



## Privacy Advisory Commission

April 7, 2022 5:00 PM

Teleconference

### *Meeting Minutes*

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**Commission Members:** *District 1 Representative: Reem Suleiman, District 2 Representative: Chloe Brown, District 3 Representative: Brian Hofer, Chair, District 4 Representative: Lou Katz, District 5 Representative: Omar De La Cruz, District 6 Representative: Gina Tomlinson, District 7 Representative: Robert Oliver, Council At-Large Representative: Henry Gage III, Vice Chair* **Mayoral Representative:** *Jessica Leavitt*

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*Pursuant to California Government Code section 54953(e), Oakland Privacy Advisory Commission Board Members/Commissioners, as well as City staff, will participate via phone/video conference, and no physical teleconference locations are required.*

1. Call to Order, determination of quorum

*Members Present: Hofer, Suleiman, Oliver, Brown, Leavitt, De La Cruz, Tomlinson, Katz.*

2. Adopt a Renewal Resolution regarding AB 361 establishing certain findings justifying the ongoing need for virtual meetings

*The resolution was adopted unanimously.*

3. Review and approval of the draft March meeting minutes

*The minutes were adopted with 7 yeas and one abstention (Member Leavitt was not a voting member of the PAC in March)*

4. Open Forum/Public Comment

*There were 6 public speakers (those without a last name did not have one on display in the video conference):*

*Alex M. stated he is a District 6 resident and a victim of violent crime. He expressed his support for Item 11, and stated a need for speed enforcement cameras in East Oakland as well.*

*Jose Resuleo spoke about the disproportionately high crime rates in East Oakland and suggested that crime data should be presented to the PAC and factor into their decision-making process based on that data.*

*Assata Olugbala spoke about the PAC as having policies to protect immigrants but not African Americans. She also cited her discontent with issues at Lake Merritt.*

*Shamar noted that there are concerns about electronic surveillance but that OPD needs support and does not have the ability to enforce traffic laws aggressively without running afoul of the courts.*

*Matt Davies stated his support for practical solutions that are in-line with other cities like San Leandro and Berkeley (citing San Leandro's installation of surveillance cameras).*

*Sandra stated she is an Eastmont neighbor and feels there is no government presence in her community. Although her property value has gone up for 8 years, there are not enough services, no bank, and traffic and shootings are a real concern.*

#### 5. Privacy Commission Ordinance – annual election of chair/vice-chair positions

*Current Chairperson Hofer was nominated to continue in the role by Member Suleiman, seconded by Member Katz, and unanimously elected. Member Katz was nominated vice-chair and unanimously elected.*

#### 6. Federal Task Force Ordinance – OPD – Presentation of Annual Reports (ATF, USMS, DEA)

*Chair Hofer noted that OPD made the corrections discussed last month and asked if OPD had anything to add. Captain Holmgren said they did not. Chair Hofer asked about the section that shows the number of violations doesn't actually say zero, instead it includes a statement about what can be released as per the Public Records Act. Captain Holmgren explained that the language used was provided by the City Attorney but when asked, confirmed that the number of violations was zero. Chair Hofer suggested that the report be changed to reflect that number when it goes to City Council.*

*There were three public speakers:*

*Assata Olugbala protested that the City no longer participates in the Joint Terrorism Task Force (JTTF) but that domestic terrorism is a real issue, especially with White Supremacy groups on the rise.*

*Moto G Stylus noted that the former JTTF was involved in investigations of "Your Black Muslim Bakery" and shared surveillance with OPD and other federal agencies. He noted these were Black Oaklanders, not immigrants and therefore questioning the role of these task forces and their role in Oakland is important.*

*Jose Resuleo spoke about comments from a previous speaker about the protection of the undocumented. He noted that he is an indigenous person, his Mayan roots originating on this continent, and that*

*California was once part of Mexico. Therefore, the idea of protecting people extends to everyone—whether documented or not, born in the USA or not.*

*Member De La Cruz asked about the section on each report about surveillance technology. He asked if this section could elaborate more about the surveillance used. Chair Hofer noted that the annual reporting structure isn't the best and could use some changes. He asked if OPD could bring back some info on how the department used Cell bright for example. Captain Holmgren said he could do that and it was agreed the department could do so separately (not embedded in the annual report itself).*

*Joe DeVries noted that OPD submitted 6 reports for approval and Chair Hofer noted that because only 3 were listed on the agenda, only those three would get a vote tonight.*

*Chair Hofer moved approval of the reports with the amendment he suggested that the section on violations should state "zero" instead of the disclaimer language that is currently there.*

## 7. Sanctuary Contracting Ordinance – CPO – Presentation of Annual Report

*Joe DeVries noted that there was one instance of a company self-selecting itself out of a contract with the City since it could not comply with the ordinance which is good news the ordinance is working.*

*There were 5 public speakers on the item:*

*Assata Olugbala complained that this ordinance protects immigrants and asked what ordinance protects Black People.*

*Alex M. stated that the previous comments are divisive and xenophobic and that he supports the ordinance.*

*Shamar recently went through a competitive bidding process and feels most local contractors would not be involved with the types of projects that would cause them to be precluded from contracting with the City and therefore questioned the impact of these restrictions.*

*Jose Resuleo believes that if we intend to protect any group, we should protect all groups no matter where they are from. He would prefer not to hear xenophobic comments from commission members or people who call in to speak.*

*Sandra asked for clarification on the item and the reasoning behind it.*

*Joe DeVries explained the background of the ordinance in which the City of Oakland has historically taken a stand against certain policies by refusing to do business with contractors who profit from those policies: the City in the 1970's took a stand against nuclear arms proliferation by not contracting with businesses involved in nuclear arms production, in the 1980s took a similar stand against businesses doing business in*

*South Africa with the Apartheid Regime, and the Sanctuary City Ordinance is modeled in the same fashion to prevent City tax payer dollars from supporting businesses helping ICE to target immigrants.*

*Chair Hofer added that Oakland was the first in the country to ban predictive analytics, the third to ban facial recognition technology, and that these technologies have been used mostly against Black people so the reasoning that these efforts only protect against abuses of immigrants is inaccurate.*

*The Commission voted unanimously to approve the report.*

8. AB 2336 (Friedman) Speed Safety System Pilot Program – Safer Streets LA/National Motorists Association – Informational report only

*Chair Hofer opened the item summarizing the bill and that Oakland is one of the cities that would pilot this technology. He introduced Jay Beeber from Safe Streets LA who opposes this measure but explained that tonight is not a debate, it's likely the PAC will officially take up a Use Policy at a later meeting.*

*Joe DeVries noted for the record that this presentation opposing the measure is being made without staff being able to present on the benefits of the measure as had been requested and denied by the Chair.*

*Jay Beeber presented his organization's work against automated technology and noted several privacy groups oppose the bill but that his focus is more technical regarding speed limits. He described the process of speed management that is currently used to set speed limits on streets and the role of prior legislation. He noted that the "85<sup>th</sup> percentile rule" makes assumptions about speed limit setting that are based on the speed an average driver would travel at on a roadway. He argued that the changes allowed to that rule by AB 43 last year will allow jurisdictions to set speed traps where they lower the limit to a rate so low that it will be difficult for drivers to obey and this will allow for disproportionate enforcement. He also claimed that these types of cameras have issued millions of tickets to people who live in disadvantaged communities creating a disparate impact.*

*Member Katz noted that it is difficult to drive 25 on Moraga through Piedmont as an example of poor speed limit setting. Member Oliver raised the issue of street engineering and that the posted speed limit is determined through an engineer, not an arbitrary number. He noted that ongoing studies are supposed to reoccur to determine current conditions. He asked if the new legislation ends that or of the prior legislation did.*

*Nicole Ferrara from OakDOT explained AB43 which does allow for some reductions outside the "85<sup>th</sup> percentile" rule. It allows certain reductions such as in school zones, neighborhood commercial districts, and safety corridors where there have been high rates on injuries and death. She also mentioned "speed creep" that has happened as cars have been designed to be quieter and easier to drive at higher rates of speed. Because this pushes the average speed of drivers, it can require cities to raise speed limits. AB43 addresses this.*

*Member Oliver asked about the ticket revenue—doesn't it go to traffic safety? In regard to cameras, he sees the cameras as much more effective than an officer at catching speeders. He is curious about the data retention and Chair Hofer noted this will be further explored in a future meeting.*

*Member Leavitt observed that the issue of speed limit setting does not seem to be a privacy issue. Chair Hofer noted that the primary duty of the PAC is to look for civil liberty impacts and disparate impacts. Joe DeVries noted that another role for the PAC is to focus on efficacy—whether a surveillance technology's benefits outweigh the costs and that there is significant data showing these cameras reduce injuries far more than other technologies that the PAC has approved in the past. Member Brown concurred that the impact is what the PAC should be looking at. Chair Hofer agreed and noted the disparate impact is a key factor in that.*

*There were X public speakers:*

*Alex M lives in an impacted area with hazardous conditions and supports the use of speed cameras. He has seen massive accidents on the MacArthur and Bancroft corridors.*

*Matt Davies noted this is an independent commission but feels as an Oaklander, does not appreciate only one viewpoint being presented, he asked that the PAC allow for more education on all sides of this debate.*

*Gray Gardner lives in D2 and is a member of the Bike and Pedestrian Advisory Committee and supports the cameras. Even though he generally opposes more surveillance as a defense attorney this is an emergency situation. He believes the speaker from LA makes a specious argument suggesting engineering street changes will be enough.*

*Zenobia stated the speaker from LA does not know what he is talking about, he should come visit East Oakland and see what is happening. It's not hard to abide by the speed limit.*

*Jose Resuleo supports this pilot and wants to see the full view and the deep dive into the data. He stated that we are in a crisis in regard to public safety in East Oakland right now.*

*Carmine Red lives in D6 near Seminary and International and a member of his Neighborhood Council. He and his neighbors are very supportive of additional traffic measures, he sees a suite of solutions is needed to make his neighborhood safe.*

*JP Masser asked what the data is to indicate there is a crisis. He noted that in Chicago they installed cameras and they issued more cameras than people. He thinks people hate these cameras and that's why they are banned.*

*Hugh stated his support for the pilot, most victims are black and brown and the PAC needs to consider that fact in its analysis. He cited a few recent events where parents were killed by schools who were black and brown. There must be some form of enforcement.*

*Assata Olugbala noted she has been driving for 57 years and has no problem with looking at the speed sign and following that limitation. She believes the speeding in Oakland is outrageous, something must be done.*

*Dr. Katrina Keating stated that she has owned her house at 57<sup>th</sup> and Bancroft for years and right now it is a crisis—she witnessed multiple accidents, has had her car totaled in front of her house, and the speed of drivers exceeds 80 miles per hour often. Her father-in-law cannot even walk across the street.*

*Shamar thanked the group for the discussion and looks forward to next month. He recalls that when he was in school, they had drivers ed and they had to read the book 1984. Its best to get the education before investing in anything. Getting stopped by an officer may be more effective then getting a ticket in the mail. Kay Mraz loves in D7 since 2005 and stated that it is the wild west right now and if one does not live in the area they should not have a voice in her community. The OakDOT has done a lot to engineer the road but people are still driving extremely dangerously.*

*Armando Solis lives in D6 and is in support of the cameras. He has taken pictures of speeders and was almost run over by someone. He believes we need to do more to prevent crime.*

*Sudip Ray noted that they tried to change the street in his neighborhood and it took ten years. Having to wait ten years is unacceptable, we need enforcement now.*

*Moto G Stylus he stated he remembers Red Light cameras and he got ticketed but learned you don't have to pay those tickets—unlike when you receive a ticket from an officer that you have to sign. He believes its more important to focus on education of people.*

*Bonita Jacobs lived in D6 for over thirty years and has witnessed many accidents and one of her tenants has been permanently disabled by one of these accidents that was totally not her fault. She is in favor of these cameras.*

*CL has been a resident of Bancroft for ten years and it has become a death trap. Drivers will speed in the left turn lane with no regard to pedestrians, dogs, or other cars. Enforcement is the key—not cameras but cops on cycles.*

*Dana Morgan said she has been a resident of D6 for over thirty years and watching the changes in the roadway is hard to bear, we need cameras, the residents are victims of thugs who race through the streets and shouldn't have to fight for their safety. She suggested that people need to take a field trip to East Oakland.*

*Brian Lanphear stated he is a bit conflicted on this measure but the fact that only one side of the story is being shown tonight is perplexing. The issue of privacy was not addressed by Mr. Beeber, but cameras may slow down a few people but seen mobs of motorcyclists go around a police officer who had no ability to do anything. However to keep people reminded to not speed so police can focus on other issues is a good idea and he supports it.*

*Jay Beeber made some closing remarks as did Nicole Ferrara from OakDOT and Chairperson Hofer noted the item would come back next month.*

#### 9. Surveillance Equipment Ordinance – OPD – Crime Analysis Software

*The Chair tabled this item to next month.*

#### 10. Surveillance Equipment Ordinance – OPD – Biometric Crime Lab – Informational report only

Chair Hofer introduced this item and reference the scandal that occurred in San Francisco. He asked Dr. Sacks from the OPD Crime Lab to speak and he has created an ad hoc committee to look at the Use Policy

and to see what could be done to prevent something happening in Oakland like what happened in SF. He stated that a list of questions was submitted in advance to Dr. Sachs.

Dr. Sachs stated that its important for the group to know that victim profiles are not used in the manner they were used in San Francisco. The Use Policy didn't look at this in the past since the department never considered using a victim profile in this manner but know that it came up in SF, it is reasonable to re-examine the Oakland Use Policy.

Member Suleiman went through some questions: first, is it standard practice to store all of the victim data? Dr. Sachs explained it is not necessary in every case but is required when there are mixtures of DNA. It resides in a paper case file in the custody of the Lab---that is the only access. Only if there is a legal discovery request can those files be shared.

The data is not submitted through CODIS or other databases. It is collected and stored within the file only. A victim's profile is only CODIS allowable if the victim is a missing person. In a mixed profile case, only the suspect DNA is uploaded to CODIS.

Chair Hofer asked about seeing a Consent Form and how it is used, Dr. Sach's explained that the data is typically collected in a hospital. She did discuss a CalOES form that she learned recently exists and is researching that—it's not anything the Crime Lab is familiar with. DC Lindsey commented that in regard to these victims, the hospitals take the samples so OPD's role is only the collection and custody of evidence that the lab processes. Dr. Sachs noted that when the lab receives the evidence, it follows its adopted policy, it does not include verification of the hospital using a consent form.

The only scenario where samples are sent elsewhere is if the crime occurred in a different jurisdiction—OPD would share with the investigating jurisdiction.

The discussion turned to whether a Use Policy change could close the potential of the sort of occurrence from SF happening here or whether a new ordinance should be proposed—Dr. Sach's suggested some language that could be used in the Use Policy, including language that could be included in the Annual Report as well. She noted however that the practice doesn't happen in Oakland currently so simply adding this to the Use Policy (as opposed to a new ordinance) would be sufficient.

Member Oliver asked about the consent to search forms that are used in the field, wondering if it applies to these samples. Captain Holmgren stated that the consent to search form is not used to gather DNA from a victim—this would not be appropriate considering the circumstances. DC Lindsey noted there is a "SART" Form or Sexual Assault Report Form which basically allows OPD to obtain the evidence collected by hospitals and later used by the prosecution. Chair Hofer asked for that form to be forwarded to the ad hoc committee. The PAC will bring this back in the near future after the ad hoc discusses more details.

For the record, Joe DeVries noted his concern that the Chair ordered the agenda to place an info item before pending items that actually had Use Policies that needed to be reviewed which is the charge of the PAC under the ordinance. Chair Hofer responded that staff was conflicted on the traffic camera issue.

There were three public speakers:

Matt Davies agreed with that concern raised by the City Administrator, he noted that there were many members of the public that wanted to speak on the other item and it was disappointing not to be able to.

Moto G Stylus shared that he does not understand the role of the City Administrator in these meetings and wanted it to be explained by Joe DeVries. He believes that the role he plays is interfering in the process.

Assata Olugbala praised the PAC and Chair Hofer for its work. Even though she sometimes disagrees with the Chair's position, she appreciates that he is not a "rubber stamp" and serves in the best interest of the community.

#### 11. Surveillance Equipment Ordinance – EDW – East Oakland Security Camera Proposal

*The Chair tabled this item to next month.*

#### 12. Surveillance Equipment Ordinance – OPD – Annual Reports (Automated License Plate Readers, Cell-Site Simulator, Biometric Crime Lab, Forensic Logic/Coplink, GPS Tag Tracker, ShotSpotter, Live Stream Camera, Mobile Fingerprint ID, Unmanned Aerial Vehicles/Drones)

*The Chair tabled this item to next month.*

*The meeting adjourned at 7:39.*