



September 10, 2018

Palo Alto City Council
Mayor Liz Kniss
Vice Mayor Eric Filseth
Council Member Greg Tanaka
Council Member Cory Wolbach
Council Member Adrian Fine
Council Member Lydia Kou
Council Member Karen Holman
Council Member Tom DuBois
Palo Alto City Hall
250 Hamilton Avenue
Palo Alto, CA

Dear Palo Alto City Council,

We are a coalition of Bay Area civil rights and civil liberties organizations working to ensure that all local residents have a seat at the table when decisions about surveillance technology are at issue. We write to express support for the Surveillance Technology Ordinance, listed as item 8 on the consent calendar of the City Council’s September 10, 2018 agenda. At the same time, we strongly urge the Council commit to consider amendments that are necessary to ensure that the rights of all Palo Alto residents are protected. What follows is a short explanation of why this legislation is necessary and of our proposed amendments.

Surveillance technology can fundamentally change the relationship between governments and residents, operating in secret and collecting information without their knowledge or consent. The availability of federal grant funding for surveillance technology can short circuit a full consideration of the costs of surveillance technology, both to taxpayers and to civil rights. Without adequate public debate, the secretive acquisition of surveillance can lead to real world harms affecting community members.

The harms of secretive and unaccountable surveillance are disproportionately felt by residents of color, immigrants, and the poor. In San Francisco, police misused a license

plate reader and held a black woman at gun point after mistaking her for a car thief.¹ County officials in Sacramento are reportedly using this technology to monitor recipients of public benefits.² In Fresno, the police department used social media monitoring software whose marketing materials labeled protesters and Black Lives Matter activists as targets.³ And finally, Immigration and Customs Enforcement has obtained access to a database of location information about drivers from a company that works with local law enforcement agencies across the United States.⁴

A surveillance technology ordinance helps prevent the above harms by subjecting surveillance proposals to public scrutiny and ensuring that any acquired technologies are subject to strict limits. First, the Ordinance requires the public be provided with information describing the technology prior for all surveillance technology proposals, followed by a public vote by the City Council when a city agency seeks to obtain funds for surveillance technology, acquire surveillance technology, or share collected information. Second, for surveillance technologies a City Council decides to approve, the Ordinance requires the creation of a set of rules governing how a surveillance technology and the data it collects is used. Finally, the ordinance requires an annual review that enables the community to reject technologies that are not delivering on their promised public safety benefits.

While the proposed Ordinance generally accomplishes these goals, essential amendments must be made to ensure that all surveillance proposals are covered and that all residents can benefit from its protections. We ask the City Council to commit to considering such amendments. What follows is a brief summary of our proposed amendments:

- **The City Council should provide for an express mechanism to enforce the Ordinance.** The public – not just the City Council – should be able to monitor and take steps to ensure compliance with this Ordinance. Accordingly, the Ordinance should be enforceable by a private right of action, with attorney’s fees for the prevailing plaintiff. Other jurisdictions, including Davis, Berkeley, and Santa Clara County, provide such an express right conditioned on a “right to cure” provision that provides government officials the chance to come into compliance before being subject to suit. We think this is a fair and reasonable approach.
- **The City Council should confirm the breadth of its oversight role and its application to all acquisitions of surveillance technology with local taxpayer funds.** The City Council and the public must be able to vet proposed

¹ Kade Crockford, *San Francisco Woman Pulled Out of Car at Gunpoint Because of License Plate Reader Error*, ACLU Free Future Blog, May 13, 2014, <https://www.aclu.org/blog/privacy-technology/location-tracking/san-francisco-woman-pulled-out-car-gunpoint-because>.

² Kellen Browning, *Sacramento welfare investigators track drivers to find fraud. Privacy group raises red flags*, Sacramento Bee, Aug. 10, 2018, <https://www.sacbee.com/news/local/article216093470.html>.

³ Justin Jouvenal, *The new way police are surveillance you: calculating your threat ‘score’*, Wash. Post, Jan. 10, 2016, https://www.washingtonpost.com/local/public-safety/the-new-way-police-are-surveilling-you-calculating-your-threat-score/2016/01/10/e42bccac-8e15-11e5-baf4-bdf37355da0c_story.html?utm_term=.3514f883ceeb.

⁴ Russell Brandom, *Exclusive: ICE is about to start tracking license plates across the US*, The Verge, Jan. 26, 2018, <https://www.theverge.com/2018/1/26/16932350/ice-immigration-customs-license-plate-recognition-contract-vigilant-solutions>.

purchases of surveillance technology prior to the formation of a contract with a particular vendor. The Council should avoid any potential ambiguity and expressly state that its oversight obligation under the ordinance is triggered by any steps to acquire surveillance technology with local taxpayer funds, including steps that precede the writing of a contract.

- **Further clarifying amendments are necessary.** First, the Council should clarify that the definition of surveillance technology is not limited to technology that can collect personally identifiable information or is used to purposefully track people. The current definition is inappropriately narrow and invites burdensome inquiries into the purpose motivating the use of a technology in particular circumstances. Second, the Council should make clear in the text of the Ordinance that all city agencies are covered by the Ordinance, which we understand to be the intent. Finally, the Council should delete a vague provision allowing for City agencies to withhold information from an annual report based on a unilateral determination of security risk.

While we support the Ordinance and believe it to be a step forward, we urge the City Council to take up amendments that will ensure that this law is as strong as those passed in other Northern California communities, including Oakland, Davis, Berkeley, and Santa Clara County. Palo Alto residents deserve the same protections as these communities. Please let us know if you have any questions.

Sincerely,

ACLU of Northern California
Electronic Frontier Foundation
Media Alliance
Oakland Privacy
Peninsula Peace & Justice Center