



Privacy Advisory Commission
March 5, 2020 5:00 PM
Oakland City Hall
Hearing Room 1
1 Frank H. Ogawa Plaza, 1st Floor
Meeting Agenda

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, Mayoral Representative: Heather Patterson, Co-Chair*

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 February meeting minutes
4. Election of Vice Chair
5. Federal Task Force Transparency Ordinance – OPD – Presentation of Annual Reports for US Marshals, DEA, ATF – review and take possible action
6. Surveillance Equipment Ordinance – DOT – Chinatown Chamber of Commerce Camera Grant Program Impact Report and proposed Use Policy – review and take possible action
7. Surveillance Equipment Ordinance – OPD – Live Stream Cameras – review and take possible action
8. Surveillance Equipment Ordinance – OPD – UAS (Drone) Impact Report and proposed Use Policy – review and take possible action



Privacy Advisory Commission
February 6, 2020 5:00 PM
Oakland City Hall
Hearing Room 1
1 Frank H. Ogawa Plaza, 1st Floor
Meeting Minutes

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: vacant District 6 Representative: Gina Tomlinson, District 7 Representative: Robert Oliver, Council At-Large Representative: Henry Gage III, Mayoral Representative: Heather Patterson, Co-Chair*

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, Hofer, Katz, Tomlinson, Oliver, Gage, Patterson.

2. Open Forum/Public Comment

There were no Open Forum Speakers.

3. Review and approval of the draft January Special Meeting minutes

The minutes were approved unanimously.

4. Census Team – Presentation on 2020 Census – Informational report only

Richard J. Luna, Assistant to the City Administrator, gave a presentation regarding the 2020 Census. The 2020 Census will be conducted primarily online and made available in only 13 languages, which makes it a challenge in ensuring a complete count for Oakland. The City of Oakland and County of Alameda have partnered in outreach efforts to ensure everyone is counted during the 2020 Census. This includes efforts by non-profit service providers to go to homeless encampments and get as many unsheltered persons counted as well.

Member Katz asked about who produces and controls the Census forms and Richard explained it all comes from the Federal Census Bureau. Member Oliver asked about the controversial citizenship question and Richard

explained that not only is that question NOT on the census, it is illegal for the bureau to share any personal information from the census forms with any other federal department or agency.

5. Chair report – Informational report only

Joe DeVries provided an update on the Privacy Principals which are scheduled to go before the Public Safety Committee on 2/25. Also, Chairperson Hofer hopes to present the PAC Annual Report to the committee on the same evening. The Chair reviewed the calendar/workplan for the year with the PAC and the group looked at the list of outstanding surveillance equipment and reordered the priorities.

6. Surveillance Equipment Ordinance – OPD – Cell Site Simulator Annual Report (2019) – review and take possible action

The department did not seek use of the Alameda County Cell Site Simulator in the past year so the report was accepted. There was one public speaker on the item, Michael Katz-Lacabe who noted that in 2007 when there were no Use Policies in place, the department used the equipment dozens of times, and since the ordinance was adopted it has only done so three times. He believes this is an example of how oversight creates a level of restraint in the department that inherently protects people’s civil liberties.

7. Surveillance Equipment Ordinance – OPD UAS (Drone) Exigent Use Report – review and take possible action.

Sgt. Daza-Quiroz presented the Report and explained the two circumstances in which the UAVs were used. Chairperson Hofer raised concern that the second incident listed in the report did not meet the exigency standard and therefore was a violation of the ordinance. Member Patterson noted this is a situation where OPD was executing Arrest Warrants and therefore were planning for the event which by default removes an exigency. She noted that this may in fact be a legitimate use of the technology to protect public and Officer safety in the future but until a Use Policy is submitted that identifies these situations as authorized uses, this use violates the ordinance.

Member Tomlinson stated she did not have a problem with this use, recognizing the danger involved in the situation. However, Member Gage noted there are no “one-off” allowable uses and therefore the report should reflect the fact that this use was a violation. Chairperson Hofer pointed out that this is a good process to help identify holes/gaps in the current ordinance that could speak to needed amendments in the future but most importantly an overall Use Policy needs to be adopted.

Member Gage made a motion to change the executive summary of the report to acknowledge that the January 7th use was a violation and to include a memo from the CPO noting the characteristics of the circumstances that were not exigent (even though they were potentially dangerous). The motion passed unanimously.

8. Surveillance Equipment Ordinance – OPD – UAS (Drone) Impact Report and proposed Use Policy – review and take possible action

Sgt. Daza-Quiroz again presented the Impact Statement and Use Policy for review. Member Patterson noted several areas of each that still require clean-up. The link to the footnote on the statement is broken

so that information was not readily available. In Section 4 (page 6) the policy refers to a Chinese vendor that is very problematic and was banned by the Department of the Interior. Many members had questions about the potential uses of the technology, including for monitoring large crowds and/or protected activity. There were also questions about the use of this technology and how it is regulated by the FAA. The item was referred to an Ad Hoc committee and will be brought back in March.

9. Surveillance Equipment Ordinance – OPD – Mobile ID Impact Report and proposed Use Policy – review and take possible action

Sgt. Daza-Quiroz was available to answer questions about the policy and Bruce Stoffmacher noted that the new version included an auditing section since the department will be able to audit data. Chairperson Hofer praised the proposed purpose section of the documents as clear and concise in explaining the goal of the technology is to avoid taking people to jail.

Members Oliver and Patterson questioned the language around a 100% hit rate noting that no fingerprint technology has a 100% accuracy. Bruce explained that the technology assesses 11 ridgelines which is considered accurate and suggested he could change the language to “verified match.”

Member Katz asked if it only identifies people that have formerly been incarcerated in either Alameda and Contra Costa Counties (it does) and member Oliver noted that this is a very limited use for the technology.

Chairperson Hofer made some recommended edits including changing the word biometric to fingerprint and the item was approved unanimously to be forwarded to the City Council.



OAKLAND POLICE DEPARTMENT United States Marshals Service (USMS) 2019 Annual Report

OPD USMS Taskforce

The USMS is responsible for enforcing federal court orders and serves as the administrative custodian of all federal warrants until they are executed or dismissed. The USMS also manages warrant information, investigates fugitive matters and executes arrest warrants.

The U.S. Marshals have a long history of providing assistance and expertise to other law enforcement agencies in support of fugitive investigations. The USMS Task Forces does not conduct an independent investigation of possible criminal activity. The USMS only seeks to apprehend individuals with active arrest warrants issued for them related to crimes which have targeted local residents. These crimes include; murder, rape, child molestation, robberies, felony assaults and large scale fraud operations. USMS TFs work by leveraging local police intel as well as other data sources (e.g. database searches, open source social media inquiries, and interviews of associates/ and family members).

Staffing

1. **Number of full and part time OPD officers assigned to USMS Task Force:** One full-time officer.
2. **Number of hours worked as USMS Task Force Officer:** Regular 40 hours per week. However, the OPD officer sometimes is asked to assist with OPD operations. The work assignment of this officer is based on OPD needs and priorities and whether there are active investigations.
3. **Funding source for USMS Task Force Officer salary:** OPD Budget.

Other Resources Provided

1. **Communication equipment:** OPD handheld radio, cellular phone.
2. **Surveillance equipment:** None.
3. **Clerical/administrative staff hours:** None.
4. **Funding sources for all the above:** OPD Budget.

Cases

1. **Number of cases USMS Task Force Officer was assigned to:** 65 – a breakdown of fugitive apprehensions is provided below.

Originating Crime Type Leading To Warrant	Amount
Homicide	15
Robbery	13
Assault	12
Weapons Charges	8
Burglary	5
Rape	2
Aiding Escapee	2
Molesting a Minor	2
Kidnapping	1
Other (e.g. Hit and Run, PAL*, Probation)	5

PAL=parolee at large

2. **Number of “duty to warn” cases:** None
3. **General types of cases:** Local, state, and federal criminal arrest warrants.
4. **Number of times USMS asked OPD to perform/OPD declined to perform:** None
 - a. **Reason for OPD declination (e.g. insufficient resources, local/state law):** N/A

Operations

1. **Number of times use of undercover officers were approved:** None.
2. **Number of instances where OPD Task Force officer managed informants:** None.
3. **Number of cases involving informants that USMS Task Force Officer worked on:** None.
4. **Number of requests from outside agencies (e.g. ICE) for records or data of OPD:** None.
 - a. **Number of such requests that were denied:** N/A
 - b. **Reason for denial:** N/A
5. **Whether USMS Task Force Officer was involved in any cases where USPER (U.S. person status) information was collected:** No.

Training and Compliance

1. **Description of training given to USMS Task Force Officer by OPD to ensure compliance with Oakland and California law:** The OPD officer assigned to the USMS Fugitive Task Force follows all OPD policies and procedures, and has

received several police trainings, including, but not limited to: continued professional training, procedural justice training, and annual firearms training.

2. **Date of last training update, and last training audit:** August 2019.
3. **Frequency with which USMS Task Force Officer briefs OPD supervisor on cases:** Weekly.

Actual and Potential Violations of Local/State Law

1. **Number of actual violations:** OPD will provide information on violations that are subject to release under California's Public Records Act (the "PRA"), Government Code section 6254. Release of any of violations not covered by the PRA, however, would violate California law (832.7), as there is only one officer assigned to this task force.
2. **Number of potential violations:** Same answer as above.
3. **Actions taken to address actual or potential violations:** The Task Force Officer follows OPD policies. OPD leadership consults with the Office of the City Attorney to ensure that all policies conform with State and Federal laws.
4. **Recommendations by OPD to address prevention of future violations:** OPD will continue to consult with the Office of the City Attorney and the Privacy Advisory Commission to ensure that personnel continue to follow federal, state, and local laws and policies.

Suspicious Activity Reports (SARs) and Northern California Regional Intelligence Center (NCRIC)

1. **Whether OPD Task Force Officer submits SARs to NCRIC:** No.
2. **Whether OPD officer receives SAR information:** No.

Command Structure for OPD Task Force Officer

1. **Reports to whom at USMS?** Supervising Deputy U.S. Marshal Ivan Peric.
2. **Reports to whom at OPD?** Sergeant Alexis Nash and Acting Lieutenant Robert Muniz.



OAKLAND POLICE DEPARTMENT

Drug Enforcement Agency (DEA) Task Force

2019 Annual Report

OPD DEA Taskforce

The DEA State and Local Task Force combines federal leverage and the specialists available to the DEA with state and local officers' investigative talents and detailed knowledge of their jurisdiction to lead drug law enforcement investigations. The DEA shares resources with state and local officers, thereby increasing the investigative possibilities available to all. Participation in DEA Task Forces also allows the DEA to pay for the overtime and investigative expenses of participating police agencies.

Staffing

1. **Number of full and part time Oakland Police Department (OPD officers assigned to DEA Task Force:** One full-time officer
2. **Number of hours worked as DEA Task Force Officer:** 1,747.5 hours
3. **Funding source for DEA Task Force Officer salary:** OPD Budget

Other Resources Provided

1. **Communication equipment:** OPD handheld radio, cellular phone
2. **Surveillance equipment:** None.
3. **Clerical/administrative staff hours:** None
4. **Funding sources for all the above:** OPD Budget

Cases

1. **Number of cases DEA Task Force Officer was assigned to:** 15 – case detail breakdown:

The goal of the Taskforce is to conduct targeted investigations into specific drug trafficking organizations (DTO) and the individuals within the DTOs who are engaged in high level narcotics distribution and trafficking. By conducting these longer federal investigations, the Taskforce is able to ensure entire DTO's are dismantled. Confronting and weakening DTOs closes off specific avenues in which drugs flow into the community. The Taskforce focuses primarily on heroin, methamphetamine, fentanyl, and cocaine trafficking; the Taskforce does not conduct any marijuana investigations.

Below is a summary of the cases worked on in 2019:

- A poly drug trafficker who was running a DTO that serviced multiple high level drug dealers throughout the bay area. Numerous suspects were arrested and charged within this investigation.
 - A fentanyl dealer operating between San Francisco and Oakland, who sold large amounts of pure fentanyl. This investigation is ongoing.
 - A street level buy walk operation targeting heroin dealers within the city of Oakland. Multiple suspects were arrested on state charges, and multiple suspects were arrested and charged federally.
 - A poly drug and firearm trafficker involved with gang activities within the bay area. Multiple suspects were arrested and charged federally.
 - A methamphetamine and cocaine trafficker operating throughout the bay area. Multiple suspects were arrested and charged federally.
 - A fentanyl and methamphetamine trafficker operating within the bay area. Multiple suspects were arrested and charged federally.
 - A cocaine and methamphetamine DTO operating within the bay area, and San Juaquin County. This investigation is ongoing.
 - A fentanyl and methamphetamine DTO involved in gang activity operating within the bay area and Solano County. This investigation is ongoing.
 - An investigation targeting gang members, selling firearms and street level narcotics, operating within the bay area. This investigation is ongoing.
 - A large quantity cocaine and methamphetamine dealer operating within the bay area. The suspect was arrested and charged federally.
 - A buy bust operation in partnership with ACNTF resulting in a 65lb methamphetamine seizure, and multiple suspects arrested on state charges.
 - A poly drug DTO operating within the bay area distributing primarily heroin and methamphetamine. Multiple suspects were arrested and charged federally.
 - An investigation targeting gang members distributing large quantities of methamphetamine, and heroin. Multiple suspects were arrested and charged federally.
 - An investigation targeting numerous members of a poly drug DTO smuggling drugs into the United States and distributing them in large quantities throughout the bay area (specifically San Francisco and Oakland). Numerous suspects were arrested and charged federally.
 - An investigation targeting a poly drug and DTO who smuggles drugs into the U.S. The DTO distributes firearms and large quantities of drugs within Oakland and the greater bay area. This investigation is ongoing.
2. **Number of “duty to warn” cases:** None
 3. **General types of cases:** Narcotics investigations and money laundering investigations
 4. **Number of times the DEA asked OPD to perform/OPD declined to perform:** None

- a. Reason for OPD declination (e.g. insufficient resources, local/state law): N/A

Operations

1. Number of times use of undercover officers were approved: None
2. Number of instances where OPD Task Force officer managed informants: None
3. Number of cases involving informants that DEA Task Force Officer worked on: One
4. Number of requests from outside agencies (e.g. ICE) for records or data of OPD: None
 - a. Number of such requests that were denied: N/A
 - b. Reason for denial: N/A
5. Whether DEA Task Force Officer was involved in any cases where USPER (U.S. person status) information was collected: No

Training and Compliance

1. Description of training given to DEA Task Force Officer by OPD to ensure compliance with Oakland and California law: The OPD officer assigned to the DEA Task Force follows all OPD policies and has received several police trainings, including but not limited to: continual professional training, Procedural Justice Training and annual firearms training. The officer has also reviewed all provisions of the DEA Task Force MOU.
2. Date of last training update, and last training audit: April 20, 2019
3. Frequency with which DEA Task Force Officer briefs OPD supervisor on cases: Weekly

Actual and Potential Violations of Local/State Law

1. Number of actual violations: Release of any of this information would violate California law (832.7), as there is only one OPD officer assigned to this task force.
2. Number of potential violations: Same answer as above.
3. Actions taken to address actual or potential violations: The officer follows OPD policies, except where DEA policies are more restrictive. OPD leadership consults with the Office of the City Attorney to ensure that all policies conform with State and Federal laws.
4. Recommendations by OPD to address prevention of future violations: OPD will continue to consult with the Office of the City Attorney and the Privacy Advisory Commission to ensure that personnel continue to follow federal, state, and local laws and policies.

Suspicious Activity Reports (SARs) and Northern California Regional Intelligence Center (NCRIC)

1. Whether OPD Task Force Officer submits SARs to NCRIC: No.
2. Whether OPD officer receives SAR information: No.

Command Structure for OPD Task Force Officer

1. **Reports to whom at DEA?** Resident Agent in Charge (RAC) Brian Cole
2. **Reports to whom at OPD?** Sergeant Alexis Nash and Acting Lieutenant Robert Muniz

City of Oakland/Oakland Chinatown Chamber of Commerce**Surveillance Camera Grant Program****Impact Statement**

- A. Description:** City grant funds (\$75,000) will be provided by the Department of Transportation (DOT) to the Oakland Chinatown Chamber of Commerce (OCCC) to purchase and install security cameras on private property at several locations in Chinatown. The data from the cameras will be transmitted to the OCCC offices and only made available to OPD for the purposes of investigating reported crimes. Signs will be placed in the locations where cameras are installed advising people that the area is under video surveillance.
- B. Purpose:** The cameras and the warning signs are designed to deter crime by establishing that the area is monitored. Additionally, if a crime were to occur, the footage could aid in criminal investigations.
- C. Location:** The cameras will be on several buildings in the Chinatown Area with general borders of Broadway to Fallon Street, and 6th Street to 12th Street.
- D. Impact:** Using surveillance cameras in public places, while common, can have an impact on people's civil liberties, especially when those cameras are owned or controlled by governmental bodies where public access to records is a standard. Members of the public could file a Public Records Request to access footage. The footage cameras collect could be used to determine a person's shopping patterns, religious affiliation (if they are surveilled entering a place of worship), or a person's daily schedule. Also, knowledge of cameras in one area may deter crime in that location but push it to another nearby location without cameras.
- E. Mitigations:** To avoid the collection of large amounts of surveillance footage by the City, these cameras will be purchased, owned, and monitored by the OCCC and therefore the data that they collect is not considered public record. The City (OPD) will only be provided access upon request for the purpose of investigating crimes. This allows the cameras to serve as a deterrent and protects the data they collect in cases of criminal wrongdoing.
- F. Data Types and Sources:** The cameras will be transmitting video footage (no audio) via the internet to the OCCC offices in Chinatown.
- G. Data Security:** The data will be accessed only by OCCC Staff. No data will be stored with the City other than data requested by OPD in the investigation of a crime.
- H. Fiscal Cost:** This is a one-time grant of \$75,000 to the OCCC. The City will not absorb any ongoing maintenance costs.
- I. Third Party Dependence:** OCCC is a third party and they will contract with a local vendor to install the cameras.
- J. Alternatives:** An alternative to placing surveillance cameras is to have human surveillance in those same areas. This would be a costly endeavor and would not have the benefit of verifiable proof of a crime occurring after-the-fact. Eye witness testimony is known to be very inaccurate.

K. Track Record: Surveillance cameras have a mixed track record of making people feel safer and actually lowering crime. It is difficult to measure the level of deterrence or displacement of crime in any given area.

For questions about this Use Policy, please contact Wlad Wlassowsky in the City of Oakland Department of Transportation at wwlassowsky@oaklandca.gov

City of Oakland/Oakland Chinatown Chamber of Commerce

Surveillance Camera Grant Program

Use Policy

- A. Purpose:** City grant funds (\$75,000) will be awarded to the Oakland Chinatown Chamber of Commerce (OCCC) to install security cameras on private property at various locations in Chinatown to deter crime and aid in criminal investigations.
- B. Authorized Use:** The OCCC will be the sole owner of the equipment and the data it collects. The OCCC will make video footage available to the Oakland Police Department (OPD) only upon their request, and only in connection with a crime that has been committed.
- C. Data Collection:** Video footage from the cameras will be recorded and stored for a period not to exceed 30 days.
- D. Data Access:** Video data will be stored and accessed by the OCCC, and will be made available to OPD only upon their request, and only in connection with a crime that has been committed.
- E. Data Protection:** The data will be accessed only by OCCC Staff. No data will be stored with the City other than data requested by OPD in the investigation of a crime.
- F. Data Retention:** Video data will be stored for a period not to exceed 30 days, unless it is accessed and made available to OPD in connection to a crime, in which case a copy may be made in connection with investigation and/or prosecution.
- G. Public Access:** General public access of the video data will not be permitted. Because the City will not retain any ownership of the cameras or the data they collect, the information is not subject to the CA Public Records Act and therefore not available to the public.
- H. Third Party Data Sharing:** No third-party video data shall be made.
- I. Training:** Since the City is solely providing grant funding for the purchase of the cameras, no City Staff training is required.
- J. Auditing and Oversight:** The City will not own or operate the cameras or manage the data that they collect and therefore no auditing will occur.
- K. Maintenance:** The City will not own or operate the cameras therefore no maintenance will be funded by the City.

For questions about this Use Policy, please contact Wlad Wlassowsky in the City of Oakland Department of Transportation at wwlassowsky@oaklandca.gov



OAKLAND POLICE DEPARTMENT

Surveillance Impact Report: 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

Live stream camera transmitters allow OPD to deploy a minimal level of police presence while providing critical situational awareness to OPD commanders. A small number of officers can monitor events and provide real-time footage to Command. This information helps OPD Command to make efficient deployment decisions. OPD at times must otherwise deploy ten or more officers and sergeants to events where crowds or large events (or special Events, as defined by the Oakland Municipal Code, which occur in public places) are occurring – so that officers can adequately convey local information to remote-stationed commanders. At times people in crowds and large or special 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 (captain 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 gatherings of people and/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 an OPD commander (captain or above) when exigent circumstances exist – and when the City Administrator has authorized a partial or full activation of the City's Emergency Operations Center (EOC) and a police commander (captain or above) has approved 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. OPD commanders need real time situational awareness to ensure public safety in public spaces. Real-time information regarding events (e.g. crowd management facilitation, coordinated response to catastrophic unplanned events) provides critical information for OPD commanders when making resource deployment decisions; OPD needs to see where people present in order to adjust resources in real-time to better ensure public safety is maximized.

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. Live-stream transmitters shall only be used in conjunction with a partial or full activation of the City's Emergency Operations Center (EOC);
2. Department members shall not use or allow others to use handheld live-stream cameras, software or data for any unauthorized purpose.
3. 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.
4. Live stream transmitters shall not be used except when authorized by the Chief of Police or designated commander.

For each use of live stream transmitters, OPD shall articulate the facts and circumstances surrounding the use in a written statement filed with the Chief Privacy Officer and/or Chair of the Privacy Advisory Commission. This statement (and the use itself) shall be included in the required Annual Report. 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.

Commented [BH1]: Please include the standard and cite to the authority (charter, AI, Muni Code, Ordinance, wherever it comes from)

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/5G, 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,

¹ <https://www.bia.gov/jag/>

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.



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.

OPD commanders need real time situational awareness to ensure public safety in public spaces. Real-time information regarding events (e.g. crowd management facilitation, coordinated response to catastrophic unplanned events) provides critical information for OPD commanders when making resource deployment decisions. Authorized personnel utilizing cameras with live-streaming transmitters can provide important situational awareness to OPD without the need to deploy many officers.

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 an OPD commander (captain or above) when exigent circumstances exist – or when the City Administrator has authorized a partial or full activation of the City's Emergency Operations Center (EOC) and a police Commander (captain or above) approves 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;
- Sporting events;
- Large parades or festivals; and
- Natural disasters.
- Live stream transmitters shall only be deployed with authorizations from an incident commander (Captain or higher-rank).
- Protected Activity
 - "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.*

Commented [BH1]: Please include the standard and cite to the authority (charter, AI, Muni Code, Ordinance, wherever it comes from)

Commented [SB2R1]: Still waiting for CAO to provide policy

Lee (9th Cir. 2000) 227 F.3d 1214, 1227; Brandenburg v. Ohio (1969) 395 U.S.

o In respect to honoring protected activity, live stream Transmitters Use Policy restricts the use of the technology as follows:

- Live stream transmitters can only be used in conjunction with a full or partial EOC activation.
 - For each use of live stream transmitters, OPD shall articulate the facts and circumstances surrounding the use in a written statement filed with the Chief Privacy Officer and/or Chair of the Privacy Advisory Commission. This statement (and the use itself) shall be included in the required Annual Report.
- 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 transmitter shall not be used to except when approved by a police commander (Captain or higher rank).

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 (force investigation or citizen complaints) 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.

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

DEPARTMENTAL GENERAL ORDER
OAKLAND POLICE DEPARTMENT

Effective Date _____

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

Surveillance Impact Report: Unmanned Aerial Systems (UAS)

1. Information Describing Unmanned Aerial Systems (UAS) and How They Work

An Unmanned Aerial System (UAS) is an unmanned aircraft of any type that is capable of sustaining directed flight, whether pre-programmed or remotely controlled (commonly referred to as an unmanned aerial vehicle (UAV)), and all of the supporting or attached components designed for gathering information through imaging, recording, or any other means. Generally, a UAS consists of:

- A UAV which consists of the chassis with several propellers for flight, radio frequency and antenna equipment to communicate with a remote-control unit, control propellers and other flight stabilization technology (e.g. accelerometer, a gyroscope), a computer chip for technology control, a camera for recording, and a digital image/video storage system for recording onto a secure digital card (SD card);
- A remote-control unit that communicates with the UAV via radio frequency; and
- A battery charging equipment for the aircraft and remote control.

UAS are controlled from a remote-control unit (similar to a tablet computer). Wireless connectivity lets pilots view the UAS and its surroundings from a bird's-eye perspective.

UAS have cameras so the UAS pilot can view the aerial perspective. UAS record image and video data onto a secure digital (SD) memory cards. SD cards can be removed from UAS after flights to input into a computer for evidence.

2. Proposed Purpose

UAS offer to significantly improve the capacity of law enforcement (LE) to provide a variety of foundational police services. This technology has already been used with many law enforcement agencies to save lives and help

capture dangerous criminal suspects. UAS can support first responders in hazardous incidents that would benefit from an aerial perspective.

Responding to violent crime in Oakland often requires officers to face risks to their safety – in addition to the clear risks faced by members of the public when violent crime is present. In 2019 Oakland saw 75 homicides, 3,334 aggravated assaults (284 with firearms), 189 rapes, and 2,789 robberies. OPD relies on policies and procedures to mitigate the possibility that attempts to arrest crime suspects will not lead to the injury of bystanders or officers. Technology such as UAS can play a vital role in further mitigating these omnipresent dangers, by providing a greater view into the immediate surroundings of crime scenes and active pursuits.

~~Better situational awareness also mitigates against conditions that lead to bodily injury of suspects and LE personnel.~~ Searches for armed and dangerous suspects are more effective and controlled with UAS support; an armed suspect can be hiding in a tree or on a roof. LE can respond accordingly and more safely when provided with this critical information (see Section #10 below “Alternatives Considered” for more information on how UAS compares to alternatives for situational awareness). More informed responses also lead to less injury and less uses of force.

LE agencies have successfully used UAS to locate missing persons, especially in more remote areas – as well as for rescue missions. UAS is also being used during disasters and during any hazardous material releases

The situational awareness UAS provides has also become an important tool for large events (e.g. sport events, parades, and festivals); the aerial view provides information that would otherwise require a much larger deployment of LE personnel to maintain the same level of public safety support. ~~LE agencies have successfully used UAS to locate missing persons, especially in more remote areas – as well as for rescue missions. UAS is also being used during disasters and during any hazardous material releases~~ Additionally, UAS offer LE a more efficient system for documenting vehicular collision as well as crime scenes. Furthermore, smaller UAS can be equipped with a loud speaker to communicate (e.g. hostage situations/providing verbal commands and directions to the subject).

As Bryan Smith, APSA¹ Safety Program Manager explains in “Working Together: Deploying Manned and Unmanned Aircraft Safely and Successfully” in Air Beat²-July-August 2019 Issue, “What if we (LE) had the ability to coordinate tasking, splitting the airborne support responsibilities between manned (helicopter) and unmanned crews so one could watch the perimeter while another searches below treetop level in the courtyards and windows and a third went head of the entry team?” In the same AirBeat Issue, Charles L. Werner, Chairman, National Council on Public Safety U.S. explains in “Public Safety Drones: The Past, Present, and Future,” “Virginia’s

¹ APSA = Airborne Public Safety Association

² The Official Journal of the Airborne Public Safety Association

public safety UAS team in York County used one of its drones to fly into a hostage situation to determine when police could safely enter.” The article also details how [the Alameda County Sheriff’s Office \(ACSO\)](#) is using its drones for traffic incidents, tactical operations, and search and rescue.

OPD does have access to [ACSO UAS](#). However, OPD must make a formal request for each use. This approval process takes several hours when situations require immediate action. Circumstances may proceed without any time for advance planning and conditions may involve individuals believed to be armed and dangerous. OPD can better respond to such dangerous situations where UAS offers useful intelligence and mitigates officer danger – by having a separate UAS program; a standalone OPD UAS program will allow for much quicker deployment options.

3. Locations Where, and Situations in which UAS may be deployed or utilized.

OPD proposes to use UAS as outlined in OPD Department General Order (DGO) I-25 “UNMANNED AERIAL SYSTEM (UAS),” Section III “General Guidelines” A “Authorized Use” only for the following situations:

- a. Mass casualty incidents (e.g. large structure fires with numerous casualties, mass shootings involving multiple deaths or injuries);
- b. Disaster management;
- c. Missing or lost persons;
- d. Hazardous material releases;
- e. Sideshow events where many vehicles and reckless driving is present;
- f. Rescue operations;
- g. Special events;
 - i. Such as large gatherings of people on city streets, sporting events, or large parades or festivals; (see authorization for “large or special events under Deployment Authorization below);
- h. Training;
- i. Hazardous situations which present a high risk to officer and/or public safety, limited to:
 - i. Barricaded suspects;
 - ii. Hostage situations;
 - iii. Armed suicidal persons;
 - iv. Arrest of armed and/or dangerous persons (as defined in OPD DGO J-04 “Pursuit Driving” Appendix A, H “Violent Forcible Crime”;

- v. Scene documentation for evidentiary or investigation value (e.g. crime, collision, or use of force scenes);
- vi. Operational pre-planning (prior planning for services of search and arrest warrants. This is would provide up-to-date intelligence (e.g. terrain, building layout) so that personnel allocate appropriate resources and minimize last minute chance encounters and uses of force);
- vii. Service of high risk search and arrest warrants involving armed and/or dangerous persons; and
- viii. Exigent circumstances
 - i. A monitoring commander (Lieutenant or above) may authorize a UAS deployment under exigent circumstances. A report shall be completed and forwarded to the Chief of Police and the OPD Department UAS Coordinator for all UAS deployments authorized under exigent circumstances, for a full review to determine policy compliance. At the direction of a command officer.

Potentially, UAS could be deployed in any location in the City of Oakland where one or more of the above situations occur and where the proper authorizations are provided. Fortunately, several of these situations rarely occur – but some do occur regularly, as such arresting armed/dangerous person, and crime scene documentation. OPD regularly needs to document crime, use of force, and/or vehicular collision scenes for evidentiary and/or investigation value. UAS can greatly aid in this documentary process, to memorialize a scene from an aerial or overview perspective. In 2018, OPD made 8,239 arrests that included either a felony charge, a misdemeanor charge that required an arrest (warrant, domestic violence, firearms violation), or both. In 2018 there were 70 homicides, 2,624 robberies, and 2,338 reported cases of aggravated assault. Additionally, OPD continues to authorize the use of armored vehicles several times each month where personnel attempt to safely locate individuals suspected in homicides and other violent crimes – UAS can provide situational awareness in many of these cases to provide a greater level of safety for officers as well as for nearby bystanders. Furthermore, smaller UAS such as the DJI Mavic that OPD may purchase, are equipped with a loud speaker; such UAS can be used for one-way communication during several of the use-cases described in this section above (e.g. hostage situations/providing verbal commands and directions to the subject).

Commented [SB1]: Moved to Sec 2

4. Privacy Impact

OPD recognizes that the use of UAS raises privacy concerns. UAS are becoming ubiquitous in the United States, and there is a growing concern that people can be surveilled without notice or reason. There is concern that UAS can be utilized

to observe people in places, public or private, where there is an expectation of privacy. The level of potential privacy impact depends upon factors such as flight elevation and camera zoom magnitude, as well as where the UAS is flown.

The results of the research study titled, "Mission-based citizen views on UAV usage and privacy: an affective perspective³," published in February 2016 found that people's perceptions of how UAS impacts privacy relate to use type. The researchers from College of Aeronautics, Florida Institute of Technology, and the Aeronautical Science at Embry-Riddle Aeronautical University (ERAU), College of Aviation UAS Lab found that people tend to be less concerned about police UAS use when the technology is only used for specific uses - "concerns for privacy were less in the condition where the UAV was only used for a specific mission than when it was operated continuously." DGO I-25.III.A "General Guidelines, Authorized Use" explains that OPD personnel can only use UAS for specific missions, detailed above in Section 3 "Locations Where, and Situations in which UAS may be deployed or utilized."

OPD cannot, for the most part, control how private individuals use these systems as the technology available to anyone continues to improve. The Federal Aviation Administration (FAA), however, does set strict flight regulations for all UAS users, including for law enforcement. The FAA provides two law enforcement options for creating acceptable UAS programs (see **Attachment A: "Drones in Public Safety: A Guide to Starting Operations"**), under 14 Code of Federal Regulation (CFR) part 107, subpart E, Special Rule for Model Aircraft; the agency can designate individual members to earn FAA drone pilot certificates and fly under the rules for small UAS, or receive a FAA certificate to function as a "public aircraft operator" to self-certify agency drone pilots and drones. Either way, these options allow for OPD to use systems under 55 pounds, for flying at or below 400 feet above ground level⁴. Absent an emergency situation warranting a FAA COA/Part 107 waiver-permitted law enforcement response, law enforcement is also restricted from using UAS to fly over or near the following locations:

- Stadiums and Sporting Events;
- Near Airports; and
- Emergency and Rescue Operations (wildfires and hurricanes).

5. Mitigations

OPD's DGO I-25 restricts OPD's use of UAS in several ways to promote greater privacy protections.

OPD will only use UAS for specific missions rather than operating continuously, mitigating concerns raised in the February 2016 study cited

³ <https://www.nrcresearchpress.com/doi/abs/10.1139/juvs-2015-0031#.XkHEAWhKiU>

⁴ Under FAA guidelines, in the case of emergency where a law enforcement agency cannot fully comply with existing regulations under their Certificate of Authorization (COA) or part 107, a law enforcement agency can request an emergency, temporary amendment to an existing COA, or, if without a COA, obtain a temporary, emergency airspace authorization for a limited period of time at specified locations.

above.

DGO I-25.III “General Guidelines.” A.”Authorized Use” Part 3 lists the only allowable uses of UAS (e.g. mass casualty incidents, Arrest of armed and/or dangerous persons (as defined in OPD DGO J-04 “Pursuit Driving” Appendix A, H “Violent Forcible Crime”)). DGO I-25.III.A.4 “Deployment Authorization” articulates that an Incident Commander must approve all uses of UAS. DGO I-25.III.A.4 “Deployment Authorization for Large or Special Events” lists the additional requirements for using UAS during these situations; this additional deployment list is required so that OPD considers the need for situational awareness in the context of not restricting the rights of Oakland residents and visitors to freedom of expression in the public domain.

DGO I-25.III.A.”Authorized Use,” Part 7 “Privacy Considerations,” outlines several protocols for mitigating against privacy abuse:

- OPD UAS personnel must adhere to FAA altitude guidelines – flying below 400 feet helps to ensure that UAS is not used for surveilling overly large geographic areas; OPD will use UAS to focus specifically on specific areas.
- OPD UAS operators shall not intentionally record or transmit images of any location where a person would have a reasonable expectation of privacy (e.g. residence, yard, enclosure, place of worship, medical provider’s office).
- Operators and observers shall take reasonable precautions, such as turning imaging devices away, to avoid inadvertently recording or transmitting images of areas where there is a reasonable expectation of privacy.

DGO I-25.III.B “Restricted Use” explains that:

- UAS and remote control units shall not transmit any data except to each other.
- Data shall only be recorded onto removable SD cards.
- UAS shall not be used for the following activities:
 - Targeting a person based on their individual characteristics, such as but not limited to race, ethnicity, national origin, religion, disability, gender, clothing, tattoos, and/or sexual orientation when not connected to actual information about specific individuals related to criminal investigations;
 - For the purpose of harassing, intimidating, or discriminating against any individual or group; or
 - To conduct personal business of any type.

The technology itself also provides privacy mitigations through information security. The DJI Matrice 210 and DJI Mavic 2 Enterprise systems both use DJI's "OcuSync 2.0" protocol and are encrypted using the leading AES-256 standard as well as password login protection. DJI⁵ uses this encrypted software to turn off the radio transmission to all devices except the paired unit controller. However, there is no guarantee that these drone-to-controller radio transmissions cannot be potentially hacked by bad actors (higher grade military level encryption would be cost-prohibitive for OPD). These protocols help to ensure that drone-to-controller transmissions cannot be intercepted by 3rd parties, and that the systems themselves cannot be used without authorized permission. DJI has produced a "Commitment to Data Security" document (see **Attachment B**). The document explains protocols undertaken to ensure that flight data is not transmitted back to DJI or other sources (e.g. storing data on a U.S.-based AWS server). DJI's "Implementing Mitigation Measures Recommended By The DHS" (see **Attachment C**) recommends mitigations that mirror OPD UAS mitigations:

- Deactivate Internet Connection from Device Used to Operate the UAS
- Take Precautionary Steps Prior to Installing Updated Software or Firmware
- Remove Secure Digital Card from the Main Flight Controller/aircraft
- If SD Card is Required to Fly the Aircraft, Remove All Data from the Card After Every Flight

OPD will also commit to using UAS such as from DJI that do not directly connect to the internet; rather, the controllers will use a separate mobile device for possible remote transmission. The UAS have local data built into the controller firmware for flight control.

6. Data Types and Sources

UAS will record using industry standard file types such as (e.g. jpeg, mov, mp4, wav or RAW). Such files may contain standard color photograph, standard color video, or other imaging technology such as thermal. Although UAS can transmit one-way audio from OPD, the UAS technology available today does not currently record sound⁶.

7. Data Security

⁵ The lead UAS manufacturer for equipment used by police agencies throughout the U.S.

⁶ Microphones could be installed, but the sound of the propellers would make sound indecipherable in current models available to OPD.

OPD takes data security seriously and safeguards UAS data by both procedural and technological means. The video recording function of the UAS shall be activated whenever the UAS is deployed. Video data will be recorded onto Secure Digital (SD) Cards. OPD DGO 1.25.4.B "Data Retention" states video recording collected by OPD UAS shall be deleted from the device within five (5) days unless:

- The recording is needed for a criminal investigation;
- The recording is related to an administrative investigation; or
- Retention of data is necessary for another organizational or public need when OPD is requested for outside agency criminal investigations, administrative investigations, and/or aiding in natural disasters; the program coordinator shall develop procedures to ensure that data are retained and purged in accordance with applicable record retention schedules (in accordance with DGO 1.25.4.B "Data Retention."). Outside agency assist would only be conducted if it is within OPD policies.

The program coordinator shall develop procedures to ensure that all UAS SD card data intended to be used as evidence are accessed, maintained, stored and retrieved in a manner that ensures its integrity as evidence, including strict adherence to chain of custody requirements.

Electronic trails, including encryption, authenticity certificates, and date and time stamping shall be used as appropriate to preserve individual rights and to ensure the authenticity and maintenance of a secure evidentiary chain of custody.

OPD's Electronic Services Unit (ESU) shall be responsible for the maintenance and storage of UAS equipment. Members approved to access UAS equipment under these guidelines are permitted to access the data for administrative or criminal investigation purposes.

UAS image and video data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes, using the following procedures:

- The agency first makes a written request for the OPD data that includes:
 - The name of the requesting agency.
 - The name of the individual making the request.
 - The basis of their need for and right to the information.
 - A right to know is the legal authority to receive information pursuant to a court order, statutory law, or case law. A need to know is a compelling reason to request information such as direct involvement in an investigation.

- The request is reviewed by the Chief of Police, Assistant Chief of Police, or Deputy Chief/ Deputy Director or designee and must be approved before the request is fulfilled.
- The approved request is retained on file, and incorporated into the annual report pursuant to Oakland Municipal Code Section 9.64.010 1.B.

8. Costs

Costs for a UAS program can vary from thousands to hundreds of thousands and beyond. Different types of systems exist that would support police services, and technology continues to evolve. However, OPD personnel have procured some initial bids to start an OPD UAS program. UAS technology updates at a fast pace and we do not want to commit to a current model. The following costs (\$46,800 total), provided here as an example, are based on an actual bid for one large UAS and four smaller UAS for different types of missions:

UAS System	Components	Cost
DJI Matrice 210 V2 (one system) – large drone for standard use	Rugged commercial enterprise drone that carry a payload of 5.07 pounds (enough for the powerful zoom camera and infrared camera). System comes with drone body, landing gear, monitor, propellers, battery packs and chargers, cables.	\$9,600
	Powerful Zoom lens Camera: Zenmuse Z30 (30x Optical Zoom)	\$2,999
	Infrared Camera: DJI Zenmuse FLIR XT2 Dual Sensor 640x512 30Hz 13mm Radiometric	\$13,200.00
	Six extra batteries: DJI TB55 Intelligent Flight Battery (Extended); \$369 x 6	\$2,214
	Matrice 200 Series Case	\$739
DJI Mavic 2 (four systems) – smaller drone for	Drone body with protection kit, controller, batteries, battery chargers, propellers, cables, other related accessories such as spotlights and one-way speakers; \$2,949 x 4	\$11,796

lighter use as well as for indoor use		
	Additional batteries; \$169x24	\$4,056
	DJI Smart Controller; \$549x4	\$2,196
		\$46,800

OPD will utilize one-time General Purpose Funds and/or look to grant funding such as from the United States Department of Homeland Security Urban Area Security Initiative (UASI).

9. Third Party Dependence

OPD is currently reliant upon the Alameda County Sheriff's Office (ACSO) when exigent circumstances occur that warrant UAS requests. OPD has requested and received UAS support from ACSO four times in 2019. "Use of Unapproved Surveillance Technology Under Exigent Circumstances – January 28, 2019" (see Attachment B) explains the use of ACSO UAS on January 18, 2019 in connection with an OPD observed murder suspect. "Use of Unapproved Surveillance Technology-December 17, 2019" (see Attachment C) December 17, 2018 explains the use of ACSO UAS on December 15, 2018 in connection with a residential (home invasion) robbery in progress with a suspected armed suspect.

OPD values its relationship with ACSO and the UAS support provided in 2019; However, OPD now hopes to join the growing list of municipal police agencies developing their own UAS programs. The "Proposed Purpose" Section 2 above explains the benefit and local need for such situational awareness. There are several vendors currently manufacturing law enforcement enterprise quality systems. Section 8 "Cost" above details a possible purchase from DJI – a leading manufacturer. However, OPD will solicit competitive bids and reevaluate vendors if and this Surveillance Impact Report and connected DGO I.25 Use Policy are approved by the City Council.

Commented [2]: From the Ordinance 12. (l) Third Party Dependence: whether use or maintenance of the technology will require data gathered by the technology to be handled or stored by a third-party vendor on an ongoing basis;

Commented [SB3R2]: If ACSO provides a drone (and pilot) to OPD operations, they will have that data so seems relevant.

10. Alternatives Considered

OPD could continue the status quo by relying on its partnership with ACSO UAS; however, OPD will be able to more efficiently deploy UASs when needed in priority situations, by having its own UAS program. OPD currently relies on ACSO for UAS access, as noted in Section 2 "Proposed Purpose" above. OPD must make a request to ACSO in each time a situation arises that would benefit from UAS use and meets all requirements outlined in the OPD UAS Policy. These requests can take several hours in which case OPD's ability to respond is greatly diminished. In cases such as hostage situations, missing persons, or pursuit of homicide investigation suspects, a

two or more-hour request period can lead to negative outcomes.-

Helicopters also offer sky-view situational awareness during some of the situations described in the Purpose and Impact sections above, but UAS costs are lower and UAS can be used in more situations. Helicopters cost several million dollars as well as \$200-\$400 per hour for manned flight. Currently OPD only has one functional helicopter because the high cost to maintain them. There -are situations where UAS do not offer an alternative - UAS can never replace the helicopter for missions such as active vehicle pursuits, sustained flight, active observations and communications from the helicopter. UAS can only be compared in terms of some situations where a local above-ground perspective is needed.

The much lower costs of UAS however means that they can potentially be deployed in more situations where the cost of maintaining helicopters is too prohibitive. UAS can also provide utility in ways beyond the capabilities of much more expensive helicopters:

- Support during fire and emergency operations – UAS can be flown in lower elevation positions such as near fires to locate possible trapped people where helicopters cannot fly; infrared cameras on UAS can also be used to identify heat spots for fire department attention.
- Finding suspects – UAS can be used to find dangerous violent crime suspects, by being flown in locations such as to view roof tops, in trees, or between buildings.
- Crime and vehicle collision scene investigation – UAS can be used to collect evidence that may be difficult to reach from the ground; UAS can easily be used to provide maps and 3D images within minutes using 3rd party software specifically designed to produce such maps and 3D images using photographic data captured by the UAS; this data is also valuable during court testimony.
- Finding and/or seizing illegal drones - police UAS can be flown to identify unregistered UAS that may be hazardous to the surrounding environment.

Another alternative to the use UAS or helicopters would be to deploy many officers to events described in DGO I-25, Section III “General Guidelines” A. “Authorized Use.” However, a greater deployment of sworn personnel would at times be less effective; A missing persons’ event would require many more officers to provide the same information as UAS. Additionally, the use of UAS can also allow OPD to minimize its physical presence in situations where more officers may actually be perceived as unnecessary and even threatening, during large or special events. Furthermore, large officer deployments can cause a greater use of overtime funding and cause negative impacts to OPD’s general fund budget.

11. Track Record of Other Entities

Many cities and counties in California and nationwide have begun to implement UAS programs due to the numerous uses cases for law enforcement. The Alameda County Sheriff's Office (ACSO) and Sacramento County Sheriff's Office have developed programs with several types of UAVs and full time deputy positions, and Stanislaus County is beginning to develop their program. Cities such as Citrus Heights, Fremont, Pittsburg, and Torrance all now have UAS programs as well.

Interviews with Citrus Heights PD, Pittsburg PD and the Sacramento County Sheriff's Office all testify to the high use value of developing a UAS program for law enforcement. These agencies have all used UAS for search and rescue missions, emergency situations (e.g. natural gas explosions and fires), and to search for suspects considered armed and dangerous. UAS are also being used by these agencies on a regular basis to document fatal vehicle collision scenes as well as for gunshot scenes to develop 3D models that provide great value for investigations – such capabilities were only possible prior to UAS technology with much more human staff time as well as expensive 3D camera technology.

Citrus Heights PD reported that initially they experienced community concerns around privacy. However, the department was able to explain their plan to community groups, to show how the program is used and the safety and privacy mitigations they employ. The department reports that this approach has led to greater community support. Pittsburg PD also reported that their community did not express any privacy concerns about their UAS program - but that they ensured transparency through proactive UAS Program communications.



DEPARTMENTAL GENERAL ORDER

I-25: UNMANNED AERIAL SYSTEM (UAS)

Effective Date:

Coordinator: Electronic Services Unit, Special Operations Division

UNMANNED AERIAL SYSTEMS (UAS)

The purpose of this order is to establish Departmental policy and procedures for the use of Unmanned Aerial Systems.

I. VALUE STATEMENT

The purpose of this policy is to establish guidelines for the use of unmanned aerial systems (UAS) and for the storage, retrieval, and dissemination of images and data captured by UAS.

II. DESCRIPTION OF THE TECHNOLOGY

A. UAS Components

An Unmanned Aerial System (UAS) is an unmanned aircraft of any type that is capable of sustaining directed flight, whether preprogrammed or remotely controlled (commonly referred to as an unmanned aerial vehicle (UAV)), and all of the supporting or attached components designed for gathering information through imaging, recording or any other means. Generally, a UAS consists of:

- A UAV, composed of:
- Chassis with several propellers for flight
- Control propellers and other flight stabilization technology (e.g. accelerometer, a gyroscope),
- Radio frequency and antenna equipment to communicate with a remote-control unit;
- A computer chip for technology control;
- A camera; and

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- A digital image/video storage system for recording onto a digital data memory card;
- A remote-control unit; and
- Battery charging equipment for the aircraft and remote control.

B. Purpose

UAS have been used to save lives and protect property and can detect possible dangers that cannot otherwise be seen. UAS can support first responders in hazardous incidents that would benefit from an aerial perspective. In addition to hazardous situations, UAS have applications in locating and apprehending subjects, missing persons, and search and rescue operations as well as task(s) that can best be accomplished from the air in an efficient and effective manner. Any use of a UAS will be in strict accordance with constitutional and privacy rights and Federal Aviation Administration (FAA) regulations.

C. How the System Works

1. The FAA Modernization and Reform Act of 2012 provides for the integration of civil unmanned aircraft systems into national airspace by September 1, 2015.
2. UAS are controlled from a remote-control unit. Drones can be controlled remotely, often from a smartphone or tablet. Wireless connectivity lets pilots view the drone and its surroundings from a birds-eye perspective. Users can also leverage apps to pre-program specific GPS coordinates and create an automated flight path for the drone. Another wirelessly-enabled feature is the ability to track battery charge in real time, an important consideration since drones use smaller batteries to keep their weight low.
3. UAS have cameras so the UAS pilot can view the aerial perspective.
4. UAS use secure digital (SD) memory cards to record image and video data; SD cards can be removed from UAS after flights to input into a computer for evidence.

III. GENERAL GUIDELINES

A. Authorized Use

1. Any use of a UAS will be in strict accordance with constitutional and privacy rights and Federal Aviation Administration (FAA) regulations. UAS operations should be conducted in accordance with FAA approval.
2. Only authorized operators who have completed the required training shall be permitted to operate the UAS.

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3. UAS may only be used for the following specified situations:
- a. Mass casualty incidents (e.g. large structure fires with numerous casualties, mass shootings involving multiple deaths or injuries);
 - b. Disaster management;
 - c. Missing or lost persons;
 - d. Hazardous material releases;
 - ~~e-e.~~ Sideshow events where many vehicles and reckless driving is present;
 - e-f. Rescue operations;
 - g. Large or sSpecial events;
 - i. Such as, large gatherings of people on city streets, sporting events, or large parades or festivals (see authorization for "large or special events under Deployment Authorization below).
 - ~~f-h.~~ Training;
 - g-i. Hazardous situations which present a high risk to officer and/or public safety, to include:
 - i. Barricaded suspects;
 - ii. Hostage situations;
 - iii. Armed suicidal persons;
 - iv. Arrest of armed and/or dangerous persons (as defined in OPD DGO J-04 "Pursuit Driving" Appendix A, H "Violent Forcible Crime";
 - v. Scene documentation for evidentiary or investigation value (e.g. crime, collision, or use of force scenes);
 - vi. Operational pre-planning (planning (prior planning for services of search and arrest warrants. This is would provide up-to-date intelligence (e.g. terrain, building layout) so that personnel allocate appropriate resources and minimize last minute chance encounters and uses of force); and
 - vii. Service of high risk search and arrest warrants involving armed and/or dangerous persons; and
 - viii. Exigent circumstances
 - ix. A monitoring commander (Lieutenant or above) may authorize a UAS deployment under exigent circumstances. A report shall be completed and forwarded to the Chief of Police and the OPD

UAS Coordinator for all UAS deployments authorized under exigent circumstances, for a full review to determine policy compliance.

~~vii. Service of search and arrest warrants.~~

4. Deployment Authorization

- a. Deployment of OPD UAS
 - i. Deployment of an OPD UAS shall require the authorization of the incident commander, who shall be of the rank of Lieutenant of Police or above.
 - ii. Incident commanders of a lower rank may authorize the use of a UAS during exigent circumstances. In these cases, authorization from a command-level officer shall be sought as soon as is reasonably practical.

5. Deployment Authorization for Large or Special Events

- a. Upon notification, the Special Operations Division Commander or designee (Incident Commander) shall develop a written operations plan. The Incident Commander shall be responsible for the overall coordination of the event as well as for crowd control and management.
- b. Operations plans for large events requiring the use of UAS and / or the redeployment of personnel from regular assignments shall be approved by the Deputy Chief of Field Operations.
- c. The following factors shall be considered and addressed in developing the operations plan for a large crowd event, including but not limited to:
 - i. What type of event is to occur?
 - ii. Who are the organizers? What is their past record of conduct (peaceful, violent, cooperative, etc.)?
 - iii. Will outsiders visibly and/or physically oppose the planned event?
 - iv. Will the event involve the use or abuse of alcohol or other substances?
 - v. Where is the event to occur? The Incident Commander shall consider the size, location, and

ingress and egress points.

vi. What is the optimal site for a command post as well as staging areas?

vii. Have the appropriate event permits been issued?

viii. Have other agencies, bureaus, and divisions been notified and included in the planning process (paramedics, fire department, Communications, Intel, etc.)?

ix. Will the EOC be needed? Is Mutual Aid needed?

x. Will off-duty personnel be involved? Has the commander of any off-duty personnel been made part of the planning process?

xi. Is it possible and appropriate to coordinate with group organizers and explain the Department's mission, preparation, and potential responses?

5.6 Deployment Logs

- a. ESU shall record details from each UAS deployment onto a flight log which shall be submitted to ESU, and kept on file for FFA records purposes.
- b. Flight logs will provide all mission deployment details for each flight.

6.7 Privacy Considerations

- a. ~~Q~~Absent a warrant or exigent circumstances, operators and observers shall adhere to FAA altitude regulations.
- b. Operators and observers shall not intentionally record or transmit images of any location where a person would have a reasonable expectation of privacy (e.g. residence, yard, enclosure). When the UAS is being flown, operators will take steps to ensure the camera is focused on the areas necessary to the mission and to minimize the inadvertent collection of data about uninvolved persons or places. Operators and observers shall take reasonable precautions, such as turning imaging devices away, to avoid inadvertently recording or transmitting images of areas where there is a reasonable expectation of privacy.

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B. Restricted Use

1. UAS shall not be equipped with any weapon systems.
2. UAS and remote control units shall not transmit any data except to each other. Data shall only be recorded onto removable SD cards.
3. UAS shall not be used for the following activities:
 - a. For any activity not defined by “Authorized Use” Part 3 above.
 - b. Conducting random surveillance not related to an authorized operation;
 - c. Targeting a person based on their individual characteristics, such as but not limited to race, ethnicity, national origin, religion, disability, gender, [clothing](#), [tattoos](#), and/or sexual orientation when not connected to actual information about specific individuals related to criminal investigations.
 - d. For the ~~sole~~ purpose of harassing, intimidating, or discriminating against any individual or group.
 - e. To conduct personal business of any type.

C. Communications

Notifications will be made to the Communications Section for notifying patrol personnel, when UAS operations are authorized by a Commander.

Commented [1]: Not sure what this means or who does it.

Commented [SB2R1]: Our dispatch section

IV. UAS DATA

A. Data Collection

The video recording only function of the UAS shall be activated whenever the UAS is deployed, and deactivated whenever the UAS deployment is completed. The UAS operator will rely on SD Cards for video recordings.

Commented [SB3]: Claire: There should be a section that describes the data transmission process. Over 4G or 5G network? What carrier? Is it a dedicated line? Can it leverage the First Net public safety broadband?

B. Data Retention

Video recording collected by OPD UAS shall be deleted from the ~~device~~ within device within five (5) days unless:

Commented [SB4R3]: There is no transmission w/ any of these formats / platforms. There is only radio transmission from drone to controller explained in I.A. above and IV.E. E below.

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1. The recording is needed for a criminal investigation;
2. The recording is related to an administrative investigation; or;
3. Retention of data is necessary for another organizational or public need.
 - a. The program coordinator shall develop procedures to ensure that data are retained and purged in accordance with applicable record retention schedules.

C. Data Access

OPD's Electronic Services Unit (ESU) shall be responsible for the maintenance and storage of UAS equipment. Members approved to access UAS equipment under these guidelines are permitted to access the data for administrative or criminal investigation purposes.

UAS image and video 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:

1. The agency makes a written request for the OPD 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.
 - i. A right to know is the legal authority to receive information pursuant to a court order, statutory law, or case law. A need to know is a compelling reason to request information such as direct involvement in an investigation.
2. The request is reviewed by the Chief of Police, Assistant Chief of Police, or Deputy Chief/ Deputy Director or designee and approved before the request is fulfilled.
3. The approved request is retained on file, and incorporated into the annual report pursuant to Oakland Municipal Code Section 9.64.010 1.B.

D. Data storage, access, and security

The program coordinator shall develop procedures to ensure that all UAS SD card data intended to be used as evidence are accessed,

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maintained, stored and retrieved in a manner that ensures its integrity as evidence. These procedures include strict adherence to chain of custody requirements.

Electronic trails, including encryption, authenticity certificates, and date and time stamping shall be used as appropriate to preserve individual rights and to ensure the authenticity and maintenance of a secure evidentiary chain of custody.

E. Data Sharing

UAS systems deployed by OPD shall not share any data with any external organizations via integrated technology; the UAS only sends data to the flight controller via encrypted radio signals – there is no internet connection for external data sharing.

UAS data which is collected and not retained under subsection B of this section is considered a “law enforcement investigatory file” pursuant to Government Code § 6254, and shall be exempt from public disclosure. UAS data which is retained pursuant to subsection B shall be available via public records request pursuant to applicable law regarding Public Records Requests.

F. Data Protection and Security

All UAS SD card data will be secured in a manner (e.g. lockbox) only accessible to ESU personnel. All evidence from UAS SD cards shall be submitted to the OPD Evidence Unit for safe storage.

V. UAS ADMINISTRATION

A. System Coordinator / Administrator

1. The ESU will appoint a program coordinator who will be responsible for the management of the UAS program. The program coordinator will ensure that policies and procedures conform to current laws, regulations and best practices. The program coordinator shall be responsible for the following program administration responsibilities.
2. The ESU Unit Supervisor, or other designated OPD personnel shall provide the Chief of Police, Privacy Advisory Commission, and City Council with an annual report that covers all use of the UAS technology during the previous year. The report shall include all report components compliant with Ordinance No. 13489 C.M.S.
3. **FAA Certificate of Waiver or Authorization (COA)**
COA (Certificate of Authorization) given by the FAA which

Commented [SB5]: PAC question: Is this data available for view upon public request via the Freedom of Information Act for all public institutions?

Commented [SB6R5]: Addressed here

grants permission to fly within specific boundaries and perimeters. The UAS Coordinator~~ACSO~~ will maintain current COA's consistent with FAA regulations. The ESU Unit Supervisor, or other designated OPD personnel, shall coordinate the application process and ensure that the COA is current.

4. Submission and evaluation of requests for UAS use

The ESU Unit Supervisor, or other designated OPD personnel, shall develop a uniform protocol for submission and evaluation of requests to deploy a UAS, including urgent requests made during ongoing or emerging incidents.

B. Facilitating law enforcement requests

The ESU Unit Supervisor, or other designated OPD personnel, shall facilitate law enforcement access to images and data captured by UAS.

C. Program improvements

The ESU Unit Supervisor, or other designated OPD personnel, shall recommend and accept program improvement suggestions, particularly those involving safety and information security.

D. Maintenance

The ESU Unit Supervisor, or other designated OPD personnel, shall develop a UAS inspection, maintenance and record-keeping protocol to ensure continuing airworthiness of a UAS, and include this protocol in the UAS procedure manual.

E. Training

The ESU Unit Supervisor, or other designated OPD personnel, shall ensure that all authorized operators and required observers have completed all required FAA and department-approved training in the operation, applicable laws, policies and procedures regarding use of the UAS.

F. Auditing and Oversight

The ESU Unit Supervisor, or other designated OPD personnel, shall develop a protocol for documenting all UAS uses in accordance to this policy with specific regards to safeguarding the privacy rights of the community and include this in the UAS procedure manual; and the annual UAS report. The UAS supervisor will develop an electronic record of time, location, equipment, purpose of deployment, number of UAS personal involved. Whenever a deployment occurs the operator will send notification/submit (either electronically or hard copy) to the UAS Supervisor to include the topics listed above. This protocol will allow the UAS supervisor to have a running log of all deployments and assist in the annual report

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G. Reporting

The ESU Unit Supervisor, or other designated OPD personnel, shall monitor the adherence of personnel to the established procedures and shall provide periodic reports on the program to the Chief of Police.

The ESU Unit Supervisor, or other designated OPD personnel, shall provide the Chief of Police, Privacy Advisory Commission, and City Council with an annual report that contains a summary of authorized access and use.

H. Training

The ESU Unit Supervisor, or other designated OPD personnel, shall develop an operational procedure manual governing the deployment and operation of a UAS including, but not limited to, safety oversight, use of visual observers, establishment of lost link procedures and secure communication with air traffic control facilities.

By Order of

Anne E. Kirkpatrick...

Chief of Police

Date Signed: