



September 17, 2019

The Honorable Jesse Arreguin, Mayor of Berkeley  
Members of the Berkeley City Council  
City of Berkeley  
2180 Milva Street  
Berkeley, CA 94709

Re: Surveillance Regulation Ordinance – 2019 Status

Dear Mayor Arreguin and Members of the City Council,

We are writing today to address the matter of the ongoing implementation of Ordinance 7,592–N.S the Surveillance Technology Use and Community Safety Ordinance. As you know, a year and a half after you unanimously passed Chapter 2.99 (3/31/18) to guide the City's acquisition and use of surveillance equipment, the City of Berkeley is still in the process of finalizing use policies. We expect an initial set to come before the Council later this fall.

The frightening events in San Pablo Park last fall moved you to add to the City's surveillance activities by installing a security system in the park. On October 16, 2018, the Council passed a resolution to authorize the City Manager to proceed with the installation of security cameras in the park. Originally phrased as a use of the exigent circumstances clause in Chapter 2.99, the resolution was amended to exempt the camera installation entirely based on the provided exception for security cameras affixed to city property.

More recently, in the process of discussing the possible addition of a ban on the use of facial recognition technology to the Chapter, as San Francisco, Oakland and Cambridge, MA have already enacted, city staff raised concerns that the existing San Pablo Park camera installation might be utilizing biometric surveillance technology that would conflict with the proposed ban. At the July 17, 2019 meeting of the Public Safety committee City staff were asked to return with a report on that equipment and the details about how it operates. However, no report was presented at the 9/16/19 meeting.

It is important to stress that the surveillance regulation process in Chapter 2.99 is a transparency measure. Neither you, nor advocates, nor Berkeley residents should be having to guess at the capabilities of the equipment, or what entities have access to the data. Putting the San Pablo Park cameras and any other municipal cameras with advanced analytics capacities through the process, whether following an exigency declaration or not, would have ensured that all of the relevant information was disclosed to the Council and to the public. Unfortunately the exemption, which was almost certainly intended only for routine and unsophisticated equipment, has left us all in the dark and created the uncertainty and mutual suspicion the Chapter was designed to avoid.

The city entered into a sole source contract with Edgeworth Security LLC, signed by a Brandon Haddad. Edgeworth Security describes themselves as specializing in military grade surveillance and security and Mr. Haddad has worked closely with the Northern California Regional Intelligence Center (NCRIC). The Avigilon cameras installed in San Pablo Park are IP-enabled and capable of performing advanced analytics including appearance search recognition and movement detection. These features would place all users of the park under active analysis rather than simply passive recording.

According to information the City released in a public records request, there are or were other Avilgon security camera installations located in the City. The video footage recorded by the cameras is apparently accessible to entities other than the City of Berkeley, including Homeland Security fusion center NCRIC, which was given a log-in to an Avilgon security camera system by a BPD detective in August of 2018, before the San Pablo Park cameras were purchased and installed.

[See public records document here.](#)

Pre-existing municipal law requires a written MOU with outside entities like NCRIC that provides the full scope of activities and that the Council annually approve that MOU. The document approved by the Council made no reference to NCRIC access to municipal security camera footage nor did it place any restrictions on the use of such footage by NCRIC. The City convened a NCRIC task force in the Fall of 2017 for the purpose of doing a thorough review of the City's relationship with NCRIC during which Oakland Privacy submitted extensive written comments. At no point in that panel's months of meetings was it disclosed that NCRIC was given log-in credentials to the camera controller for any city-owned Avilgon security camera system.

We believe it was the intent of the Council simply to place cameras to record video in the park which could be accessed in the event of another shooting or violent incident to help identify the perpetrators. We do not believe it was the intent of the Council to install an advanced military-grade surveillance system in the park that is accessible to the Department of Homeland Security.

Oakland Privacy regrets agreeing to an open-ended exemption for San Pablo Park without sufficient knowledge about the exact nature of the equipment that was contracted and then installed. We also are distressed that other Avilgon security camera installations have not been disclosed nor the required use policies written. As is always the case with technology, even in the scope of a year and a half, things can change greatly and the definition of a "routine security camera" can no longer assume the absence of advanced videoanalytics, biometric surveillance and the capacity for facial recognition.

We would like to suggest a proposal, a way to make things right. We agree that the Berkeley community overwhelmingly wants to feel safe in San Pablo Park, and we are certain the Council's unanimous vote for surveillance regulation demonstrates a commitment to transparency and civil rights, and that there is a way for these not to be in conflict.

We'd suggest that the camera system in San Pablo Park, and all other Avilgon security camera installations in the City, immediately go through the surveillance transparency process and that the earlier exemption be rescinded so that the equipment capabilities and data retention and distribution protocols are articulated and a use policy developed outlining the appropriate uses for the security system and restricting any inappropriate use, retention or access. We also suggest that NCRIC access to any Avilgon or any other security camera footage be terminated unless and until it is affirmatively approved by the City Council via a revised Memorandum of Agreement.

We also suggest amending Chapter 2.99 to clarify that the scope of the exemption for security cameras affixed to city property to be restricted to those capable only of simple passive recording, thereby not exempting sophisticated military grade surveillance from having appropriate transparency and usage policies.

Respectfully,

Tracy Rosenberg and JP Massar  
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