



Privacy Advisory Commission

January 7, 2021 5:00 PM

Zoom Teleconference

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: Omar De La Cruz, District 6 Representative: Gina Tomlinson, District 7 Representative: Robert Oliver, Council At-Large Representative: Henry Gage III, Vice Chair* **Mayoral Representative:** *Heather Patterson*

1. Call to Order, determination of quorum

Members present: Suleiman, Hofer, Katz, De La Cruz, Oliver, Gage.

2. Open Forum/Public Comment

Assata Olugbala spoke about the PAC item on the agenda regarding a Fair Payment Ordinance suggesting it is designed to assist undocumented persons only and doesn't help other persons. She also complained about the resources directed at Lake Merritt activities in the fall.

3. Review and approval of the draft October meeting minutes

The minutes were adopted unanimously.

4. Fair Payment Ordinance – Hofer, Patterson, Gage, Tomlinson – introductory review of proposed ordinance requiring that businesses accept cash as one form of payment. No action will be taken on this item at this meeting.

Chairperson Hofer opened by explaining that he and other members worked on the draft a year ago and was intending to set up meetings with the chamber of commerce and some others but the pandemic put this on hold. This is the beginning of the conversation and a chance for PAC Members to discuss initial concerns. He noted that many businesses are refusing to accept cash in part due to the pandemic and in part due to security concerns. However, the impact on those who cannot get bank accounts, or are charged fees when using preloaded debt cards are at a disadvantage. Also, the data collection and tracking being done by credit card companies raises many privacy concerns for individuals.

He noted that other jurisdictions have done this, in varying forms, and the Oakland proposal seeks to go further, beyond just retail, to preserve people's ability to have cash transactions.

He asked that Joe DeVries summarize some thoughts on enforcement and implementation concerns. Joe reflected back on the City's ban on Styrofoam which was a challenge in enforcing. The City was trying to educate small businesses and not punish them but the staffing needs made even that difficult. He also noted the illegal dumping ordinance relies on capturing evidence of a vehicle being involved in the dumping. The City then goes after the vehicle owner but if they are nonresponsive, they can avoid paying and keep dumping. The City doesn't have the power to attach to the vehicle's registration and sending people to collections is not very effective either.

Chairperson Hofer asked about administrative fees being built in to a program ahead of time and Joe drew a comparison to the Excess Litter fee which is charged to convenience stores and fast food restaurants to defray the cost of picking it up in Oakland. He noted that all fees are designed to pay for services but fines are not used to cover fixed costs.

Lou Katz noted credit card transactions track at least one's zip code. He also spoke about transportation systems; BART is moving away from cash which will be a risk for people without bank accounts as the won't be able to take transportation without a credit card. He wants language specifically around transportation as well as pharmacies.

There were XX public comment: J.P. Masser noted that he helped with the Berkeley and San Francisco ordinances and has not heard of any serious issues coming up since adoption. He supports a more expansive measure and noted it is an equity issue across all races for lower income people. He also noted that the ordinance is self-enforcing; if a store doesn't take cash, it will get posted on social media for example and it will be easy for the City to be alerted to the problem.

Assata Olugbala also spoke about the conversation around enforcement and the cost involved. She noted the current budget deficit is huge and the cuts that will occur will make it hard to dedicate any staff resources to it. She is skeptical that social media will be a likely way to call attention to violators.

Member Oliver raised concern about the many fees charged in neighborhood stores for using debit cards/credit cards which is an added tax on people that is frustrating. Although this is a state/federal issue, it is a good example of the hidden costs to people. Member De La Cruz voiced his support for the ordinance based on his past work with AC Transit on this issue.

The Chair noted that this will be a slowly developing item and he will continue to work with the ad hoc committee that started work on the item.

5. Surveillance Equipment Ordinance – Katz, Hofer – how to ensure transmission of Privacy Advisory Commission recommendations to City Council – discuss and take possible action.

The Chair cited a few recent examples where the recommendation from the PAC did not make it to the Council when the item was introduced. He is looking for a mechanism to make sure this does not happen in the future. He asked for some clarification from staff about how things are brought forward.

Joe DeVries explained that when a policy is submitted, it is done so by the department, not the CAO but he reviews the reports to ensure they include the recommendations from the PAC. He believes there were a couple of unique circumstances that created the omissions recently: For example, with the Drone policy it was several months between the PAC action and Council Meeting. He offered to have a section in any report to Council that is for the Chief Privacy Officer to insert some detail as a check and balance. Bruce Stoffmacher agreed that there were a few unique omissions recently but would support the idea of a CPO section in the reports. He also supported Council Member Bas's recommendation that the PAC motion be included in the report. Chairperson Hofer noted that if the PAC provides a written motion in advance it would help as well. Member Suleiman also suggested that the written motion be included in the PAC Minutes in full length instead of shorthand as well.

6. Surveillance Equipment Ordinance – Hofer – Work Flow and Priority List updates.

The Chair shared the original priority list to see what changes need to be made. There was some conversation about the Body Worn Camera discussion and the process it will need to follow in regard to the Police Commission and NSA Court Monitor. There were some items discussed that could be removed and the list will be forwarded to the Chair prior to the February meeting if the department is seeking changes.

The group discussed the website and if the annual reports that are due (or received) are posted accordingly. Joe Devries noted he has an active request in for more admin support to address and update the website but with the deficit, there will not be any new staffing support for the foreseeable future.

7. Surveillance Equipment Ordinance - OPD – Automated License Plate Reader impact report and proposed use policy – review and take possible action.

The Chair noted that the new policy draft is slightly different and asked if staff had anything to highlight. DC Holmgren opened up with a welcome message of continued collaboration. There was a question about expanding the technology and Brice Stoffmacher noted that the department may want to upgrade the technology but they are not at that point right now.

There was conversation about what Hot Lists exist and it was explained that there is a State Department of Justice Hot List only. A local agency may have its own as well (and OPD monitors its own). If they have a vehicle that should be entered into the state system, they will add it. But if it is an internal list, not entered into the state system, the ALPR won't alert an officer that drives by a vehicle usually. However, there is a way to have a vehicle flagged in the system for a limited period of time at the local level without it being sent into the state system.

There were two public speaker on the item: JP Masser noted his discouragement looking at language that is vague such as "legitimate law enforcement use," the point of a policy is to list what is acceptable, not just allow all uses. Also, he believes the reporting section needs strengthening including the analysis of topics such as how many stolen vehicles are recovered. The policy states that OPD only must say how often the system is use; he believes far more detail is needed.

Michael Katz-Lacabe submitted his comments in writing and those are copied here:

C-1.2 Maximum Retention is two years, which is an excessive period of time not based on a demonstrated need. I recommend a substantially shorter retention period on the order of 30-60 days to reduce the potential privacy implications for the storage and use of the data.

C-1.2 states that ALPR data may be retained for "Other Departmental Need." This is far too broad a category for which the data may be retained. This should be eliminated or revised to be much more restrictive.

C-2 This section on data security says nothing about whether the stored ALPR data is encrypted. In addition, while the use of a username and password to access ALPR server data is the bare minimum for what should be expected, the use of two-factor authentication would prevent access to the data in the event that a user's credentials were compromised.

C-3. It's unclear whether any sharing of ALPR data with other agencies would generate an auditable paper trail. How could an audit of ALPR data sharing determine whether the ALPR data had been shared with a rogue agency or with an immigration enforcement agency?

D-3.1 The requirement to report "The number of times the ALPR technology was used." Is unclear at best. I recommend that the information that should be reported to include:

- How many license plate reads*
- How many unique license plate reads*
- How many hits*
- How many misreads, including the make and model of the ALPR*
- The data should be disaggregated for mobile (police vehicle), stationary (when that become applicable) and other mobile (trailers or cameras used for tracking dumping)*
- How many stolen vehicles were recovered/felony suspects arrested*

General Policy Comments:

In addition, the policy states that ALPR data may be shared "for official law enforcement purposes or as otherwise permitted by law" but as otherwise permitted by law means anything goes because there are essentially no laws preventing sharing of ALPR data besides those restricting sharing for immigration purposes.

How would the security of the ALPR data be protected as it is shared with another agency. Would the sharing occur via email? Via paper, Via CopLogic? What would be considered acceptable?

The policy does not appear to include a requirement to manually verify the ALPR read before initiating a stop. Failure to verify the ALPR read has led to situations in which police have performed high-risk stops of innocent motorists/vehicles.

The policy does not include a requirement for regular audits to ensure that the ALPR data is only accessed by authorized personnel and for authorized reasons.

The policy does not address how hot-lists are generated or where they are sourced from. What are the legitimate and authorized reasons for which a license plate can be added to a hot list?

Member Katz noted his concern with a two-year retention period and recommended a much shorter period. He also noted that the public comments above captured many of his concerns. Member De La Cruz noted a similar concern with retention and that the above comments reflected his concerns as well.

Member Suleiman had a few questions about Hot Lists and databases—how does the department address license plates that remain on the list long after recovery which she imagines is common with rental car companies. She also asked about demographic data that could be collected using ALPR. DC Holmgren noted there is a lot of human error the department has to be very diligent about but is not sure if a manual 90-day audit, for example, is possible. As for demographic data, the department's CAD system just does not have the capability to do this as other departments do—there is no drop-down menu where an officer can identify that ALPR was used in the reporting. This type of ability is about a year out.

Chair Hofer noted areas where the policy has some conflicts with state law/court decisions and some errors that will require an ad hoc committee to focus on. He is concerned about the two-year retention conversation. He also sent the 2016 ALPR Policy that OPD put forward before a Surveillance Ordinance existed but when State Law (SB34) required that all departments adopt one. The Oakland Policy included an annual report and Chairperson Hofer asked if any reports were provided, if any audits were done, and if records of third party data sharing were kept as delineated in the Policy. He asked if these items were handled. DC Holmgren said he believed they were based on his conversations with staff. The department is assembling the data right now. The department has a 2019 annual report and is researching if a 2017 and 2018 report was created. Chairperson Hofer noted that the data that would be included in these reports would be helpful in developing the current policy. Officer Pullen, who works on the system noted that the current system is broken and internal audits cannot be performed and the department is working on correcting this.

There was continued discussion, especially around the retention policy and the item was continued to the next meeting with a request for the past annual reports to inform the process and that an ad hoc group meet to work on details between meetings.

The meeting adjourned at 7:08.