

CITY OF OAKLAND

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AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: David E. Downing
Assistant Chief of Police

SUBJECT: Cell-Site Simulator Technology

DATE: December 27, 2016

City Administrator
Approval

Date

1/12/17

RECOMMENDATION

Staff Recommends That The City Council: 1) Approve A Resolution Authorizing The City Administrator Or Designee To Enter Into A Memorandum Of Understanding (MOU) With The Alameda County District Attorney's Office (ACDA) To Allow Members Of The Oakland Police Department (OPD) To Use Cellular Site Simulator Technology, For Five Years From The Effective Date Of The MOU At No Cost To OPD; And 2) Approve A Resolution Establishing The City Of Oakland's Cellular Site Simulator Usage And Privacy Policy.

EXECUTIVE SUMMARY

Approval of this resolution for an MOU will allow OPD to enter into a no-cost MOU with ACDA to use CSS technology. CSS technology will assist OPD in locating missing persons, at-risk individuals, and victims of mass casualty incidents. The technology will also assist with investigations involving danger to the life or physical safety of individuals and in the apprehension of fugitives. CSS technology transmits digital wireless signals as a cellular phone tower, mimicking the signal that wireless phones seek in locating a cellular phone tower. Cellular devices in the area identify the CSS as the most attractive cell tower of which to transmit its signal. The CSS receives these signals and identifies the target device when it is within range.

ACDA has acquired CSS technology and is making it available to Alameda County law enforcement agencies. In order to use this technology, OPD must enter into an MOU with ACDA. A draft MOU (**Attachment B**) has been developed and requires City Council authorization for the City Administrator or designee to enter into the agreement. A draft OPD policy (**Attachment A**) concerning use of CSS technology and making reference to the MOU with ACDA has been developed by OPD.

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January 24, 2017

BACKGROUND AND LEGISLATIVE HISTORY

California Government Code § 53166(b) was enacted in October 2015 and regulates the use of CSS technology by law enforcement agencies. Among other provisions, the law states that law enforcement agencies using CSS technology must maintain reasonable security procedures and practices. The law also requires that law enforcement agencies using CSS technology “[i]mplement a usage and privacy policy (**Attachment A**) to ensure that the collection, use, maintenance, sharing, and dissemination of information gathered through the use of cellular communications interception technology complies with all applicable law and is consistent with respect for an individual’s privacy and civil liberties. This usage and privacy policy shall be... posted conspicuously on [the agency’s] Web site. The usage and privacy policy shall... include... [t]he existence of [any] memorandum of understanding or other agreement with another local agency or any other party for the shared use of cellular communications interception technology or the sharing of information collected through its use, including the identity of signatory parties.”¹

The accompanying policy and MOU were approved by the Oakland Privacy Advocacy Commission (PAC) on October 20, 2016.

ANALYSIS AND POLICY ALTERNATIVES

OPD is committed to reducing crime and serving the community through fair, quality policing. OPD can more effectively save lives, reduce harm, and reduce crime through the use of CSS technology.

Authorized Purposes and Legal Authority

Per policy, as outlined in the accompanying resolution, OPD would be limited to using CSS technology to:

- (a) Locate missing persons
- (b) Locate at-risk individuals
- (c) Locate victims of mass casualty incidents²
- (d) Assist in investigations involving danger to the life or physical safety of an individual
- (e) Apprehend fugitives

As provided by OPD policy, CSS technology can be used only with a search warrant or for an identified exigency³. In the case of an identified exigency, a concurrent application for a search warrant shall be made whenever possible and no later than 48 hours after use.

¹ https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=53166.&lawCode=GOV

² The CSS Technology Police Resolution accompanying this report defines “mass casualty incident” as a natural disaster such as an earthquake or fire; a terrorist attack; or any other event resulting in imminent loss of life or injury.

³ The CSS Technology Police Resolution accompanying this report defines “Exigency” as an imminent threat of death or bodily injury

What CSS Does

Digital wireless cellular phone towers receive unique wireless radio wave frequencies transmitted by each wireless phone of a particular wireless phone carrier (i.e., ATT, Verizon, etc.). Wireless towers then transmit the signals to satellites or first to other towers; the satellites then transmit the signals back to other towers adjacent to the location of the wireless phone that is receiving the wireless call. The second tower then sends the wireless radio signal to the receiving phone. A CSS functions by transmitting digital wireless signals as a cellular phone tower, and thus mimicking the signal that wireless phones seek in locating a cellular phone tower. Cellular devices like mobile phones in the area of the CSS identify the CSS as the most attractive cell tower of which to transmit its signal. These cellular devices transmit signals to the CSS that identify the cellular devices. The CSS receives these signals and identifies the target device when the particular target phone device is within range. The CSS will obtain the signaling information relating only to that particular phone and reject all others. Although the CSS initially receives signals from multiple devices near the simulator while attempting to locate the target device, it does not display the unique identifying numbers of those other devices-the CSS is designed to display only the unique identifying numbers of the target device of which it is programmed to find. Additionally, all data contained by the cellular site simulator device shall be deleted at the end of any 24-hour period of use unless needed for a search and rescue operation in which case it will be deleted no less than once every 10 days, as per policy.

The CSS will obtain signaling information from all devices in the target vicinity to locate persons in need of assistance or to further recovery efforts, when used for search and rescue,. Any such information will be used only for these limited purposes. All such information received will be purged as soon as the person or persons in need of assistance have been located and in any event no less than once every 10 days, as per policy. The only information obtained by the CSS are the azimuth (an angular measurement in a spherical coordinate system), signal strength, and device identifier.

What CSS Does Not Do

The CSS owned by ACDA and available to OPD through an MOU will not be used to capture emails, texts, contact lists, images or any other data. The CSS will not be used to collect subscriber account information such as an account holder's name, address, or telephone number. Per policy, any data that is acquired by the CSS device will be deleted at the end of any 24-hour period of use unless needed for a search and rescue operation. Any data acquired during a search and rescue operation will be deleted at the end of the operation or no less than once every 10 days, as per policy.

Oversight by OPD

The OPD CSS Policy and the resolution that accompanies this report require that each use of CSS technology by OPD be approved by the Chief of Police or Assistant Chief of Police. Any emergency use must be approved by a Lieutenant of Police or higher-ranking member, as per policy and the accompanying resolution. The Chief of Police, Privacy Advisory Commission, and the Public Safety Committee will be provided with an annual report that includes information on each use of CSS technology.

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PUBLIC OUTREACH / INTEREST

OPD staff collaborated with the PAC from August through October, 2016. This collaboration included presentation, discussion, and revision at PAC meetings. The policy will be placed on the OPD website upon City Council approval of the accompanying resolution.

COORDINATION

This report and legislation have been reviewed by the Office of the City Attorney.

FISCAL IMPACT

There is no expected fiscal impact for this MOU. OPD staff time will be required to use the CSS. Any such staff time will rely on existing funding.

SUSTAINABLE OPPORTUNITIES

Economic: There are no economic opportunities associated with this report.

Environmental: There are no environmental opportunities associated with this report.

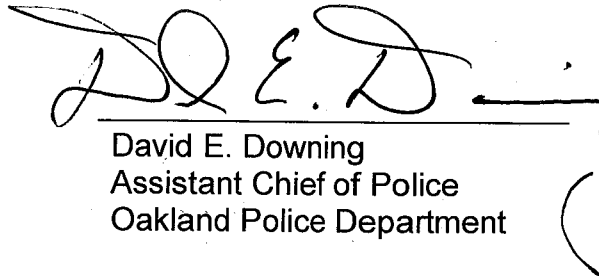
Social Equity: All residents benefit from greater public safety. This technology will help all members of Oakland's community. The accompanying policy and required reports will assist with building community trust and relationships.

ACTION REQUESTED OF THE PUBLIC SAFETY COMMITTEE

Staff Recommends That The City Council: 1) Approve A Resolution Authorizing The City Administrator Or Designee To Enter Into A Memorandum Of Understanding (MOU) With The Alameda County District Attorney's Office (ACDA) To Allow Members Of The Oakland Police Department (OPD) To Use Cellular Site Simulator Technology, For Five Years From The Effective Date Of The MOU At No Cost To OPD; And 2) Approve A Resolution Establishing The City Of Oakland's Cellular Site Simulator Usage And Privacy Policy.

For questions regarding this report, please contact Timothy Birch, Police Services Manager, OPD Research and Planning, at (510) 238-6443.

Respectfully submitted,



David E. Downing
Assistant Chief of Police
Oakland Police Department

Reviewed by:
Timothy Birch, Police Services Manager
OPD, Research and Planning, OCOP

Prepared by:
Bruce Stoffmacher, Legislation Manager
OPD, Research and Planning, OCOP

Attachments (2)

- A: Draft OPD Policy Concerning Cell-Site Simulator Technology
- B: Draft MOU with ACDA Concerning Cell-Site Simulator Technology

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Cellular Site Simulator Usage and Privacy

609.1 PURPOSE AND SCOPE

The purpose of this policy is to set guidelines and requirements pertaining to cellular site simulator technology usage and privacy. Any changes to this policy – including authorized uses of the cellular site simulator technology by the Oakland Police Department – will be made in consultation with the Oakland Privacy Commission.

609.2 POLICY

It is the policy of the Oakland Police Department to respect the privacy rights and civil liberties of individuals and to follow the Constitution, particularly the First and Fourth Amendments, the California Constitution, and all applicable laws.

609.3 BASIS FOR POLICY

Government Code § 53166(b) requires all law enforcement organizations that use cellular communications interception technology, including cellular site simulator technology, to:

- (a) Maintain reasonable security procedures and practices, including operational, administrative, technical, and physical safeguards, to protect information gathered through the use of cellular communications interception technology from unauthorized access, destruction, use, modification, or disclosure.
- (b) Implement a usage and privacy policy to ensure that the collection, use, maintenance, sharing, and dissemination of information gathered through the use of cellular communications interception technology complies with all applicable law and is consistent with respect for an individual's privacy and civil liberties. This usage and privacy policy shall be available in writing to the public, and, if the local agency has an Internet Web site, the usage and privacy policy shall be posted conspicuously on that Internet Web site. The usage and privacy policy shall, at a minimum, include all of the following:
 1. The authorized purposes for using cellular communications interception technology and for collecting information using that technology.
 2. A description of the job title or other designation of the employees who are authorized to use, or access information collected through the use of, cellular communications interception technology. The policy shall identify the training requirements necessary for those authorized employees.
 3. A description of how the local agency will monitor its own use of cellular communications interception technology to ensure the accuracy of the information collected and compliance with all applicable laws, including laws providing for process and time period system audits.
 4. The existence of a memorandum of understanding or other agreement with another local agency or any other party for the shared use of cellular communications interception technology or the sharing of information collected through its use, including the identity of signatory parties.

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5. The purpose of, process for, and restrictions on, the sharing of information gathered through the use of cellular communications interception technology with other local agencies and persons.
6. The length of time information gathered through the use of cellular communications interception technology will be retained, and the process the local agency will utilize to determine if and when to destroy retained information.

Members shall use only department-approved devices and usage shall be in compliance with department security procedures, the department's usage and privacy procedures and all applicable laws.

609.4 HOW THE TECHNOLOGY WORKS

Cellular site simulator technology relies on use of cellular site simulators. Cellular site simulators, as governed by this policy, function by transmitting as a cell tower. In response to the signals emitted by the simulator, cellular devices in the proximity of the simulator identify it as the most attractive cell tower in the area and thus transmit signals to the simulator that identify the device in the same way that they would a networked tower.

A cellular site simulator receives signals and uses an industry standard unique identifying number assigned by a device manufacturer or cellular network provider to distinguish between incoming signals until the targeted device is located. Once the cellular site simulator identifies the specific cellular device for which it is looking, it will obtain the signaling information relating only to that particular phone, rejecting all others. Although the cellular site simulator initially receives signals from multiple devices in the vicinity of the simulator while attempting to locate the target device, it does not display the unique identifying numbers of those other devices for the operator except when deployed in registration mode. Registration mode may only be used for mass casualty incidents. If the cellular site simulator equipment or software is modified or capable of displaying unique identifiers other than in registration mode, Oakland Police personnel are prohibited from making use of, or saving, such information. To the extent that any unique identifier for the non-targeted device might exist in the software or simulator itself, it will be purged at the conclusion of operations in accordance with this policy.

When used in a mass casualty event, the cellular site simulator will obtain signaling information from all devices in the simulator's target vicinity for the limited purpose of locating persons in need of assistance or to further recovery efforts. Any information received from the cellular devices during this time will only be used for these limited purposes and all such information received will be purged at the conclusion of the effort in accordance with this policy. A mass casualty incident is a natural disaster such as an earthquake or fire; a terrorist attack; or any other event resulting in imminent loss of life or injury.

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Cellular site simulator technology will not be used at crowd management events.

609.4.1 INFORMATION OBTAINED

By transmitting as a cell tower, cellular site simulators acquire identifying information from cellular devices. As employed by the Oakland Police Department, this information is limited. Cellular site simulators employed by the Oakland Police Department will be limited to providing only:

- (a) Azimuth (an angular measurement in a spherical coordinate system)
- (b) Signal strength
- (c) Device identifier for the target device when locating a single individual or all device identifiers for a mass casualty incident.

Cellular site simulators do not function as GPS locators, as they will not obtain or download any location information from the device or its applications.

Cellular site simulators used by the Oakland Police Department shall not be used to collect the contents of any communication, in accordance with 18 U.S.C. § 3121(c).

The cellular site simulator employed by the Oakland Police Department shall not capture emails, texts, contact lists, images or any other data contained on the phone. In addition, the cellular site simulators shall not be used by the Oakland Police Department to collect subscriber account information (for example, an account holder's name, address, or telephone number).

609.5 AUTHORIZED PURPOSES

The authorized purposes for using cellular communications interception technology and for collecting information using that technology to:

- (a) Locate missing persons
- (b) Locate at-risk individuals
- (c) Locate victims of mass casualty incidents
- (d) Assist in investigations involving danger to the life or physical safety of an individual
- (e) Apprehend fugitives

609.5.1 LEGAL AUTHORITY

Cellular site simulator technology may only be used by the Oakland Police Department with a search warrant or for an identified exigency, with a concurrent application for a search warrant. A search warrant application shall be made no later than 48 hours after use in an identified exigency. When using cellular site simulator technology to assist in an investigation, Oakland Police personnel may only attempt to locate cellular devices whose unique identifiers are already known to law enforcement unless used for a mass casualty event.

When making any application to a court, members of the Oakland Police Department shall disclose appropriately and accurately the underlying purpose and activities for which an order or

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authorization is sought. Oakland Police Department personnel must consult with prosecutors when using a cell-site simulator and applications for the use of a cell-site simulator must include sufficient information to ensure that the courts are aware that the technology is being used.

- (a) Regardless of the legal authority relied upon, at the time of making an application for use of a cell-site simulator, the application or supporting affidavit shall describe in general terms the technique to be employed. The application or supporting affidavit shall indicate that investigators plan to send signals to the cellular phone that will cause it, and non-target phones on the same provider network in close physical proximity, to emit unique identifiers. The application or supporting affidavit shall indicate that these unique identifiers will be obtained by the technology, and investigators may only use the information collected to determine the physical location of the target cellular device.
- (b) An application or supporting affidavit shall inform the court that the target cellular device (e.g., cell phone) and other cellular devices in the area might experience a temporary disruption of service from the service provider. The application or supporting affidavit may also note, if accurate, that any potential service disruption to non-target devices would be temporary and all operations will be conducted to ensure the minimal amount of interference to non-target devices.
- (c) An application for the use of a cellular site simulator shall inform the court about how law enforcement intends to address deletion of data not associated with the target phone. The application shall state that law enforcement will make no use of any non-target data, except to identify and distinguish the target device from other devices.

If cellular site technology is used based on an exigency, then the above requirements will be met by applying for a search warrant concurrently with use of the device whenever possible and no later than 48 hours after use. An exigency is defined as an imminent threat of death or bodily injury.

609.6 JOB TITLES, DESIGNATIONS, AND TRAINING REQUIREMENTS

Personnel authorized to use or access information collected through the use of cellular communications interception technology shall be specifically trained in such technology and authorized by the Chief of Police or designee. Such personnel shall be limited to designated sergeants and officers unless otherwise authorized.

Training requirements for the above employees include completion of training by the manufacturer of the cellular communications interception technology or appropriate subject matter experts as designated by the Oakland Police Department. Such training shall include Federal and state law; applicable policy and memoranda of understanding; and functionality of equipment. Training updates are required annually.

609.7 AGENCY MONITORING AND CONTROLS

The Oakland Police Department will monitor its use of cellular site simulator technology to ensure the accuracy of the information collected and compliance with all applicable laws, including laws providing for process and time period system audits. The Chief of Police shall designate a Cellular Site Simulator Program Supervisor who shall ensure such audits are conducted in accordance with law and policy.

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609.7.1 DEPLOYMENT LOG

Prior to deployment of the technology, use of a cellular site simulator by the Oakland Police Department must be approved by the Chief of Police or the Assistant Chief of Police. Any emergency use of a cellular site simulator must be approved by a Lieutenant of Police or above. Each use of the cellular site simulator device requires completion of a log by the user. The log shall include the following information at a minimum:

- (a) The name and other applicable information of each user.
- (b) The reason for each use.
- (c) The results of each use including the accuracy of the information obtained.

609.7.2 ANNUAL REPORT

The Cellular Site Simulator Program Coordinator shall provide the Chief of Police, the Privacy Advisory Commission, and Public Safety Committee with an annual report that contains all of the above information. The report shall also contain the following for the previous 12-month period:

- (a) The number of times cellular site simulator technology was requested.
- (b) The number of times cellular site simulator technology was used.
- (c) The number of times that agencies other than the Oakland Police Department received information from use of the equipment by the Oakland Police Department.
- (d) The number of times the Oakland Police Department received information from use of this equipment by other agencies.
- (e) Information concerning any violation of this policy including any alleged violations of policy.
- (f) Total costs for maintenance, licensing and training, if any.
- (g) The results of any internal audits and if any corrective action was taken, subject to laws governing confidentiality of employment actions and personnel rules.
- (h) The number of times the equipment was deployed:
 - 1. To make an arrest or attempt to make an arrest.
 - 2. To locate an at-risk person.
 - 3. To aid in search and rescue efforts.
 - 4. For any other reason.
- (i) If cellular site simulator technology was used in relation to a crime, the type of crime.
- (j) The effectiveness of the technology in assisting in investigations based on data collected.
- (k) Final location of use in specific deployments as long as such information does not compromise an investigation. Location information shall be as specific as possible without compromising an investigation.

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- (l) Information in the deployment log that does not violate individual privacy rights or compromise an investigation, including:
1. The name and other applicable information of each user.
 2. The reason for each use.
 3. The results of each use including the accuracy of the information obtained.

The above information and reporting procedures will assist in evaluating the efficacy of this policy and equipment.

609.8 MEMORANDUM OF UNDERSTANDING

The Oakland Police Department has a memorandum of understanding with the Alameda County District Attorney's Office for the shared use of cellular site simulator technology and the sharing of information collected through its use. The signatory parties are the County of Alameda and the City of Oakland.

609.9 SHARING OF INFORMATION

The Oakland Police Department will share information gathered through the use of cellular site simulator technology with other law enforcement agencies that have a right to know and a need to know the information requested. A right to know is the legal authority to receive information pursuant to a court order, statutory law, or case law. A need to know is a compelling reason to request information such as direct involvement in an investigation.

Information will be shared only with agencies in accordance with a lawful purpose and limited to a court order, search warrant, or identified exigency on the part of the agency. The Oakland Police Department will not share information outside of the legal parameters necessary for the lawful purpose. All requests for information shall be reviewed by the Cellular Site Simulator Program Coordinator or other individual as designated by the Chief of Police. Information will be shared only upon approval of the Cellular Site Simulator Program Coordinator or other individual as designated by the Chief of Police.

The agency with which information is shared ("recipient agency") shall be designated as the custodian of such information. The recipient agency shall be responsible for observance of all conditions of the use of information including the prevention of unauthorized use, retention of information, and destruction of information.

Every law enforcement agency and officer requesting use of the cell- site simulator, shall be provided with a copy of this Policy and specialized training in the use of this technology. Such agencies shall also provide copies of this Policy and training, as appropriate, to all relevant employees who may be involved in the use of this technology.

609.10 RETENTION AND DISPOSAL OF INFORMATION

The Oakland Police Department shall destroy all information intercepted by the cellular site simulator equipment as soon as the objective of the information request is accomplished and shall record this destruction in accordance with the following:

Cellular Site Simulator Usage and Privacy

- (a) When the cellular site simulator equipment is used to locate a known cellular device, all data shall be deleted upon locating the cellular device and no fewer than once daily for a known cellular device.
- (b) When the cellular site simulator equipment is used in a search and rescue operation, all data must be deleted as soon as the person or persons in need of assistance have been located, and in any event no less than once every 10 days.
- (c) Prior to deploying the cellular site simulator equipment for a subsequent operation, ensure the equipment has been cleared of any previous operational data.
- (d) No data derived or recorded by cellular site simulator software or equipment will be stored on any server, device, cloud-based storage system, or in any capacity.

Memorandum of Understanding
Between
The Alameda County District Attorney's Office
and
The Oakland Police Department

I. PARTIES – PARTICIPATING AGENCIES

This agreement, referred to herein as a “Memorandum of Understanding” (MOU) is entered into by and between the law enforcement agencies collectively referred to herein as “Participating Agencies”, specifically the:

- A. Alameda County District Attorney's Office (ACDA)
- B. Oakland Police Department (OPD)

A “Participating Agency” is an allied state or local law enforcement agency that has made a commitment of resources for an agreed upon period of time. This commitment is on a case by case basis to access and deploy the specific equipment and technology referred to herein as the “CSS Program.”

PARTICIPATING AGENCIES HEREBY AGREE AS FOLLOWS:

II. PURPOSE/MISSION

OPD desires access to Cellular-Site Simulator (CSS) technology and equipment possessed and controlled by ACDA, to enhance investigative capabilities. This includes the ability to quickly and safely apprehend fugitives, locate missing and at risk individuals, provide search and rescue support in natural disasters and emergencies, and locate persons involved in serious crimes that put the public at risk.

This MOU is sets forth of the terms and conditions of access to the CSS Program. This MOU outlines responsibilities of participating agencies as they relate to the requirements for pre-deployment, deployment, use and post-use of the CSS Program technology and equipment. As with any law enforcement capability, ACDA and OPD must use the CSS Program in a manner consistent with the requirements and protections of the United States Constitution, including the Fourth Amendment, and applicable statutory authorities, including the Pen Register Statute. Information resulting from the use of a cell-site simulator must be handled consistent with applicable statutes, regulations, and policies that guide law enforcement in the collection, retention, and disclosure of data.

The mission of the CSS Program is to enhance public safety by acquiring real time intelligence to:

- Increase opportunities to protect the public, enhance officer safety, and reduce deadly force encounters.
- Apprehend fugitives.
- Locate missing or at risk individuals.
- Locate victims of natural disasters.

III. EFFECTIVE DATE/DURATION/TERMINATION

- A. This MOU shall become effective upon execution by all their respective representatives.
- B. The term of this MOU is five years from the effective date.
- C. The participating agencies will review the mission objectives and the need for continued operation under this MOU every 12 months.
- D. Either agency may withdraw from this agreement by written notice. Written notice of intent to withdraw must be provided to the other participating agencies within 30 days prior to the date of the intended withdrawal.
- E. Any amendment or extension shall be agreed upon by both parties.

IV. PROGRAM OVERSIGHT, MANAGEMENT, AND SUPERVISION

A. PROGRAM OVERSIGHT COMMITTEE

- 1. The Program Oversight Committee (Committee) shall be comprised of the Chief's designee from each participating agency.
- 2. The Committee shall meet annually to review and assess:
 - a. Program policies and procedures
 - b. Pre-deployment requirements
 - c. Operational guidelines
 - d. Reports of deployment
 - e. Policy compliance
 - f. Equipment condition
 - g. MOU terms and provisions
- 3. The Committee shall prepare a report to summarize its review and assessment and provide the report to each participating agency's Chief within ten days of completing the review and assessment.

B. PROGRAM MANAGEMENT

1. ACDA Responsibilities:

- a. Assess and approve or deny CSS Program deployment requests
- b. Management and daily operation of the CSS Program
- c. Developing and preparing CSS Program policies and operating procedures
- d. Media releases regarding the CSS Program and its use
- e. CSS Program equipment maintenance and storage in a secured facility
- f. CSS Program equipment operating costs

2. Participating Agency Responsibilities

The following provisions will guide the participating agencies regarding resources, deployment, policy, training, and supervision.

- a. Each participating agency shall commit personnel to staff the CSS Program. ACDA will assign staff to each participating agency CSS Program deployment to assist with and monitor use of the equipment, data collection, and policy compliance.
- b. Each participating agency will assign supervisors and equipment operators (Operators) to the CSS Program. The personnel initially assigned to the CSS Program will be listed on Attachment A to this MOU. Additions, deletions, and temporary reassignments of personnel will be at the discretion of the respective participating agencies, with notice to the other participating agencies.
- c. Each participating agency will provide for the salary and employment benefits, including overtime, of their personnel assigned to the CSS Program. Each participating agency will retain control of its personnel's work hours, including the approval of overtime.
- d. Each participating agency shall designate qualified personnel (Operators) to complete training to operate the equipment and appropriately manage data obtained through its use. Only properly trained peace officers

may operate the CSS Program equipment. Training is completed at the participating agency's expense.

e. CSS Program Operators must meet the following minimum qualifications:

1. Must be Peace Officers (830.1 PC)
2. Must complete required training
3. Must be familiar with the ACDA policy "Use of a Cell-Site Simulator"
4. If operating the CSS vehicle, must have a valid California Driver's License.

f. CSS Program Coordinators

Each participating agency agrees to designate a Program Coordinator (Coordinator) to the CSS Program. These Coordinators are responsible for insuring compliance with this MOU and all related policies affecting CSS Program deployment and operations. The personnel assigned as Coordinators will be listed on Attachment B to this MOU. Additions, deletions, and temporary reassignments of personnel will be at the discretion of the respective participating agencies, with notice to the other participating agencies.

g. Operational Dispute Mediation

Operational disputes will normally be mutually addressed and resolved by the on-scene designated CSS Program supervisors. Any problems not resolved at this level will be referred to the CSS Program Coordinators identified in Attachment B of this MOU. However, the ACDA Chief of Inspectors or his/her designee is vested with the authority to resolve any dispute and to reverse decisions made at any level. Decisions by the ACDA Chief of Inspectors are final.

h. Identifying Cases for Deployment

The ACDA Chief of Inspectors or his/her designee shall assess and approve or deny each request for deployment based on the criteria set forth below.

The participating agencies agree to limit requests to use CSS Program resources to the following:

1. **Pursuant to a search warrant¹:**
 - a. Investigations involving danger to the life or physical safety of an individual.
 - b. Apprehension of a fugitive.
2. **Exigency:**
 - a. The CSS program may be used, absent a search warrant, if a participating agency, in good faith, believes that *an exigency* involving danger of death or serious physical injury to any person exists.
 - b. Search and rescue operations
 - c. Missing or at risk person operations
 - d. Warrantless CSS Program deployments must be approved per the provisions of this MOU.

C. PROGRAM SUPERVISION

1. Operations

The Operator Supervisor is responsible for initiating, assigning, directing, monitoring, supervising, concluding and reporting CSS Program deployments for their respective agency.

2. Reporting (deployment)

The Operator Supervisor shall complete, consistent with applicable procedures, the required Incident Report to document the participating agency's use of the CSS Program equipment and will forward the report to the ACDA Chief of Inspectors within five days of concluding a CSS Program deployment.

3. Reporting (equipment)

The Operator Supervisor shall complete, consistent with applicable procedures, the required Incident Report to document any equipment failure, equipment damage or operational concern(s) related to

¹ Any valid search warrant, including telephonic search warrants, satisfy this requirement.

equipment and will forward the report to the ACDA Chief of Inspectors as soon as is practical.

4. Complaints (personnel)

Each participating agency shall be responsible for receiving, investigating and adjudicating any personnel complaint(s) regarding their employee(s) arising out of the use of the CSS Program equipment or use of data obtained by the equipment.

5. General Guidelines

While all personnel assigned to the CSS Program will give primary consideration to the regulations and guidelines imposed by their own agency, they shall not violate policies and procedures imposed by the ACDA regarding the CSS Program. ACDA policies and procedures are controlling when participating agencies, authorized by this MOU, are assigned to a CSS Program deployment operation.

Each participating agency member assigned to the CSS Program will be provided with copies of the relevant ACDA policies and procedures. Participating agencies' policies may be more restrictive than ACDA policies in their decisions to request deployments of the CSS Program equipment. In those instances where participating agencies' policies are more restrictive than ACDA, then the participating agencies' policies are controlling.

V. OUTSIDE AGENCY REQUESTS

Outside agency requests for use of the CSS Program may be directed to any of the participating agencies. The participating agency shall forward the request only if the outside agency request meets the criteria described herein and the requesting agency's search warrant includes the Pen-Register and request for the use of the Cell-Site Simulator. It is the responsibility of the participating agency to review the search warrant and ensure that it is accurate and that there is probable cause to justify deployment. Participating agencies shall forward policy compliant requests to the ACDA Chief of Inspectors or his or her designee. If the request is (a) warrantless, (b) an emergency, and (c) meets the criteria described in Part 4.B.2.h.2. of this MOU, the request may be granted.

VI. REPORTING

ACDA will prepare and provide an Annual Report of CSS Program deployment activity to the Alameda County Board of Supervisors no later than February 15th of each year. The report will summarize the preceding calendar year's program activities.

VII. MEDIA RELATIONS

1. CSS Program (general inquiries)

Media relations specific to the CSS Program, program equipment, program technology and program policies and procedures will be handled by the ACDA Public Information Officer.

Participating agencies will refer all press and media requests and inquiries regarding the CSS Program, program equipment, program technology and program policies and procedures to the ACDA Public Information Officer to the extent permissible by law.

2. CSS Program Deployments

Participating agencies will not give statements or release information to the media regarding any CSS Program deployment without the concurrence, where appropriate, of the prosecuting attorney and the ACDA Public Information Officer to the extent permissible by law.

VIII. PROGRAM AUDIT

The operations under this MOU are subject to audit by the ACDA. OPD agrees to permit such audits and to maintain records relating to the terms, provisions and compliance of this agreement for the term of this MOU and, if an audit is being conducted, until such time as the audit is officially completed, whichever is greater. These audits may include review of any and all records, documents, and reports relating to this MOU, as well as the interview of any and all personnel involved in relevant CSS Program deployment operations. Examples of records are:

- Program Operator Training Record
- Search Warrant and Affidavit
- Agency policies and procedures

IX. LIABILITY

Notwithstanding any other agreements, the City of Oakland agrees to hold harmless and indemnify Alameda County and/or ACDA against any legal liability with respect to bodily injury, death, and property damage arising out of the City's use of CSS equipment belonging to Alameda County and/or ACDA pursuant to this agreement except for such losses or damages which were caused by the sole negligence or willful misconduct of ACDA.

Further, Alameda County and/or ACDA agrees to hold harmless and indemnify the City of Oakland against any legal liability with respect to bodily injury, death, and property damage arising out of the ACDA's use CSS equipment belonging to the AC and/or ACDA pursuant to this agreement except for such losses or damages which were caused by the sole negligence or willful misconduct of the City of Oakland.

X. NOTICES

Unless otherwise indicated elsewhere in this agreement, all written communications sent by the parties may be by U.S. mail, email or by facsimile, and shall be addressed as follows:

To: Alameda County District Attorney's Office

Lieutenant Daniel Lee
Alameda County District Attorney's Office
1225 Fallon Street
Oakland, California
Phone: (510) 208-9879
Fax: (510) 271-5157
Email: daniel.lee@acgov.org

To: Oakland Police Department

Deputy Chief Darren Allison
Oakland Police Department
455 7th Street
Oakland, California 94607
Phone: (510) 238-3958
Fax: (510) 637-0166
Email: dallison@oaklandnet.com

XI. REVISIONS

The terms of this MOU may be amended, modified, or revised in writing. Such amendment, modification, or revision will become effective upon the signatures of authorized representatives of all of the participating agencies.

IX. SIGNATORIES

By: _____ Date: _____
Name: Nancy E. O'Malley
Title: District Attorney
Agency: Alameda County District Attorney's Office

By: _____ Date: _____

Name: Robert Chenault

Title: Chief of Inspectors

Agency: Alameda County District Attorney's Office

By: _____ Date: _____

Name: David E. Downing

Title: Assistant Chief of Police

Agency: Oakland Police Department

2017 JAN 12 PM 7:17
OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

Introduced by Councilmember _____

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR OR DESIGNEE TO ENTER INTO A MEMORANDUM OF UNDERSTANDING (MOU) WITH THE ALAMEDA COUNTY DISTRICT ATTORNEY'S OFFICE (ACDA) TO ALLOW MEMBERS OF THE OAKLAND POLICE DEPARTMENT (OPD) TO USE CELLULAR SITE SIMULATOR TECHNOLOGY, FOR FIVE YEARS FROM THE EFFECTIVE DATE OF THE MOU AT NO COST TO OPD

WHEREAS, the OPD is committed to reducing crime and serving the community through fair, quality policing; and

WHEREAS, cellular site simulator technology is available at no cost to OPD from ACDA; and

WHEREAS, OPD can more effectively investigate such crimes when provided with additional resources including the use of advanced technology; and

WHEREAS, cellular site simulator technology will be used only to locate missing persons, at-risk individuals, and victims of mass casualty incidents; investigations involving danger to the life or physical safety of individuals; and to apprehend fugitives; and

WHEREAS, cellular site simulator technology will be used only in a manner consistent with the United States Constitution – particularly the First and Fourth Amendments – the California Constitution, and applicable statutory authorities;

WHEREAS, the Oakland Police Department is committed to honor and respect civil liberties;

WHEREAS, whenever cellular site simulator technology is used to assist in investigations it will only be done so pursuant to a search warrant, or identified exigency in accordance with an concurrent application for a search warrant whenever possible and in no event more than 48 hours after use; and

WHEREAS, cellular site simulator technology will not be used to capture emails, texts, contact lists, images or any other data; and

WHEREAS, cellular site simulator technology will not be used to collect subscriber account information such as an account holder's name, address, or telephone number; and

WHEREAS, the cellular site simulator sought for use by OPD will not be used to intercept or capture communications, emails, texts, contact lists, images or other data contained on a device; and

WHEREAS, only designated OPD personnel may use cellular site simulator technology; and

WHEREAS, each use of cellular site simulator technology by OPD must be approved by the Chief of Police or Assistant Chief of Police and any emergency use must be approved by a Lieutenant of Police or higher-ranking member; and

WHEREAS, the Chief of Police, the Privacy Advisory Commission, and the Public Safety Committee will be provided with an annual report that includes information on each use of cellular site simulator technology; and

WHEREAS, all data contained by the cellular site simulator device shall be deleted at the end of any 24-hour period of use unless needed for a search and rescue operation in which case it will be deleted no less than once every 10 days; and

WHEREAS, the Oakland Police Department has developed a policy governing use of cellular site simulator technology in collaboration with the Privacy Advisory Commission and will follow this policy as written; and

WHEREAS, no new cellular site simulator technology capabilities will be installed or used beyond what is initially approved without express City Council approval; now, therefore, be it

RESOLVED: That the City Council authorizes the City Administrator or designee to enter into a MOU with ACDA for the purpose of using cellular site simulator technology owned by ACDA at no cost to OPD for a period of five years; and be it

FURTHER RESOLVED, cellular site simulator technology will be used by the Oakland Police Department only to locate missing persons, at-risk individuals, and victims of mass casualty incidents; investigations involving danger to the life or physical safety of individuals; and to apprehend fugitives; and

FURTHER RESOLVED: That the City Council authorizes the City Administrator or designee to use cellular site simulator technology in a manner consistent with the United States Constitution – particularly the First and Fourth Amendments – the California Constitution, and applicable statutory authorities; and be it

FURTHER RESOLVED: the Oakland Police Department shall honor and respect civil liberties;

FURTHER RESOLVED: That the City Council requires the City Administrator or designee to obtain a search warrant or, in an identified exigency, complete a search warrant application concurrently whenever possible and in no event file the application for a search warrant no more than 48 hours after use in an identified exigency whenever the technology is used to assist in an investigation; and be it

FURTHER RESOLVED: That the City Council prohibits the City Administrator or designee from using cellular site simulator technology to capture emails, texts, contact lists, images or any other data; and be it

FURTHER RESOLVED: That the City Council prohibits the City Administrator or designee from using cellular site simulator technology to collect subscriber account information such as an account holder's name, address, or telephone number; and be it

FURTHER RESOLVED: That the City Council prohibits the City Administrator or designee from using cellular site simulator technology to intercept or capture communications, emails, texts, contact lists, images or other data contained on a device; and be it

FURTHER RESOLVED: That the City Council authorizes the City Administrator or designee to limit use of cellular site simulator technology to designated OPD personnel; and be it

FURTHER RESOLVED: That the City Council authorizes the City Administrator or designee to require approval by the Chief of Police or Assistant Chief of Police for each use and approval by a Lieutenant of Police or higher-ranking member for each emergency use; and be it

FURTHER RESOLVED: That the City Council authorizes the City Administrator or designee to require an annual report to the Chief of Police, the Privacy Advisory Commission, and the Public Safety Committee concerning each use of cellular site simulator technology; and be it

FURTHER RESOLVED: That the City Council authorizes the City Administrator or designee to require that all data contained by the cellular site simulator device be deleted at the end of any 24-hour period of use unless needed for a search and rescue operation in which case it will be deleted no less than once every 10 days; and be it

FURTHER RESOLVED: That the Oakland Police Department has developed a policy governing use of cellular site simulator technology in collaboration with the Privacy Advisory Commission and will follow this policy as written; and be it

FURTHER RESOLVED, no new cellular site simulator technology capabilities will be installed or used beyond what is initially approved without express City Council approval; now, therefore, be it

FURTHER RESOLVED: That the City Administrator, or designee, is authorized to conduct all negotiations, applications, agreements, and related actions which may be necessary to administer the aforementioned program.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

Introduced by Councilmember _____

**RESOLUTION ESTABLISHING THE CITY OF OAKLAND'S CELLULAR
SITE SIMULATOR USAGE AND PRIVACY POLICY**

I. BACKGROUND AND OVERVIEW

WHEREAS, the Oakland Police Department (OPD) is committed to reducing crime and serving the community through fair, quality policing; and

WHEREAS, cellular site simulator technology is available at no cost to OPD from the Alameda County District Attorney (ACDA); and

WHEREAS, OPD can more effectively investigate such crimes when provided with additional resources including the use of advanced technology; now therefore be

RESOLVED: That the Purpose and Scope of the of the City of Oakland's Cellular Site Similar Usage and Privacy Policy (Policy) is as follows:

II. PURPOSE AND SCOPE

The purpose of the Cellular Site Simulator Usage and Privacy Policy is to set guidelines and requirements pertaining to cellular site simulator technology usage and privacy. Any changes to this policy – including authorized uses of the cellular site simulator technology by the Oakland Police Department – will be made in consultation with the Oakland Privacy Commission; and be it

FURTHER RESOLVED: That the general policy considerations shall be as follows:

III. POLICY

- A. It is the policy of OPD to respect the privacy rights and civil liberties of individuals and to follow the Constitution, particularly the First and Fourth Amendments, the California Constitution, and all applicable laws.
- B. Cellular site simulator technology will be used only in a manner consistent with the United States Constitution – particularly the First and Fourth Amendments – the California Constitution, and applicable statutory authorities.
- C. OPD is committed to honor and respect civil liberties.
- D. OPD has developed a policy governing use of cellular site simulator technology in collaboration with the Privacy Advisory Commission and will follow this policy as written; and be it

FURTHER RESOLVED: That the basis for the policy is as follows:

IV. BASIS FOR POLICY

- A. Pursuant to California Government Code Section 53166, a local law enforcement agency shall not acquire cellular communications interception technology unless approved do so by its legislative body by a resolution or ordinance authorizing the acquisition and the usage and a privacy policy. Government Code § 53166(b) requires all law enforcement organizations that use cellular communications interception technology, including cellular site simulator technology, to:
 - 1. Maintain reasonable security procedures and practices, including operational, administrative, technical, and physical safeguards, to protect information gathered through the use of cellular communications interception technology from unauthorized access, destruction, use, modification, or disclosure.
 - 2. Implement a usage and privacy policy to ensure that the collection, use, maintenance, sharing, and dissemination of information gathered through the use of cellular communications interception technology complies with all applicable law and is consistent with respect for an individual's privacy and civil liberties. This usage and privacy policy shall be available in writing to the public, and, if the local agency has an Internet Web site, the usage and

privacy policy shall be posted conspicuously on that Internet Web site. The usage and privacy policy shall, at a minimum, include all of the following:

- a. The authorized purposes for using cellular communications interception technology and for collecting information using that technology.
 - b. A description of the job title or other designation of the employees who are authorized to use, or access information collected through the use of, cellular communications interception technology. The policy shall identify the training requirements necessary for those authorized employees.
 - c. A description of how the local agency will monitor its own use of cellular communications interception technology to ensure the accuracy of the information collected and compliance with all applicable laws, including laws providing for process and time period system audits.
 - d. The existence of a memorandum of understanding or other agreement with another local agency or any other party for the shared use of cellular communications interception technology or the sharing of information collected through its use, including the identity of signatory parties.
 - e. The purpose of, process for, and restrictions on, the sharing of information gathered through the use of cellular communications interception technology with other local agencies and persons.
 - f. The length of time information gathered through the use of cellular communications interception technology will be retained, and the process the local agency will utilize to determine if and when to destroy retained information.
- B. Members shall use only department-approved devices and usage shall be in compliance with department security procedures, the department's usage and privacy procedures and all applicable laws; and be it

FURTHER RESOLVED: That the following definitions apply to this policy:

V. DEFINITIONS

“Cellular Site Simulator Technology,” as governed by this policy, functions by transmitting as a cell tower. In response to the signals emitted by the simulator, cellular devices in the proximity of the simulator identify it as the most attractive cell tower in the area and thus transmit signals to the simulator that identify the device in the same way that they would a networked tower. A cellular site simulator receives signals and uses an industry standard unique identifying number assigned by a device manufacturer or cellular network provider to distinguish between incoming signals until the targeted device is located. Once the cellular site simulator identifies the specific cellular device for which it is looking, it will obtain the signaling information relating only to that particular phone, rejecting all others. Although the cellular site simulator initially receives signals from multiple devices in the vicinity of the simulator while attempting to locate the target device, it does not display the unique identifying numbers of those other devices for the operator except when deployed in registration mode. Registration mode may only be used for mass casualty incidents. If the cellular site simulator equipment or software is modified or capable of displaying unique identifiers other than in registration mode, Oakland Police personnel are prohibited from making use of, or saving, such information. To the extent that any unique identifier for the non-targeted device might exist in the software or simulator itself, it will be purged at the conclusion of operations in accordance with this policy. Cellular site simulators do not function as Global Positioning System (GPS) locators, as they will not obtain or download any location information from the device or its applications;

“Mass casualty incident” is a natural disaster such as an earthquake or fire; a terrorist attack; or any other event resulting in imminent loss of life or injury;

“Exigency” is defined as an imminent threat of death or bodily injury;

“Search warrant” is a court order that a magistrate, judge or Court official issues to authorize law enforcement officers to conduct a search of a person, location, or vehicle for evidence of a crime and to confiscate related evidence that they find; and be it

FURTHER RESOLVED: That the authorized purposes of the policy shall be as follows:

VI. AUTHORIZED PURPOSES

- A. When used in a mass casualty event, the cellular site simulator will obtain signaling information from all devices in the simulator’s target vicinity for the limited purpose of locating persons in need of assistance or to further recovery efforts. Any information

received from the cellular devices during this time will only be used for these limited purposes and all such information received will be purged at the conclusion of the effort in accordance with this policy.

- B. Cellular site simulator technology will not be used at crowd management events.
- C. By transmitting as a cell tower, cellular site simulators acquire identifying information from cellular devices. As employed by OPD, this information is limited. Cellular site simulators employed by OPD will be limited to providing only: a) azimuth (an angular measurement in a spherical coordinate system); b) signal strength; and c) device identifier for the target device when locating a single individual or all device identifiers for a mass casualty incident.
- D. Cellular site simulators used by OPD shall not be used to collect the contents of any communication, in accordance with 18 U.S.C. § 3121(c).
- E. The cellular site simulator employed by OPD shall not capture emails, texts, contact lists, images or any other data contained on the phone. In addition, the cellular site simulators shall not be used OPD to collect subscriber account information (for example, an account holder's name, address, or telephone number).
- F. That the authorized purposes for using cellular communications interception technology and for collecting information using that technology to:
 - 1. Locate missing persons;
 - 2. Locate at-risk individuals;
 - 3. Locate victims of mass casualty incidents;
 - 4. Assist in investigations involving danger to the life or physical safety of an individual; and
 - 5. Apprehend fugitives.
- G. That cellular site simulator technology may only be used by OPD with a search warrant or for an identified exigency, with a concurrent application for a search warrant. A search warrant application shall be made no later than 48 hours after use in an identified exigency. When using cellular site simulator technology to assist in an investigation, Oakland Police personnel may only attempt to locate cellular devices whose unique identifiers are already known to law enforcement unless used for a mass casualty event.
- H. That when making any application to a court, members of OPD shall disclose appropriately and accurately the underlying purpose and activities for which an order or authorization is sought. Oakland Police Department personnel must consult with prosecutors when using a cell-site simulator and applications for the use of a cell- site simulator must include sufficient information to ensure that the courts are aware that the technology is being used.

1. Regardless of the legal authority relied upon, at the time of making an application for use of a cell-site simulator, the application or supporting affidavit shall describe in general terms the technique to be employed. The application or supporting affidavit shall indicate that investigators plan to send signals to the cellular phone that will cause it, and non-target phones on the same provider network in close physical proximity, to emit unique identifiers. The application or supporting affidavit shall indicate that these unique identifiers will be obtained by the technology, and investigators may only use the information collected to determine the physical location of the target cellular device;
 2. An application or supporting affidavit shall inform the court that the target cellular device (e.g., cell phone) and other cellular devices in the area might experience a temporary disruption of service from the service provider. The application or supporting affidavit may also note, if accurate, that any potential service disruption to non-target devices would be temporary and all operations will be conducted to ensure the minimal amount of interference to non-target devices;
 3. An application for the use of a cellular site simulator shall inform the court about how law enforcement intends to address deletion of data not associated with the target phone. The application shall state that law enforcement will make no use of any non-target data, except to identify and distinguish the target device from other devices; and be it
- I. If cellular site technology is used based on an exigency, then the above requirements will be met by applying for a search warrant concurrently with use of the device whenever possible and no later than 48 hours after use; and be it

FURTHER RESOLVED: that access to cellular site simulator, internal controls, and reporting metrics shall be as follows:

VII. ACCESS TO CELLULAR SITE SIMULATOR, INTERNAL CONTROLS, AND REPORTING METRICS

- A. Only designated OPD personnel may use cellular site simulator technology.
- B. Each use of cellular site simulator technology by OPD must be approved by the Chief of Police or Assistant Chief of Police and any emergency use must be approved by a Lieutenant of Police or higher-ranking member.
- C. The Chief of Police, the Privacy Advisory Commission, and the Public Safety

Committee will be provided with an annual report that includes information on each use of cellular site simulator technology.

- D. All data contained by the cellular site simulator device shall be deleted at the end of any 24-hour period of use unless needed for a search and rescue operation in which case it will be deleted no less than once every 10 days.
- E. No new cellular site simulator technology capabilities will be installed or used beyond what is initially approved without express City Council approval.

VIII. SEVERABILITY

FURTHER RESOLVED: That if any section, subsection, sentence, clause or phrase of this Policy 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 Policy. The City Council hereby declares that it would have adopted this Policy and each section, subsection, clause, or phrase thereof irrespective of the fact that one or more sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California