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17 JUN 29 PM 2:55

# AGENDA REPORT

**TO:** Members of the City Council

**FROM:** Councilmember Lynette  
Gibson McElhaney

**SUBJECT:** Transparency for City Participation  
with Federal Surveillance Activities

**DATE:** June 29, 2017

## RECOMMENDATION

Councilmember McElhaney recommends that the City Council adopt an ordinance creating Chapter 9.72 of the Oakland Municipal Code to ensure greater transparency and a protocol for City participation in federal law enforcement surveillance operations.

## BACKGROUND / LEGISLATIVE HISTORY

On January 19, 2016, the City Council adopted Ordinance No.13349 C.M.S. which created and defined the duties of the Privacy Advisory Commission. The Commission is charged with providing advice and technical assistance to the City of Oakland on best practices to protect citizen privacy rights in connection with the City's purchase and use of surveillance equipment and other technology that collects or stores citizen data. They are also asked to draft and analyze for City Council consideration, legislation relevant to privacy and data protection.

During their March 9, 2017 meeting, the Privacy Advisory Commission unanimously recommended that the City Council adopt an ordinance to require an agreement, such as a "Memorandum of Understanding" (MOU), be reviewed by the Privacy Advisory Commission before their adoption to ensure sufficient consideration of privacy and data protection.

In addition, existing law in Oakland (Oakland City Charter section 504(l)) requires that any interagency agreement between the City and another public agency for joint governmental actions, such as a MOU, must be approved by the City Council.

## PROPOSAL

The proposed ordinance seeks to strengthen the City of Oakland's oversight of joint governmental activities to ensure the privacy and data protection rights of Oaklanders. Specifically, this ordinance seeks to accomplish these goals by requiring an additional layer of public review for any agreements related to surveillance between the City of Oakland and federal agencies.

Specifically, 'Article II – Participation in Federal Law Enforcement Activities':

Item: \_\_\_\_\_  
Public Safety Committee  
July 11, 2017

- Affirms that the City, from time to time, assists and partners with federal agencies in criminal enforcement activities;
- Requires that the Chief of Police will submit any proposed agreement, such as an MOU, and any documents relevant to the subject matter of the agreement to the Privacy Advisory Commission for discussion and public comment; and
- By January 31 of each year, the Chief of Police will submit an annual report to the Privacy Advisory Commission and City Council on the Police Department's work with federal agencies involved in surveillance in the City of Oakland.

### **FISCAL IMPACT**

There is no anticipated fiscal impact to this legislation.

### **COORDINATION**

This ordinance was unanimously recommended by the Oakland Privacy Commission. This ordinance was created with the assistance of the Oakland City Attorney's office. The Oakland Police Department and City Administrator's Office were also consulted in its preparation.

### **SUSTAINABLE OPPORTUNITIES**

**Economic:** The information presented in this report presents no economic impact.

**Environmental:** There are no environmental opportunities identified in this report.

**Social Equity:** The adoption of an Ordinance for Transparency for City Participation with Federal Surveillance Activities provides residents with a public process to evaluate how the City engages with federal law enforcement agencies engaged in surveillance activities in Oakland. Having such a process indicates that the City is responding appropriately to concerns about civil liberties and privacy during a time of rapidly evolving technology. By establishing this process, the City will strengthen residents' faith in local government and allows for robust public dialogue and increased trust.

### **ACTION REQUESTED OF THE CITY COUNCIL**

Adopt an ordinance creating Chapter 9.72 of the Oakland Municipal Code to ensure greater transparency and a protocol for City participation in federal law enforcement surveillance operations.

For questions regarding this report, please contact Alex Marqusee, Sr. Legislative Analyst, at 510-238-7031.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lynette Gibson McElhaney", with a long horizontal flourish extending to the right.

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Councilmember Lynette Gibson McElhaney

Prepared by:  
Alex Marqusee, Sr. Legislative Analyst  
Office of Councilmember McElhaney

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APPROVED AS TO FORM AND LEGALITY

  
CITY ATTORNEY'S OFFICE

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

## OAKLAND CITY COUNCIL

ORDINANCE NO. \_\_\_\_\_ C.M.S.

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**ORDINANCE ADDING CHAPTER 9.72.010 TO CHAPTER 9 OF THE OAKLAND MUNICIPAL CODE TO ENSURE GREATER TRANSPARENCY AND ESTABLISH A PROTOCOL FOR CITY PARTICIPATION IN FEDERAL LAW ENFORCEMENT SURVEILLANCE OPERATIONS**

**WHEREAS**, the City Council finds it is essential to set City policy regarding City's participation in federal counterterrorism activities; and

**WHEREAS**, the City Council finds that it is essential that a public discussion occur at the Privacy Advisory Commission before the execution of any Memorandum of Understanding with the Federal Bureau of Investigation or other federal law enforcement agency regarding the Joint Terrorism Task Force or other similar agreement regarding the City's participation in federal law enforcement efforts; and

**WHEREAS**, the City Council finds that no decisions relating to participation in federal counterterrorism or other federal law enforcement activities should occur without strong consideration being given to the impacts such participation may have on civil rights and civil liberties, including those rights guaranteed by the California and United States Constitutions; and

**WHEREAS**, the City Council finds that all decisions regarding if and how the City, and in particular, its Police Department participates in federal counterterrorism or other federal law enforcement activities requires meaningful public input and that public opinion should be given significant weight; and

**WHEREAS**, under Oakland City Charter section 504(l) (Charter section 504(l)), any interagency agreement between the City and another public agency for joint governmental actions, such as a "Memorandum of Understanding" (MOU), must be approved by the City Council and the public has a right to speak on the item; and

**WHEREAS**, the City Council desires to have the Privacy Advisory Commission review proposed surveillance agreements and provide input to the City Council to provide an additional layer of review and public discussion; and

**WHEREAS**, the City Council finds that if Police Department participation in federal counterterrorism or other federal law enforcement activities is approved by Council, reporting measures must be adopted and provided in an annual report that empowers the City Council and public to verify that mandated civil rights and civil liberties safeguards have been strictly adhered to.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**SECTION 1.** That the City Council finds and determines the foregoing recitals to be true and correct and hereby makes them a part of this Ordinance.

**SECTION 2.** Oakland Municipal Code Chapter 9.72.010, is hereby added as set forth below (chapter and section numbers are indicated in **bold type**, as follows:

**9.72.010 City Participation in Federal Law Enforcement Activities.**

1) The City of Oakland, including but not limited to the Oakland Police Department, may assist federal agencies, including but not limited to, the Federal Bureau of Investigation ("FBI") through its Joint Terrorism Task Force, or any successor task force, joint operation, assignment, or enforcement activity (collectively, "JTTF") in preventing and investigating possible acts of terrorism and other criminal activity only in a manner that is fully consistent with the laws of the State of California, including but not limited to the inalienable right to privacy guaranteed by Article 1, Section 1 of the California Constitution, as well as the laws and policies of the City of Oakland, including but not limited to Police Department policies, procedures, and orders.

2) Before execution of any Memorandum of Understanding or other written agreement, contract or arrangement (collectively, "MOU") between the Oakland Police Department and the FBI, or other federal law enforcement agency, regarding the Police Department's participation on the JTTF or other federal law enforcement agency task force, or any amendment to any such existing MOU, the Chief of Police shall submit the proposed MOU and any orders, policies, and procedures relevant to the subject matter of the MOU for discussion and public comment at an open meeting of the Privacy Advisory Commission.

3) By January 31 of each year, the Chief of Police shall provide to the Privacy Advisory Commission and City Council, a public report with appropriate public information on the Police Department's work with the JTTF or other federal law enforcement agency task force in the prior calendar year, including any issues related to compliance with this Section.

**SECTION 3. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

**SECTION 4. Effective Date.** This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL-WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLÉN, KALB, KAPLAN  
AND PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_

LATONDA SIMMONS  
City Clerk and Clerk of the Council  
of the City of Oakland, California

Date of Attestation: \_\_\_\_\_

## NOTICE AND DIGEST

### **ORDINANCE ADDING CHAPTER 9.72.010 TO CHAPTER 9 OF THE OAKLAND MUNICIPAL CODE TO ENSURE GREATER TRANSPARENCY AND ESTABLISH A PROTOCOL FOR CITY PARTICIPATION IN FEDERAL LAW ENFORCEMENT SURVEILLANCE OPERATIONS**

This ordinance adds Chapter 9.72.010 to Chapter 9 of the Oakland Municipal Code to ensure greater transparency and establish a protocol for City participation in federal law enforcement surveillance operations, by providing that:

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