reads as follows:

1. The City of Oakland, including but not limited to the Oakland Police Department, may assist federal agencies, including but not limited to, the Federal Bureau of Investigation ("FBI") through its Joint Terrorism Task Force, or any successor task force, joint operation, assignment, or enforcement activity (collectively, "JTTF") in preventing and investigating possible acts of terrorism and other criminal activity only in a manner that is fully consistent with the laws of the State of California, including but not limited to the inalienable right to privacy guaranteed by Article 1, Section 1 of the California Constitution, as well as the laws and policies of the City of Oakland, including but not limited to Police Department policies, procedures, and orders.
2. Before execution of any Memorandum of Understanding or other written agreement, contract or arrangement (collectively, "MOU") between the Oakland Police Department and the FBI, or other federal law enforcement agency, regarding the Police Department's participation on the JTTF or other federal law enforcement agency task force, or any amendment to any such existing MOU, the Chief of Police shall submit the proposed MOU and any orders, policies, and procedures relevant to the subject matter of the MOU for discussion and public comment at an open meeting of the PAC.
3. By January 31 of each year, the Chief of Police shall provide to the PAC and City Council, a public report with appropriate public information on the Police Department's work with the JTTF or other federal law enforcement agency task force in the prior calendar year, including any issues related to compliance with this Section – the PAC

Item: _____
Public Safety Committee
December 3, 2019

unanimously accepted OPD's 2018 Annual JTTF report after on July 8, 2019. OPD first presented the annual report earlier in 2019; the acceptance of the annual report on July 8, 2019 was the result of significant collaboration between OPD, the PAC, and numerous privacy advocacy organizations.

Commented [BS9]: Update this if PAC recommends approval of MOU reso

In accordance with Ordinance No. 13457 C.M.S, OPD plans to provide to the PAC and City Council each year a public report with appropriate public information on OPD's work with the JTTF in the prior calendar year. Ordinance No. 13457 C.M.S. also requires that OPD bring this MOU and resolution first to the PAC before the City Council can approve the resolution which authorizes the City Administrator to negotiate and execute the MOU (see Attachment A) . The PAC reviewed this MOU and **resolution on....**

Asset Forfeiture Related to FBI JTTF Participation

The OPD FBI JTTF MOU includes language regarding possible compensation to OPD from FBI deriving from asset forfeitures. However, in the last several years, OPD has not received any funding from the FBI in connection with the JTTF, stemming from asset forfeiture or any other sources.

Compliance with State of California, City of Oakland, OPD Laws and Policies

OPD personnel participating in the JTTF shall remain subject to all OPD policies and procedures, including compliance with OPD Departmental General Order (DGO) M-17¹⁵, Section V "Professional Standards" and DGO M-19¹⁶, Sections III and VIII (A, C); as well as the following California and City of Oakland laws:

- California Sanctuary Law or "California Values Act" (Senate Bill (SB) B54) signed into law as California Government Code §7284 et seq., which requires that local and state law enforcement authorities not use resources, including personnel or facilities, to investigate or arrest people for federal immigration enforcement purposes;
- California Religious Freedom Act (SB 31), signed into law as California Government Code §8310.3 et seq., which requires that prohibits a state agency from including a question regarding an applicant's race, sex, marital status, or religion in any application form for employment;
- Oakland Sanctuary City Ordinance (code pending)

Commented [BS10]: Need Amadis to confirm

PUBLIC OUTEACH / INTEREST

The PAC reviewed the FBI JTTF MOU on.... During publicly noticed meetings....

¹⁵ DGO M-17 found here:

<http://www2.oaklandnet.com/oakca1/groups/police/documents/webcontent/oak063011.pdf>

¹⁶ DGO M-19 found here:

<http://www2.oaklandnet.com/oakca1/groups/police/documents/webcontent/oak032293.pdf>

COORDINATION

OPD consulted the Office of the City Attorney in the development of this report and accompanying resolution.

FISCAL IMPACT

There are no personnel or other costs to OPD associated with membership in the FBI JTTF. OPD will designate one or more officers already employed through OPD's operating budget. OPD is responsible for providing the salary, benefits and overtime payments for its assigned personnel.

~~Asset forfeitures attributable to the JTTF investigations may be distributed among participating JTTF agencies at the discretion of the FBI. Any reimbursements for overtime expenses made by the FBI to OPD shall be deposited into Fund 2000, Org 102310, Account 46120, Project 4001413, and Program PS03.~~

SUSTAINABLE OPPORTUNITIES

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

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

Social Equity: OPD's collaboration with the DEA helps OPD to target not only illegal drug and narcotics trafficking but violent crime connected to illegal drug trafficking and associated networks. All residents and visitors benefit from these efforts to investigate and prosecute individuals involved in this illegal and dangerous activity.

ACTION REQUESTED OF THE PUBLIC SAFETY COMMITTEE

Staff Recommends That The City Council Approve A Resolution Authorizing The City Administrator Or Designee To Enter Into A Memorandum Of Understanding (MOU) With The United States Department Of Justice, Federal Bureau Of Investigation (FBI) To Authorize The Oakland Police Department (OPD) To Participate In The Bay Area FBI Joint Terrorism Task Force (JTTF) To Fight Terrorism And Terrorism Planning Activity Which May Occur In, Or Relate To, The City Of Oakland, From January 1, 2018 Through December 31, 2019.

Commented [BS11]: Date range?

For questions regarding this report, please contact Sergeant Omar Daza-Quiroz, Intelligence Unit, Office of the Chief of Police, at (510) 238-3753.

Respectfully submitted,

Anne E. Kirkpatrick
Chief of Police
Oakland Police Department

Reviewed by:
Omar Daza-Quiroz, Sergeant
Office of the Chief of Police, Intelligence Unit

Prepared by:
Bruce Stoffmacher, Legislation Manager
Training Division, Research and Planning

Attachments (2)

A: FBI-OPD JTTF MOU

B: 2018 OPD – FBI 2018 Joint Terrorism Taskforce (JTTF) Annual Report

Item: _____
Public Safety Committee
December 3, 2019

FOR OFFICIAL USE ONLY

JOINT TERRORISM TASK FORCE

STANDARD MEMORANDUM OF UNDERSTANDING

BETWEEN

THE FEDERAL BUREAU OF INVESTIGATION

AND

THE OAKLAND POLICE DEPARTMENT

PREAMBLE

The policy of the United States with regard to domestic and international terrorism is to deter, defeat and respond vigorously to all terrorist attacks on our territory and against our citizens, or facilities. Within the United States, the Department of Justice, acting through the Federal Bureau of Investigation (FBI), is the lead agency domestically for the counterterrorism effort.

In order to ensure that there is a robust capability to deter, defeat and respond vigorously to terrorism in the U.S. interest, the FBI recognizes the need for all federal, state, local and tribal agencies that are involved in fighting terrorism to coordinate and share information and resources. To that end, the FBI believes that the creation of the FBI National Joint Terrorism Task Force (NJTTF) and Joint Terrorism Task Forces (JTTFs) embodies the objectives of the U.S. policy on counterterrorism as set forth in Presidential Directives.

FBI policy for the NJTTF and JTTFs is to provide a vehicle to facilitate sharing FBI information with the intelligence and law enforcement communities to protect the United States against threats to our national security, including international terrorism, and thereby improve the effectiveness of law enforcement, consistent with the protection of classified or otherwise sensitive intelligence and law enforcement information, including sources and methods. All NJTTF and JTTF operational and investigative activity, including the collection, retention and dissemination of personal information, will be conducted in a manner that protects and preserves the constitutional rights and civil liberties of all persons in the United States.

This Memorandum of Understanding (MOU) shall serve to establish the parameters for the detail of employees (Detailees or members) from the Participating Agency to the FBI-led JTTF's in selected locations around the United States.

I. PURPOSE

- A. The purpose of this MOU is to outline the mission of the JTTF, and to formalize the relationship between the FBI and the Participating Agency; in order to maximize cooperation and to create a cohesive unit cable of addressing the most complex terrorism investigations.
- B. The MOU specifically represents the agreement between the FBI and the Participating Agency, which will govern the process by which employees of the Participating Agency are detailed to work with the FBI as part of the JTTF.
- C. The MOU is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law or otherwise by any third party against the parties, their parent agencies, the U.S., or the officers employees, agents or other associated personnel thereof.

II. MISSION

The mission of the JTTF is to leverage the collective resources of the member agencies for the prevention, preemption, deterrence and investigation of terrorist acts that affect United States interests and to disrupt and prevent terrorist acts and apprehend individuals who may commit or plain to commit such acts. To further this mission, the JTTF shall serve as a means to facilitate information sharing amount JTTF members.

III. AUTHORITY

Pursuant to 28U.S.C. §533, 28 C.F.R. §0.85. Executive Order 12333, Presidential Decision Directive (PDD) 39, PDD 62 and pending approval of National Security Presidential Decision Directive (NSPD) 46 and Homeland Security Presidential Directive (HSPD) 15, the FBI is authorized to coordinate an intelligence, investigative and operational response to terrorism. By virtue of that same authority, the FBI formed the JTTFs composed of other federal, state, local and tribal law enforcement agencies acting in support of the above listed statutory and regulatory provisions.

[Participating agencies may include applicable authority for entering into this MOU.]

FOR OFFICIAL USE ONLY

IV. CONTROLLING DOCUMENTS

- A. Since the JTTF operates under the authority of the Attorney General of the United States, all JTTF participants must adhere to applicable Attorney General's Guidelines and directives, to include the following; as amended or supplemented;
1. Attorney General's Guidelines on General Crimes, Racketeering enterprise and Terrorism Enterprise Investigations;
 2. Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection;
 3. Attorney General's Guidelines on Federal Bureau of Investigation Undercover Operations;
 4. Attorney General's Guidelines Regarding Prompt Handling of Reports of Possible Criminal Activity Involving Foreign Intelligence Sources;
 5. Attorney General's Memorandum dated march 6, 2002, titled "Intelligence Sharing Procedures for Foreign Intelligence and Foreign Counterintelligence Investigations Conducted by the FBI;
 6. Attorney General's Guidelines Regarding the Use of Confidential Informants;
 7. Attorney General's Guidelines on the Development and Operation of FBI Criminal Formants and Cooperative Witnesses in Extraterritorial Jurisdictions;
 8. Attorney General's Guidelines Regarding Disclosure to the Director of Central Intelligence and Homeland Security Officials of Foreign Intelligence Acquired in the Court of a Criminal Investigation; and
 9. Memorandum of the Deputy attorney General and the FBI Director re: Field Guidance on Intelligence Sharing Procedures for [Foreign Intelligence] and [Foreign Counterintelligence] Investigations (December 24, 2002).

B. All guidance on investigative matters handled by the JTTF will be issued by the Attorney General and the FBI. The FBI will provide copies of the above-listed guidelines and any other applicable policies for referenced and review to all JTTF members. Notwithstanding the above, this MOU does not alter or abrogate existing directives or policies regarding the conduct of investigations or the use of special investigative techniques or controlled informants. The FBI agrees to conduct periodic briefings of the member agencies of the JTTF subsequent to execution of this agreement.

V. STRUCTURE AND MANAGEMENT OF THE TASK FORCE

A. MEMBERS

1. Each JTTF shall consist of a combined body of sworn and non-sworn personnel from the FBI and each Participating Agency. This MOU shall apply to Participating Agencies that join the JTTF subsequent to execution of this agreement.

B. PROGRAM MANAGEMENT, DIRECTION AND SUPERVISION

1. In order to comply with Presidential Directives, the policy and program management of the JTTFs is the responsibility of FBI Headquarters (FBIHQ). The overall commander of each individual JTTF will be the Special Agent in Charge (SAC) or Assistant Director in Charge (ADIC), if assigned, of the FBI's local Field Division. The operational chain of command beginning at the highest level, in each FBI Field Division will be as follows" ADIC if assigned, SAC, Assistant Special Agent in Charge (ASAC), and Supervisory Special Agent [JTTF Supervisor].
2. Each FBI ADIC/SAC, through his or her chain-of-command, is responsible for administrative and operational matters directly associated with the Division's JTTF(s). Operational activities will be supervised by FBI JTTF Supervisors. Staffing issues are the responsibility of the FBI chain of command.
3. All investigations opened and conducted by the JTTF must be conducted in conformance with FBI policy, to include the above stated Controlling Documents. Each FBI ADIC/SAC, through his or her chain-of-command, will ensure that all investigations are properly documented on FBI form in accordance with FBI rules and regulations. Any operational problems will be resolved at the field office level. Any problems not resolved at the field office level will be submitted to each agency's headquarters for resolution.

4. Each Participating Agency representative will report to his or her respective agency for personnel administrative matters. Each Participating Agency shall be responsible for the pay, overtime, leave, performance appraisals, and other personnel matters relating to its employees detailed to JTTFs. As discussed later herein a Paragraph XI, the FBI and Participating Agency may provide for overtime reimbursement by the FBI by separate written agreement.
5. Each JTTF member will be subject to the personnel rules, regulations, laws and policies applicable to employees of his or her respective agency and also will adhere to the FBI's ethical standards and will be subject to the Supplemental Standards of Ethical Conduct for employees of the Department of justice. Where there is a conflict between the standards or requirements of the greatest organizational protection of benefit will apply, unless the organizations jointly resolve the conflict otherwise.
6. JTTF members are subject to removal from the JTTF by the FBI for violation of any provision of this MOU, the FBI's ethical standards, the Supplemental Standards of Ethical Conduct for employees of the Department of Justice, or other applicable agreements, rules and regulations.
7. The FBI maintains oversight and review responsibility of the JTTFs. In the event of any FBI inquiry into JTTF activities by an investigative or administrative body, including but not limited to, the FBI's Office of Professional Responsibility or the FBI's Inspection Division, each Participating Agency representative to the JTTF, may be subject to interview by the FBI.

C. PHYSICAL LOCATION AND SUPPORT

1. The FBI will provide office space for all JTTF members and support staff. In addition, the FBI will provide all necessary secretarial, clerical, automation and technical support for the JTTF in accordance with FBI guidelines and procedures. The FBI will provide all furniture and office equipment. Participating agencies may bring office equipment furniture into FBI space with the approval of the FBI JTTF Supervisor and in compliance with FBI regulations.

2. The introduction of office equipment and furniture into FBI space by participating agencies is discouraged, as any such material is subject to examination for technical compromise, which may result in its being damaged or destroyed

VI. SECURITY PROGRAM

A. CLEARANCES

1. State, local and tribal members of the JTTFs, as well as appropriate supervisory personnel responsible for these individuals, must apply for and receive a Top Secret/Sensitive Compartmental Information (TS/SCI) Security Clearance granted by the FBI. JTTF members from other federal agencies must obtain a Top Secret/SCI clearance from their agency and have this information passed to the FBI. No one will have access to sensitive or classified documents or material or FBI space without a valid security clearance and the necessary "need-to-know." Pursuant to the provision of Section 1.2 of the Executive Order 12968, Detailees are required to have signed a non-disclosure agreement approved by the FBI's Security Division. Pursuant to federal law, JTTF members are strictly forbidden from disclosing any classified information to individuals who do not possess the appropriate security clearance and the need to know.

2. All JTTF management personnel must ensure that each participating JTTF officer or agent undertakes all necessary steps to obtain a TS/SCI clearance. Conversion of FBI counterterrorism and JTTF spaces to Sensitive Compartmented Information Facilities (SCIFs) is underway. This will require that all JTTF task force officers enhance their clearances to TS/SCI (SI, TK, Gamma, HCS-P).

3. Federal agency task force officers should contact their Security Officers and request and obtain the following SCI Clearances; SI, TK, Gamma and HCS-P. If the parent agency refuses or is unable to provide the appropriate clearances, the FBI will request the task force officer's security file. If provided, the FBI will adjudicate the SCI clearances. This action may not involve a prohibitively long process and should be avoided.

4. Each Participating Agency fully understands that its personnel detailed to the JTTF are not permitted to discuss official JTTF business with supervisors who are not members of the JTTF unless the supervisor possesses the appropriate security

clearance and the dissemination or discussion is specifically approved the FBI JTTF Supervisor. Participating Agency heads will be briefed regarding JTTF matters by the SAC or ADIC, as appropriate through established JTTF executive Board meeting.

5. In accordance with the Director of Central Intelligence Directive (DCID) 6/4, entitled Personnel Security Standards and Procedures Governing Eligibility for Access to Sensitive Compartmented Information (SCI), the FBI will implement protocols to ensure Special Agent (SA) and Task Force Officers (TFO) assigned to Joint Terrorism task Forces (JTTF) in the field and the National Joint Terrorism Task Force (NJTTF) at FBI Headquarters – Liberty Crossing 1, are in compliance with stated directive. In order to comply with DCID 6/4, all JTTF personnel, including FBI and non FBI JTTF members and contractors who perform functions requiring access to FBI classified data networks and space, will be given counter-intelligence focused on polygraphs. The FBI will recognize polygraph examination meets the PSPP requirements.

6. All JTTF members must agree to submit to counter-intelligence focused polygraphs as part of the process for obtaining and retaining a Top Secret Security Clearance.

B. RESTRICTIONS ON ELECTRONIC EQUIPMENT

Personally owned Portable Electronic Devices (PEDs) including, but not limited to, personal digital assistance, Blackberry devices, cellular telephones and two-way pagers are prohibited in FBI space unless properly approved. No personally owned electronic devices are permitted to operate within SCIF's as outlined in DCI Directive 6/9 and existing Bureau policy. All other non-FBI owned information technology and systems (such as computers, printers, fax machines, copiers, PEDs, cameras and medical including diskettes, CDs, tapes) require FBI approval prior to introduction, operation, connection or removal from FBI spaces to include SCIFs' Additionally, if approved by the FBI Security Officer, these systems must operate in compliance with the FBI's policies, guidelines and procedures.

VII. DEPUTATION

Non-federal members of the JTTF who are subject to a background inquiry and are sworn law enforcement officers will be federally deputized while detailed to the JTTF. The FBI will secure the required authorization for the deputation. Deputation of these individuals will ensure that they are able to assist fully in investigations in compliance with applicable federal statutes. On occasion, investigations may be conducted outside

of the JTTF's assigned territory. Deputation will allow non-federal members of the JTTF to exercise federal law enforcement authority throughout the United States.

Under the terms of this MOU, all Participating Agencies agree that non-sworn detailed to the JTTF will not: (1) participate in law enforcement activities, (2) carry a weapon or (3) participate in the execution of search/arrest warrants.

VII. STAFFING COMMITMENT

A. In view of the need for security clearances and continuity of investigations, all personnel detailed to the JTTF should be expected to be detailed for the period of at least two (2) years. This MOU imposes no maximum limit as to the time that any individual may remain a member of the JTTF. All non-FBI members of the JTTF must adhere to the same rules and regulations as FBI employees with regard to conduct and activities while in FBI space, while operating FBI vehicles, and while conducting JTTF business. All Task Force members detailed from other federal agencies are responsible for maintaining an appropriate case load, as directed by JTTF management.

B. All investigators detailed to the JTTF will be designed either full-time or part-time. The operational needs of the JTTF require that any assignments to special details, or duties outside of the JTTF to full time JTTF members be coordinated with the FBI JTTF Supervisor. Though each JTTF member will report to his or her respective Participating Agency for personnel matters, he or she will coordinate leave with the JTTF's FBI JTTF Supervisor.

C. During periods of heightened threats and emergencies, the JTTFs may be expected to operate 24 hours a day, seven days per week, for extended periods of time. To function properly, the JTTF depends upon the unique contributions of each Participating Agency. Accordingly, during these periods, each Participating Agency member will be expected to be available to support JTTF activities

IX. RECORDS, REPORTS AND INFORMATION SHARING

A. All JTTF materials and investigative records, including any Memorandum of Understanding, originate with, belong to, and will be maintained by the FBI. All investigative reports will be prepared by JTTF personnel solely by the FBI and may not be removed from FBI space with the approval of the JTTF Supervisor. Dissemination, access or other use of JTTF records will be in accordance with Federal law, Executive Orders, and Department of Justice and FBI regulations and policy, including the dissemination and information sharing provisions of the FBI Intelligence Policy Manual. As FBI records, they may be disclosed only with FBI permission and only in conformance with the provisions of federal laws and regulations, including the Freedom of Information Act, 5 U.S.C. Section 552, and the Privacy Action of 1974, 5 U.S.C. Section 552a, as well as applicable civil and

criminal discovery privileges. This policy includes any disclosure of FBI information, including JTTF materials and investigative records, to employees and officials of a Participating Agency who are not members of a JTTF which must be approved by the JTTF supervisor. All electronic records and information, including, but not limited to, systems, databases and media, are also regulated by FBI policy. JTTF members may request approval to disseminate FBI information from the JTTF Supervisor.

B. Each Participating Agency agrees to have its Detailees to the JTTF execute an FD-868, or a similar form approved by the FBI. This action obligates the Detailee, who is accepting a position of special trust in being granted access to classified and otherwise sensitive information as part of the JTTF, to be bound by prepublication review to protect against the unauthorized disclosure of such information,

C. The participation of other federal, state, local and tribal partners on the JTTF is critical to the long term success of the endeavor. Articulating the level of effort for these partnership is a key measure of the JTTF's performance. Accordingly, all task force members will be required to record their workload in the Time Utilization Recordkeeping (TURK) system used by the FBI.

X. COORDINATION

A. The Participating Agency agrees to not knowingly act unilaterally on any matter affecting the JTTF without first coordinating with the FBI. The parties agree that matters designated to be handled by the JTTF shall not knowingly be subject to non-JTTF or non-FBI intelligence, law enforcement and operation actions will be coordinated and cooperatively carried out within the JTTFs.

B. JTTF criminal investigative procedures will conform to the requirements for federal prosecution. It is expected that the appropriate United States Attorney in consultation with the FBI and affected JTTF partners, will determine on a case-by-case basis whether the prosecution of cases will be at the federal or state level, based upon which would better advance the interests of justice.

XI. FUNDING

This MOU is not an obligation or commitment of funds, not a basis for transfer of funds. Even where one party has agreed (or later does agree) to assume a particular financial responsibility, written agreement must be obtained before incurring an expense expected to be assumed by another party. All obligations of an expenditures by the parties are subject to their respective budgetary and fiscal processes and availability of funds pursuant to all laws, regulations and policies applicable thereto. The parties acknowledge that there is no intimation, promise or guarantee that funds will be available in future years. The FBI and

the Participating Agency may enter into a separate agreement to reimburse the Participating Agency' for approved overtime expenses.

XII. TRAVEL

All JTTF-related travel of non-FBI personnel requires the approval of the appropriate JTTF Supervisor and Participating Agency authorization prior to travel. In order to avoid delay in operation travel, the Participating Agency will provide general travel authority to all of its participating employees for the duration of the employee's membership in the JTTFs. For domestic travel, each agency member will be responsible for appropriate notifications within his or her own agency, as well as standard FBI travel approvals and notification. The FBI will obtain FBIHQ authorization and country clearances for all JTTF members who are required to travel outside the United States. As noted above, the appropriate security clearance must be obtained prior to any international travel. The FBI will pay costs for travel of all members of the JTTFs to conduct investigations outside of the JTTF's assigned territory.

XIII. VEHICLES AND EQUIPMENT

- A. In furtherance of this MOU, employees of the Participating Agency may be permitted to drive FBI owned or leased vehicles for surveillance, case management and investigation in connection with any JTTF investigation. FBI vehicles must only be used for official JTTF business and only in accordance with applicable FBI rules and regulations.
- B. *[non-Federal entities only]* Any civil liability arising from the use of any FBI owned or leased vehicle by a Participating Agency task force member while engaged in any conduct other than his or her official duties and assignments under this MOU shall be the responsibility of the Participating Agency. The Participating Agency will indemnify and hold harmless the FBI and the United State for any claim for property damage or personal injury arising from any use of any FBI owned or leased vehicle by a Participating Agency JTTF member which is outside of the scope of his or her official duties and assignments under this MOU.
- C. For official inventory purpose, all JTTF equipment including badges, credentials and other form of JTTF identification subject to FBI property inventory requirements will be produced by each JTTF member upon request. At the completion of the member's assignment on the JTTF, or upon withdrawal or termination of the Participating Agency from the JTTF, all equipment will be returned to the supplying agency.

XIV. FORFEITURE

The FBI shall be responsible for the processing of assets seized for federal forfeiture in conjunction with JTTF operations, as provided by these rules and regulations. Asset

forfeitures will be conducted in accordance with federal law and the rules and regulations set forth by the U.S. Department of Justice and the FBI. Forfeitures attributable to JTTF investigations may be distributed among the Participating Agency in JTTF-related operations at the discretion of the FBI.

XV. HUMAN SOURCES

A. All human sources developed through the JTTF will be handled in accordance with the Attorney General and the FBI's Guidelines, policies and procedures.

B. All human sources developed through the JTTF investigation shall be operated with all appropriate FBI suitability paperwork completed prior to use. All source debriefings or written products of information obtained from any human source will use FBI document format and handling procedures.

C. The FBI, as permitted by federal law, agrees to pay reasonable and necessary human source expenses incurred by the JTTF. All expenses must be approved by the FBI before they are incurred. No payments may be made to JTTF human sources without prior FBI approval.

XVI. MEDICAL

A. All Participating Agencies will ensure that detailed JTTF members are medically qualified according to their agencies' standards to perform law enforcement duties, functions and responsibilities.

B. To ensure protection for purposes of the Federal Employees' Compensation Act (FECA), JTTF members should be detailed to the FBI consistent with the provisions of the Intergovernmental Personnel Act (IPA), 5 U.S.C. § 337(d). This Act stipulates that "[a] State of local government employee who is given an appointment in a Federal agency for the period of the assignment or who is on detail to a Federal agency and who suffers disability or dies as a result of a personal injury sustained while in the performance of his duty during the assignment shall be treated . . . as though he were an employee as defined by section 8101 of this title who has sustained the injury in the performance of duty." Other provisions of federal law may extend FECA benefits in more limited circumstances. The Department of Labor's Office of Workers' Compensation Program is charged with making FECA coverage determinations and is available to provide guidance concerning specific circumstances.

XVII. TRAINING

All JTTF members are required to attend FBI legal training in compliance with FBI regulations and any other training deemed necessary by the FBI chain of command. The FBI is responsible for the costs of such training. The Participating Agency will bear

the costs of any training required of its own employees detailed to the JTTF.

XVIII. DEADLY FORCE AND SHOOTING INCIDENT POLICIES

Members of the JTTF will follow their own agency's policy concerning use of deadly force.

XIX. DEPARTMENT OF DEFENSE COMPONENTS

The Posse Comitatus Act, 18 U.S.C. § 1385, prohibits the Army and Air Force (Department of Defense regulations now restrict the activities of all branches or components of the Armed Services under this Act) from being used as a posse comitatus or otherwise to execute the laws entrusted to civilian law enforcement authorities. The restrictions of the Act do not apply to civilian employees of the Department of Defense who are not acting under the direct command and control of a military officer. Other statutory provisions specifically authorize certain indirect and direct assistance and participation by the military in specified law enforcement functions and activities. All Department of Defense components (except strictly civilian components not acting under direct command and control of a military officer) who enter into this agreement, shall comply with all Department of Defense regulations and statutory authorities (describing restrictions, authorizations and conditions in support of law enforcement) including but not limited to Department of Defense Directives 5525.5, and 3025.15, Chapter 18 of Title 10 of the United States Code dealing with military support for civilian law enforcement agencies and any other or subsequent rules, regulations and laws that any address this topic or that may amend, or modify any of the above provisions. This MOU shall not be construed to authorize any additional or greater authority (than already described) for Department of defense components to act in support of law enforcement activities.

XX. MEDIA

All media releases will be mutually agreed upon and jointly handled by the member Participating Agencies of the appropriate JTTF. Press releases will conform to DOJ Guidelines regarding press releases. No press release will be issued without prior FBI approval.

XXI. LIABILITY

The Participating Agency acknowledges that financial and civil liability, if any and in accordance with applicable law, for the acts and omissions of each employee detailed to the JTTF remains vested with his or her employing agency. However, the Department of Justice (DOJ) may, in its discretion determine on a case-by-case basis that an individual should be afforded legal representation, legal defense or indemnification of a civil judgment, pursuant to federal law and DOJ policy and regulations.

A. COMMON LAW TORT CLAIMS

1. Congress has provided that the exclusive remedy for the negligent or wrongful act or omission of any employee of the U.S Government, acting within the scope of his or her employment, shall be an action against the United States under FTCA, 28 U.S.C. § 1346(b) and §§ 2671 – 2680.

2. Notwithstanding the provisions contained in Article XIII of this MOU, for the limited purpose of defending civil claims arising out of JTTF activity, a state, local or tribal law enforcement officer who has been federally deputized and who is acting within the course and scope of his or her official duties and assignments pursuant to the MOU may be considered an “employee” of the U.S. government, as defined at 28 U.S.C. § 2671. See 5 U.S.C. § 3374(c)(2).

3. Under the Federal employee Liability reform and Tort Compensation Act of 1998 (commonly known as the Westfall Act), 28 U.S.C. § 2679(b)(1), if an employee of the United States is named as a defendant in a civil action, the Attorney General or his or her designee may certify that the defendant acted within the scope of his or her employment at the time of the incident giving rise to the suit. 28 U.S.C. § 2679(d)(2). The United States can then be substituted for the employee as the sole defendant with respect to any tort claims alleged in the action. 28 U.S.C. § 2679(d)(2). If the United States is substituted as defendant, the individual employee is thereby protected from suit on any tort claim arising out of the incident.

4. If the Attorney General declines to certify that an employee was acting within the scope of employment, “the employee may at any time before trial petition the court to find and certify that the employee was acting within the scope of his office or employment.” 28 U.S.C. § 269(d)(3).

5. Liability for any negligent or willful acts of JTTF members undertaken outside the terms of this MOU will be the sole responsibility of the respective employee and agency involved.

B. CONSTITUTIONAL CLAIMS

1. Liability for violations of federal constitutional law may rest with the individual federal agent or officer pursuant to Bivens v. Six Unknown Names Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971) or pursuant to 42 U.S.C. § 1983 for state officers.

2. Federal, state, local and tribal officers enjoy qualified immunity from suit for constitutional torts, “insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” Harlow v. Fitzgerald 457 U.S. 800 (9182).
3. If a Participating Agency JTTF officer is named as a defendant in his or her individual capacity in a civil action alleging constitutional damages as a result of conduct taken within the course of the JTTF, the officer may request representation by DOJ. 28 C.F.R. §§ 50.15, 50.16.
4. An employee may be provided representation “when the actions for which representation is requested reasonably appears to have performed within the scope of the employee’s employment and the Attorney General, or his or her designee, determines that providing representation would otherwise be in the interest of the United States.” 28 C.F.R. §50.15(a).
5. A JTTF member’s written request for representation should be directed to the Attorney General and provided to the Chief Division Counsel (CDC) of the FBI division coordinating the JTTF. The CDC will forward the representation request to the FBI’s Office of the General Counsel (OGC) together with a letterhead memorandum concerning the factual basis of the lawsuit. FBI’s OGC will then forward the request to the Civil Division of DOJ together with an agency recommendation concerning scope of employment and DOJ representation. 28 C.F.R. §50.15(a)(3).
6. If a JTTF member is found to be liable for a constitutional tort, he or she may request indemnification from DOJ to satisfy and adverse judgment rendered against the employee in his or her individual capacity. 28 C.F.R. § 50.15(c)(4). The criteria for payment are substantially similar to those used to determine whether a federal employee is entitled to DOJ representation under 28 C.F.R. §(a).
7. Determination concerning legal representation and indemnification by the United States are discretionary and are made by DOJ on a case by case basis. The FBI cannot guarantee that the United States will provide legal representation, legal defense, or indemnification to any federal or state employee detailed to the JTTF, and nothing in this Article shall be deemed to create any legal right on the part of any JTTF personnel.

C. EXPRESS RESERVATIONS

1. Nothing in this Article shall be deemed to create an employment relationship between the FBI or the United States and any Participating Agency JTTF member other than for exclusive purposes of the FTCA as outlined herein.

2. The participating agencies do not waive any available defenses and/or limitations on liability. No Participating Agency shall be considered to be an agent of any other Participating Agency.

XXII. DURATION

A. The term of the MOU shall be an indefinite period. The MOU may be terminated at will by any party, provided written notice is provided to the other parties of not less than sixty (60) days. Upon termination of the MOU, all equipment will be returned to the supplying agency(ies). It is understood that the termination of this agreement by any one of the Participating Agencies will have no effect on the agreement between the FBI and all other participating agencies.

B. Notwithstanding this provision, the provisions of Paragraph IX, entitled RECORDS, REPORTS AND INFORMATION SHARING, and Paragraph XXI, entitled LIABILITY, will continue until all potential liabilities have lapsed. Similarly, the inherent disclaimer limitation contained in the EXPRESS RESERVATION provision will survive any termination.

XXIII. AMENDMENTS

This agreement in no manner affects any existing MOUs or agreements with the FBI or any other agency. This agreement may be amended only by mutual written consent of the parties. The modification shall have no force and effect unless such modifications are reduced to writing and signed by an authorized representative of the FBI and the Participating Agency.



MEMORANDUM

TO: Privacy Advisory Commission

FROM: Anne E. Kirkpatrick,
Chief of Police

SUBJECT: OPD – FBI 2018 Joint Terrorism
Taskforce (JTTF) Annual Report

DATE: June 28, 2019

EXECUTIVE SUMMARY

Ordinance No. 13457 C.M.S. approved by the City Council on October 3, 2017, adds Chapter 9.72.010 to the City of Oakland Municipal Code (OMC) concerning “Law Enforcement Surveillance Operations.” OMC 9.72.010 requires that, among other requirements, that by January 31 of each year, the Chief of Police shall provide to the Privacy Advisory Commission (PAC) and City Council, a public report with appropriate public information on the Police Department’s work with the Federal Bureau of Investigation (FBI) Joint Terrorism Task Force (JTTF) or other federal law enforcement agency task force in the prior calendar year. The Oakland Police Department (OPD) has already introduced a draft 2018 FBI JTTF Taskforce annual report to the PAC at its February meeting; this report provides updated information for 2018.

STAFFING, EQUIPMENT AND FUNDING

As of January 1, 2018, (1) one employee (sworn OPD officer) was assigned to the FBI JTTF. The officer was assigned to work a standard regular work week of (40) forty hours per week. This officer is assigned to OPD’s Intelligence Unit and has a joint duty of also participating and assisting with the FBI JTTF. The officer’s duties and reporting responsibilities depend upon whether there is any active counter-terrorism investigation as well as the current needs and priorities of the OPD Intelligence Unit.

The position is compensated as a regular OPD officer; the FBI does not compensate OPD for this position’s salary. The officer position works regular hours: 40 hours per week; 1,920 hours per year (approximately). Any overtime (OT) hours specific to taskforce operations are paid by the FBI - in 2018, the OPD JTTF did not work any OT hours related to JTTF duties.

In 2018, the JTTF Officer was on special loan from the Intelligence Unit and assigned to the Bureau of Services for all of 2018; this Officer only participated minimally in JTTF operations (approximately 1-2 times a month).

OTHER RESOURCES PROVIDED

The FBI provided a vehicle, covered all fuel expenditures and allowed access to the FBI JTTF office space and access to FBI data systems. OPD provides the mobile phone used by the Task Force (TF) officer. The officer is not provided with any FBI surveillance equipment.

CASES ASSIGNED TO THE OPD JTTF OFFICER

The JTTF Officer assists the FBI on counter-terrorism cases. In 2018, the OPD JTTF Officer was assigned on special loan to OPD's Bureau of Services (ongoing), and was not assigned to any JTTF Task Force cases as a lead investigator; the limited assistance was due to the OPD JTTF Officer being on special loan away from the JTTF for this year.

The JTTF Task Force Officer was assigned zero (0) cases as lead investigator in 2018. However, the JTTF Officer was assigned to assist on (1) one case, which gained national attention. This was an October 2018 pipe bomb investigation in which Bay Area politicians and members of the media received pipe bombs in the mail. OPD was concerned that local figures in Oakland were also targeted. The OPD JTTF Officer coordinated with the Task Force on investigations (the Task Force determined that no Oakland based officials were targeted, and this information was relayed to City officials)¹

A past-year example provides context to the nature of OPD's FBI JTTF Task Force. This example is provided as 2018 is the first year for OPD to provide annual reports to the PAC. In 2016 the Task Force investigated the case leading to the arrest of Amer Alhaggagi. The investigation revealed that Alhaggagi planned to: 1) set fires in the hills of Berkeley; 2) strategically place backpack bombs in various public areas around downtown Oakland; 3) sell cocaine laced with rat poison at bars and clubs in Oakland and Berkeley; and 4) detonate a car bomb at a gay nightclub in San Francisco. The FBI learned that in July of 2016, Alhaggagi had applied to the Oakland Police Department for a position as a police Officer. The Oakland JTTF Officer assisted the FBI in identifying Alhaggagi as the subject. Ultimately, the FBI was able to safely arrest him. Alhaggagi was sentenced to 15.5 years' imprisonment because of his conviction on the above-mentioned criminal activity.

"Duty to Warn" is identified as the "requirement to warn U.S. and non-U.S persons of impending threats of intentional killing, serious bodily injury, or kidnapping".² The JTTF Officer participated in zero (0) duty to warn cases.

There were zero (0) cases in 2018 where OPD declined to participate after FBI request. The FBI knows that OPD task force officers must comply with all Oakland laws and policies. Furthermore, the FBI commonly works with different jurisdictions and understands that taskforces must collaborate with the particular polices and laws of those jurisdictions.

UNDERCOVER OPERATIONS AND INTERVIEWS

In 2018, the OPD JTTF Officer did not conduct any undercover operations or interviews (JTTF interviews are normally conducted by FBI Agents) - zero (0) were conducted.

In 2018, the OPD JTTF Officer did not take part in any interviews (voluntary or involuntary) - zero (0) were conducted.

In 2018, the OPD JTTF officer did not conduct any assessments - zero (0) assessments conducted. Generally, unless someone were to come to the OPD to report a threat, all assessments begin with

¹ This case occurred before 2018 (the year of this annual report). OPD is including this past information because 2018 is the first reporting year; past information is provided for context as to relevant work related to the JTTF TF.

² FBI Duty to Warn – Intelligence Community Directive 191: <https://fas.org/irp/dni/icd/icd-191.pdf>

the FBI. Procedurally, FBI is notified and an assessment is opened and FBI will then forward the assessment to specific agents.

The OPD JTTF officer does not manage any informant relationships. In 2018, there were zero (0) informant's managed by OPD JTTF. Furthermore, the Intelligence Unit is the Informant Program Coordinator for all OPD informants. A file check was conducted on the JTTF Officer and there were zero (0) informant relationships related to the JTTF³.

There were no situations in 2018 where the officer conducted undercover operations or managed informants. There were no requests from outside agencies (e.g. Immigration and Customs Enforcement or "ICE") for records or data of OPD. There were no cases where the Task Force Officer was involved or aware of asking an individual's U.S. Person (residency) status. Furthermore, it is OPD Policy that OPD shall not inquire about a citizen's residency status

The FBI is aware of requirements mandated of OPD and its protocols for undercover operations and interviews; the Task Force Officer was always held responsible for following all sworn officer policies and standards.

TRAINING AND COMPLIANCE

The OPD JTTF Officer follows all OPD policies and receives several police trainings, including but not limited to: continual professional training, procedural justice, and annual firearms training. The Officer has also reviewed all provisions of the JTTF MOU. The JTTF Officer as well as supervisor are held responsible by OPD for compliance with all applicable Oakland and California laws.

The OPD JTTF Officer supervisor (Intel Sergeant) conducts mandatory bi-weekly meetings with the officer. Daily and weekly meetings are also held when critical incidents occur.

ACTUAL AND POTENTIAL VIOLATIONS OF LOCAL/STATE LAW

The JTTF OPD Officer had no violations of local, California, or Federal law. OPD Command consults with the Office of the City Attorney to ensure that all polices conform with State and Federal laws. Furthermore, a file check was conducted on the OPD JTTF Officer's complaint history in 2018 and there were zero (0) zero complaints against the officer.

SUSPICIOUS ACTIVITY REPORTING (SARs) and NORTHERN CALIFORNIA REGIONAL INTELLIGENCE CENTER (NCRIC)

OPD submits Suspicious Activity Reports (SARs) to the Northern California Regional Intelligence Center (NCRIC). These reports contain information regarding activity, such as, but not limited to: narcotics, cyber-attacks, sabotage, terrorism threats, officer safety, and human trafficking. NCRIC provides a secure online portal where police agencies can provide this information. NCRIC has shared with OPD that providing false or misleading information to NCRIC is a violation of Federal Law and may be subject to prosecution under Title 18 USC 1001. The JTTF is a recipient of SAR information. The OPD JTTF Officer submitted zero SARs to NCRIC during the 2018 calendar year.

³ Identities of any informant would never be released to the public as such information is may be dangerous for the life of the informant.

It is unknown how many SAR's OPD Officers received during 2018 as there is no current tracking system.

COMMAND STRUCTURE FOR OPD JTTF OFFICER

The OPD JTTF Officer works under the command structure of OPD; the OPD JTTF Officer reports directly to the OPD Intelligence Unit Supervisor (Sergeant). The Officer also coordinates with the FBI Supervisor, who is also serves as a Counterterrorism Assistant Agent.

Respectfully submitted,

Anne E. Kirkpatrick,
Chief of Police

Reviewed:
Bruce Stoffmacher, Acting Police Services Manager
OPD, Research and Planning Unit, Training Division

Prepared by:
Omar Daza-Quiroz, Sergeant of Police
OPD, Intelligence Unit