



Susan Wengraf  
Councilmember District 6

CONSENT CALENDAR  
May 16, 2017

To: Honorable Mayor and Members of the City Council  
From: Councilmembers Susan Wengraf, Lori Droste, and Linda Maio  
Subject: Support SB 21 (Hill) Law Enforcement Agencies: Surveillance Policies

RECOMMENDATION

Send a letter in support of SB 21 (Hill) urging our representatives to support this bill. Letter should be sent to State Senator Jerry Hill, State Senator Nancy Skinner, Assemblymember Tony Thurmond and Governor Jerry Brown.

FINANCIAL IMPLICATIONS

Minimal

BACKGROUND

Senate Bill 21 (Hill), supported by State Senator Nancy Skinner, provides an appropriate balance between protecting Californian's civil liberties and law enforcement's ability to use automatic license plate readers, cell-intercept devices and other surveillance technologies.

The bill requires law enforcement to submit all surveillance proposals to their governing body and requires that the hearing for the surveillance proposals be open to public input.

Before California law enforcement agencies could obtain new surveillance technology, they would be required to submit and get approval for an amended policy including new technology.

As it stands, many law enforcement agencies can obtain this high-tech, extremely intrusive technology without any approval or oversight. The federal government often provides grants and other funding sources for this equipment. Members of the community, and even elected officials, often don't know that their police departments possess technology capable of sweeping up electronic data, phone calls and location information.

SB 21 takes an important first step toward limiting the use of surveillance technology by addressing it at the local level. The use of such surveillance technologies should not go unchecked.

ENVIRONMENTAL SUSTAINABILITY

NA

CONTACT PERSON

Councilmember Susan Wengraf Council District 6 510-981-7160

Attachments:

1: Letter

2: Bill

[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180SB21](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB21)

**Re: SUPPORT for SB 21 (Hill) -- Law Enforcement Agencies: Surveillance Policies**

Dear State Representatives,

The Berkeley City Council is in support of SB 21 (Hill), which provides an appropriate balance between protecting Californian's civil liberties and law enforcement's ability to use automatic license plate readers, cell intercept devices and other surveillance technologies.

The bill requires law enforcement to submit all surveillance proposals to their governing body and requires that the hearing for the surveillance proposals be open to public input.

Before California law enforcement agencies could obtain new surveillance technology, they would be required to submit and get approval for an amended policy including new technology.

As it stands, many law enforcement agencies can obtain this high-tech, extremely intrusive technology without any approval or oversight. The federal government often provides grants and other funding sources for the equipment. Members of the community, and even elected officials, often don't know their police departments possess technology capable of sweeping up electronic data, phone calls and location information.

SB 21 takes an important first step toward limiting the use of surveillance technology by addressing it at the local level. The use of such technologies cannot go unchecked.

We respectfully urge you to pass this common sense measure that will bring full disclosure and accountability to the use of surveillance technologies; allowing law enforcement to do their job, while at the same time protecting civil liberties of all Californians.

Sincerely,  
Berkeley City Council

**Bill Text:**

An act to add Chapter 15 (commencing with Section 54999.8) to Part 1 of Division 2 of Title 5 of the Government Code, relating to law enforcement agencies.

LEGISLATIVE COUNSEL'S DIGEST

SB 21, as amended, Hill. Law enforcement agencies: surveillance: policies.

Under existing law, a city or county is empowered to perform duties including providing for public safety and law enforcement. A city or county is authorized, either directly or indirectly, to prescribe policies and regulations for law enforcement agencies under its jurisdiction.

This bill would, beginning July 1, 2018, ~~except in exigent circumstances, as defined~~, require each public agency, as defined, to submit to its governing body at a regularly scheduled hearing, open to the public, a proposed ~~plan~~ *Surveillance Use Policy* for the use of each type of surveillance technology and the information collected, as specified. *The bill would require the public agency to cease using the surveillance technology within 30 days if the proposed plan is not adopted.* The bill would require that the public agency submit an amendment to the surveillance plan, pursuant to the same open meeting requirements, for each new type of surveillance technology sought to be used. The bill would require the policy and any amendments to be posted on the agency's Internet Web site. The bill would also require the agency to make specified reports, at approved intervals, concerning the use of surveillance technology, and to make those reports available on the agency's Internet Web site. *The bill would prohibit a public agency from selling, sharing, or transferring information gathered by surveillance technology, except to another public agency, as permitted by law and the terms of the Surveillance Use Policy.* The bill would provide specified penalties, in addition to any other remedies under law, for violations of these provisions, including punitive damages, attorney's fees, and injunctive relief. The bill would authorize an agency to temporarily use surveillance technology in exigent circumstances without meeting the requirements of these provisions, provided that the agency submits a specified report to its governing body within 90 days of the end of the exigent circumstances or a later period as extended.

The bill would make legislative findings in support of these provisions.

Because this bill would impose additional requirements on local public agencies, it would impose a state-mandated local program.

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

*The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.*

*This bill would make legislative findings to that effect.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that, with regard to certain mandates, no reimbursement is required by this act for a specified reason.*

*With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.*

**DIGEST KEY**

Vote: MAJORITY Appropriation: NO Fiscal Committee: YES Local Program: YES

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**BILL TEXT**

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.**

The Legislature finds and declares all of the following:

- (a) While law enforcement agencies increasingly rely on surveillance technologies because those technologies may enhance community safety and aid in the investigation of crimes, those technologies are often used without any written rules or civilian oversight, and the ability of surveillance technology to enhance public safety should be balanced with reasonable safeguards for residents' civil liberties and privacy.
- (b) Promoting a safer community through the use of surveillance technology while preserving the protection of civil liberties and privacy are not mutually exclusive goals, and policymakers should be empowered to make informed decisions about what kind of surveillance technologies should be used in their community.
- (c) Decisions about whether to use surveillance technology for data collection and how to use and store the information collected should not be made by the agencies that would operate the technology, but by the elected bodies that are directly accountable to the residents in their communities who should also have opportunities to review the decision of whether or not to use surveillance technologies.

## SEC. 2.

Chapter 15 (commencing with Section 54999.8) is added to Part 1 of Division 2 of Title 5 of the Government Code, to read:

### **CHAPTER 15. Surveillance Policies for Law Enforcement 54999.8.**

The following definitions apply for purposes of this chapter:

- (a) "Exigent circumstances" means a law enforcement agency's good faith belief that an emergency involving danger of death or serious physical injury to any person requires use of a surveillance technology or the information it provides.
- (b) "Governing body" means the elected body that oversees the ~~law enforcement~~ public agency or the ~~law enforcement~~ public agency's corresponding geographic area in the case of a county sheriff.
- (c) "Public agency" means the state, any city, county, or city and county, or any agency or political subdivision of the state or a city, county, or city and county, including, but not limited to, a law enforcement agency.
- (d) (1) "Surveillance technology" means any electronic device or system ~~primarily used for law enforcement purposes and intended with the capacity~~ to monitor and collect audio, visual, locational, thermal, or similar information on any individual or group. This includes, but is not limited to, drones with cameras or monitoring capabilities, automated license plate readers, closed-circuit cameras/televisions, ~~international mobile subscriber identity (IMSD)~~ *International Mobile Subscriber Identity (IMSI)* trackers, global positioning system (GPS) technology, ~~radio-frequency~~ *radio frequency* identification (RFID) technology, ~~biometrics identification technology, and facial-recognition~~ *biometric identification technology, and facial recognition* technology.
- (2) "Surveillance technology" does not include ~~standard electronic devices or systems that have a primary function other than monitoring or collecting audio, visual, locational, thermal, or similar information on any individual or group. This includes, but is not limited to,~~ standard public agency computers and software, fingerprint scanners, ignition interlock devices, ~~cell phones,~~ *cellular telephones*, two-way radios, or other similar electronic devices.

### **54999.85.**

- (a) (1) On or before July 1, 2018, a public agency that ~~uses~~ *uses, or accesses information from*, surveillance technology shall submit to its governing body a Surveillance Use ~~Policy, which~~ *Policy to ensure that the collection, use, maintenance, sharing, and dissemination of information or data collected with surveillance technology is consistent with respect for individuals' privacy and civil liberties. The policy* shall be in writing and made publicly available on the agency's Internet Web site prior to the public hearing and after adoption. ~~The~~
- (2) *The* governing body, at a regularly scheduled hearing pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), shall consider the policy for adoption by resolution or ordinance on the regular, nonconsent ~~calendar.~~ *calendar and shall provide an opportunity for public comment before adopting the resolution or ordinance.*
- (3) *If a submitted Surveillance Use Policy is not adopted by resolution or ordinance by the governing body, the public agency shall cease use of surveillance technologies within 30 days of the hearing and until the time that a Surveillance Use Policy is adopted.*
- (b) The policy shall pertain to any surveillance technologies already in use *or relied upon for information* by the public agency and shall include, in separate sections specific to each unique type of surveillance technology, a description of each surveillance technology used *or relied upon for information* by the ~~law enforcement~~ public agency. Each section covering a separate technology shall, at a minimum include the following:
  - (1) Authorized purposes for using the surveillance technology.
  - (2) Types of data that can be and is collected by the surveillance technology.
  - (3) A description of the job title or other designation of employees and independent contractors who are authorized to use the surveillance technology or to access data collected by the surveillance technology. The policy shall identify and require training for those authorized employees and independent contractors.
  - (4) Title of the official custodian, or owner, of the surveillance technology responsible for implementing this section.
  - (5) A description of how the surveillance technology will be monitored to ensure the security of the information and compliance with applicable privacy laws.

- (6) The length of time information gathered by the surveillance technology will be retained, and a process to determine if and when to destroy retained information.
- (7) Purposes of, process for, and restrictions on the sale, sharing, or transfer of information to other persons and ~~whether and, whether~~, if so, how the collected information can be accessed by members of the public, including criminal defendants.
- (8) A process to maintain a record of access of the surveillance technology or information collected by the surveillance technology. At a minimum, the record shall include all of the following:*
- (A) The date and time the technology is used or the information is accessed.*
  - (B) The data elements the employee used to query the information.*
  - (C) The username of the employee who uses the technology or accesses the information, and, as applicable, the organization or entity with whom the person is affiliated.*
  - (D) The purpose for accessing the information or using the technology.*
- (9) The existence of a memorandum of understanding or other agreement with another local agency or any other party, whether or not formalized, for the shared use of the surveillance technology or the sharing of the information collected through its use, including the identity of the parties.*
- (c) *(1) After July 1, 2018, if a public agency intends to acquire a new type of surveillance technology after the adoption of the policy required by subdivision (a), the agency shall submit an amendment to the policy to include the new type of technology as a new section of the policy and submit the amendment to its governing body for approval consistent with subdivision (a). The*
- (2) Except as provided in Section 54999.95, the amendment shall be submitted prior to the acquisition of requesting funds for acquiring, using, or accessing information from the technology and shall be submitted to the governing body at a properly noticed public meeting on the regular, nonconsent calendar. The calendar and the governing body shall provide an opportunity for public comment before adopting the amendment.*
- (3) The amendment shall be in writing and made publicly available on the agency's Internet Web site prior to the public hearing and after adoption. The governing body has 30 days to consider an amendment. If a submitted amendment is not adopted by the governing body, the public agency shall not request funds for, acquire, use, or access information from the new surveillance technology.*
- (d) If, before July 1, 2018, a public agency has implemented the requirements for automated license plate readers pursuant to Title 1.81.23 (commencing with Section 1798.90.5) of Part 4 of Division 3 of the Civil Code or for cellular communications interception technology pursuant to Article 11 (commencing with Section 53166) of Chapter ~~1 of Part 1 of Division 2 of Title 5 of the Government Code~~, *1*, the law enforcement agency shall include the required information as part of the Surveillance Use Policy required by subdivision (a).
- (e) At a time interval agreed to by the public agency and the governing body, *but not less often than every two years*, a public agency that uses surveillance technologies and which has an approved Surveillance Use Policy shall submit to its governing body a written Surveillance Technology Use Report. The report shall be made publicly available on the agency's Internet Web site, and shall, at a minimum, include the following:
- (1) The total costs for each surveillance technology, including personnel costs.*
  - (2) A description of how many times each type of technology was used in the preceding year and how many times each type of technology helped apprehend suspects or close a criminal case.*
  - (3) A description of the type of data collected by each surveillance technology, including whether each technology captured images, sound, or other data.*
  - (4) The number of times and the purposes surveillance technology was borrowed from or lent to another agency, including technologies used under exigent circumstances.*
  - (5) The number and classification of the agency employees trained and authorized to use each type of surveillance technology, along with a description of the training provided to agency employees on each type of surveillance technology and how often the training was provided.*
  - (6) Disclosure of whether any surveillance technology was used in a manner out of compliance with the agency's Surveillance Use Policy, whether data collected through the use of surveillance technology was inappropriately disclosed, released, or in any other way revealed for a nonapproved reason, and the steps the agency took to correct the error.*
  - (f) Nothing in this section shall be construed to prohibit a governing body from adopting additional protocols as they relate to surveillance technology. A governing body may reevaluate any existing Surveillance Use Policy at a properly noticed public meeting on the regular, nonconsent calendar and revoke or request amendments to the policy.*
  - (g) A public agency shall not sell, share, or transfer information gathered by surveillance technology, except to another public agency, and only as permitted by law and as allowed by an approved Surveillance Use Policy.*

**54999.9.**

In addition to any other sanctions, penalties, or remedies provided by law, an individual who has been harmed by a violation of this section may bring a civil action in any court of competent jurisdiction against a person who knowingly caused that violation. The court may award a combination of any one or more of the following:

- (a) Actual damages, but not less than liquidated damages in the amount of two thousand five hundred dollars (\$2,500).
- (b) Punitive damages upon proof of willful or reckless disregard of the law.
- (c) Reasonable attorney's fees and other litigation costs reasonably incurred.

(d) Other preliminary and equitable relief as the court determines to be appropriate.

**54999.95.**

(a) A public agency may temporarily acquire or temporarily use a surveillance technology in exigent circumstances without following the provisions of Section 54999.85 before that acquisition or use unless that acquisition or use in exigent circumstances conflicts with, or is preempted by, other state or federal law.

(b) If a public agency acquires or uses a surveillance technology in exigent circumstances, the agency shall report that acquisition or use to the governing body within 90 days following the end of the exigent circumstances, submit an amendment to the agency's Surveillance Use Policy for the technology that was acquired or used, and also include the technology and its use in the agency's Surveillance Technology Use Report.

(c) If the agency is unable to comply with the 90-day timeline, the agency shall notify the governing body, which may grant an extension.

~~SEC. 3.~~

~~If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.~~

**SEC. 3.**

*The Legislature finds and declares that Section 2 of this act, which adds Chapter 15 (commencing with Section 54999.8) to Part 1 of Division 2 of Title 5 of the Government Code, furthers, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:*

*By requiring public agencies to submit their proposed Surveillance Use Policy for consideration by their governing body at a public hearing, this act furthers the purposes of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution.*

**SEC. 4.**

*No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.*

*However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.*

