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cc: City of El Cerrito
El Cerrito City Council
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Comments on Proposed Drone Policy

Thank you for the opportunity to comment on the City's proposed drone policy. Below you will find brief comments regarding the specifics of the policy and a general statement regarding best practices in surveillance oversight.

Oakland Privacy is a citizens' coalition that works regionally to defend the right to privacy and enhance public transparency and oversight regarding the use of surveillance techniques and equipment. We were instrumental in the creation of the first standing municipal citizens' privacy advisory commission in the City of Oakland, and we have engaged in privacy enhancing legislative efforts with the Counties of Alameda and Santa Clara and several Northern California cities and regional entities. As experts on municipal privacy reform, we have written use policies and impact reports for a variety of surveillance technologies, conducted research and investigations, and developed frameworks for the use of equipment with respect for civil rights, privacy protections and community control.

Firstly, we are pleased to report that at the 10-22-19 community forum on the drone held by the police department, the community members and the police department mutually agreed to follow the outline of the best practices we recommend and which are codified in the surveillance transparency ordinance that has been adopted in 12 cities nationwide, and 8 Bay Area jurisdictions. It is wonderful that El Cerrito recognizes and voluntarily adopts desirable practices such as public hearings, use policies, City Council review and the release of logs detailing use. As with the previous body camera process, El Cerrito is following best practices and we sorely wish more cities would be as forthcoming and cooperative. Many aren't.

That said, it is of utmost importance that the desirable practices currently in use be standardized and codified as surveillance technologies rapidly multiply and grow more extensive and more privacy-challenging, and as both council members and law enforcement staff change over time. The issues are difficult and sometimes challenging as we balance the demands of public safety and the need to protect freedom of expression, maintain personal privacy and protect vulnerable groups that often experience increased tracking and profiling. Standardization makes sure that our beliefs and practices carry over into the future and that our protective efforts do not rely merely on voluntary acts by unknown future officials. An ordinance represents a covenant with the community that these best practices for surveillance oversight and transparency will be followed and provides them a role as the backstop of last resort for any sort of system failure. Oakland Privacy hopes the City of El Cerrito will move ahead as quickly as possible with the standardization of this agreed-upon process and its enactment into law.

With regard to the current draft of Policy 607 – Unmanned Aerial System UAS Operations, we will just summarize the comments received at the community forum that we thought were most important.

Section 607.4

1. We would recommend that the data security procedures delegated to the program coordinator in the policy be articulated and added to the policy or cited. These are important components to a use policy and need to be fleshed out in order for the City Council to ascertain the efficacy of the policy.
2. We would similarly recommend that the data retention and purge procedures delegated to the program coordinator in the policy be articulated and added to the policy or cited.

Section 607.5 Section 4

1. We would recommend a fleshed out description of what constitutes civil unrest in order to clearly differentiate between peaceful protest that may include some civil disobedience and would not generally be considered appropriate for drone surveillance. This concern is palpable in the city's community due to the use of drones to surveil many El Cerrito residents when they took part in protests against separation of families and caging of migrant children. Protests happened at locations in El Cerrito and at West County Detention Center and were monitored by drones from the Contra Costa and Alameda Sheriff's Departments. It is important that surveillance tech not be used, even inadvertently to deter community members from standing up against injustice.

Section 607.5 Section 7

1. We would recommend that the language relating to wildfire response and prevention replace the word "felony" with the word "arson", as the use indicated is to attempt to document or prevent crimes specifically relating to wildfire setting or propagation. Arson is the term that describes those actions.

Section 607.7

1. We would recommend that the City's record retention schedule be articulated or cited within the UAS policy. While we agree with the intent to retain drone footage in usable as evidence and otherwise to schedule it for destruction, it is not clear from this policy document what the cited record retention schedule is.
2. We would also recommend that the City's other procedures in place for the request of evidentiary items from other law enforcement departments be articulated or cited within the UAS policy.

Thank you for this opportunity to make brief comments on the proposed drone policy prior to its presentation to the El Cerrito City Council.

Respectfully,

Tracy Rosenberg

Tracy Rosenberg
Member, and on behalf of, Oakland Privacy