



DATE: December 1, 2021

TO: Council Infrastructure Committee

FROM: City Manager
Chief of Police

SUBJECT: Review and Recommend Council Approval of: (1) a Proposed Council Resolution and Policy Statement Regarding Citywide Use of Surveillance Technologies; and (2) an Operational Policy for the Hayward Police Department's Unmanned Aerial Systems Program

RECOMMENDATION

That the Council Infrastructure Committee (CIC) reviews and recommends Council approval of: (1) a proposed Council resolution and policy statement regarding Citywide use of surveillance technologies (Attachment II); and (2) an operational policy for an Unmanned Aerial Systems (UAS) Program for the Hayward Police Department (HPD) (Attachment III).

SUMMARY

On July 13, 2021, the Council approved a resolution authorizing the purchase of UAS for HPD conditioned upon review by the Community Advisory Panel (CAP) and the CIC of an operational policy for the use of UAS by HPD, and ultimately, Council approval prior to HPD deployment of UAS. Additionally, it was requested that the CIC and Council review a policy for Citywide use of surveillance technologies.

The proposed Council resolution and policy statement for Citywide use of surveillance technologies (Citywide Policy) highlights the commitment to balance the use of surveillance technologies with the privacy and civil rights of community members (Attachment II). It also authorizes the City Manager to issue administrative regulations, including but not limited to, purchasing, data retention, storage, and access policies that would apply to all City surveillance and UAS operations. It also recommends annual reporting by departments on UAS operations.

This staff report is also intended to present information to the CIC regarding HPD's proposed Operations Manual for the UAS Program (Attachment III). The UAS Program Operations Manual is an internal document designed to provide guidance for the management and operation of HPD's UAS Program. It incorporates portions of HPD's Policy 610 (Unmanned Aerial System (UAS) Operations) (Attachment IV) and provides

guidance on the UAS Program administration, safety, training, operating procedures, and pre- and post-flight actions. The UAS Program Operations Manual is a living document, which will be reviewed on a regular basis to ensure best practices are adhered to and to ensure alignment with the Citywide Policy, as well as other local, regional, state, and federal laws or policies.

HPD's UAS Program Operations Manual was reviewed by the CAP and discussed during a virtual meeting, which was held on October 11, 2021. While no specific changes were recommended for the UAS Program Operations Manual, there was discussion of previously identified issues regarding the use of surveillance technologies, including UAS, which are presented later in this staff report.

BACKGROUND

On July 13, 2021, the Council approved a resolution authorizing the purchase of UAS for HPD conditioned upon review by the Community Advisory Panel (CAP) and the CIC of an operational policy for the use of UAS by HPD, and ultimately, Council approval prior to HPD deployment of UAS. Additionally, it was requested that the CIC and Council review a policy for Citywide use of surveillance technologies. For reference, the original staff report submitted by HPD can be reviewed here: [Attachment I Staff Report \(10\).pdf](#)

In the months that followed the July Council meeting, City staff developed the Citywide Policy regarding the use of UAS and other surveillance technologies (Attachment II). In developing these documents, City staff conducted research and reviewed associated materials to ensure best practices and local, regional, state, and federal laws are followed. Specifically, City staff researched and reviewed statutes, case law, other policies, publications from the American Civil Liberties Union (ACLU), and community member and Council commentary from previous public meetings. The proposed Citywide Policy conveys Council's commitment to public safety, while balancing the use of surveillance technologies with the privacy and civil rights of all community members. It also conveys Council's commitment to transparency and accountability through ongoing oversight and data reporting measures related to the use of surveillance technologies, including annual reporting to the Council.

In addition, HPD staff consulted with other local law enforcement agencies, which currently operate UAS Programs, regarding a specific operational policy for HPD to better understand the policies and procedures governing all aspects of program administration. From these conversations, HPD staff developed a UAS Program Operations Manual, which is designed to provide guidance for UAS Program administration, safety, training, operating procedures, and pre- and post-flight actions (Attachment III). It should be noted that no policy or operations manual can account for every situation or circumstance that may arise; however it is designed to provide a foundation for the implementation of a UAS Program and to help ensure public safety needs and community expectations of privacy continue to be met.

On October 11, 2021, the Chief of Police and the HPD Command staff met with the CAP to discuss the UAS Program and any new community concerns. CAP members were provided with a copy of the HPD UAS Operations Manual prior to the meeting. While there were no new, specific concerns raised or recommended changes to the UAS Program Operations Manual during this meeting, some members of the CAP continued to cite privacy concerns and raise questions about how UAS will be used. HPD staff assured the members of the CAP that the UAS Operations Manual is a living document that will undergo continual review and amendments can be made to help ensure alignment with City policy and local, regional, state, and federal laws. HPD staff also assured members of the CAP that any allegations of improper usage or violations of UAS policies will be referred to HPD Internal Affairs for investigation.

DISCUSSION

History has shown that non-existent or ineffective policy governing surveillance technologies can foster environments where such technologies can be abused. Throughout the history of this country, surveillance technologies have been used by the government to infringe upon people's reasonable expectation of privacy and have had adverse impacts, particularly in communities of color. As such, Council provided direction to staff to clearly establish a strong Citywide position on the use of surveillance technologies prior to implementing HPD's UAS Program and that the policies clearly identify circumstances when such technologies can be used. The approval and adoption of the Citywide Policy will allow for the advancement of legitimate City objectives, while balancing the constitutional privacy and civil rights of community members (Attachment II). Such action will also ensure that processes and administrative regulations will be put in place to prevent abuse, to maintain transparency and accountability, and to ensure community concerns regarding privacy and civil rights are specifically addressed.

For HPD, existing staffing shortages and resource challenges require staff to seek ways to leverage developing technologies and community partnerships to address public safety issues. The implementation of a UAS Program will allow the HPD to leverage technology to safely respond to in-progress incidents, improve safety for community members and HPD staff, effectively engage in de-escalation strategies, document crime scenes, and provide an invaluable tool for engaging in damage assessment and rescue operations in the aftermath of a significant disaster (e.g., earthquake).

With these operational necessities in mind, and with the utmost respect for personal privacy and the freedom of community members to go about their lives without unwarranted intrusion from the government, HPD staff developed a UAS Program Operations Manual (Attachment III). The UAS Program Operations Manual specifically addresses the following elements of the UAS Program:

- Philosophy and Mission Statement
- Protection of Rights and Privacy
- Definitions
- Administration
- Safety

- Training
- General Operating Procedures
- Pre-Flight / Post-Flight Actions

The UAS Program Operations Manual specifically addresses the need for HPD staff to use UAS in compliance with applicable laws and regulations, including those of the federal and State governments, the City of Hayward, and the Federal Aviation Administration (FAA), as the FAA certifies and maintains oversight of UAS Programs more generally. The UAS Program Operations Manual integrates language from HPD Policy 610 (Attachment IV), which has been formally reviewed and approved by the City Attorney's Office, and it addresses the expectation that HPD staff will consider individual rights and reasonable expectations of privacy in decisions to use UAS.

The administration of the UAS Program will be the responsibility of the Special Teams Lieutenant, who will serve as the Program Coordinator. The Special Teams Lieutenant will be responsible for selecting HPD staff to serve as observers and operators, performing all administrative duties, and coordinating training for all HPD staff to ensure a clear understanding of the circumstances under which UAS can be utilized. The Special Teams Lieutenant directly reports to the Special Operations Division Commander, who will provide regular program updates to the Chief of Police after quarterly program audits are conducted in coordination with HPD Internal Affairs. In turn, the Chief of Police will provide regular program updates to Council as directed.

The Chief of Police, HPD Command staff, and other HPD staff members have conducted extensive community engagement and solicited input on the UAS Program. Several concerns were presented, and based on community feedback, several recommendations were incorporated into the UAS Program Operations Manual. These issues include the following:

1. The ability to redact images of uninvolved persons or properties.

Staff currently can redact these images and do so as a part of the Body Worn Camera program. The City would only release portions of video relevant to a Public Records Act request or in response to discovery as a part of a legal proceeding. ***In Attachment III and IV, this specific concern is addressed under UAS Program Operations Manual Section 9.3 and HPD Policy Section 610.9.***

2. The security of data and 3rd party auditing of stored videos.

The 3rd party video storage software, Evidence.com, incorporates access based on individual user identity and audit trails are built into the software. All data would be HPD property and would not be shared with anyone else except for legitimate law enforcement purposes. Axon, the owner of Evidence.com, maintains a publicly available website that outlines their data compliance, security assurances, and certifications to demonstrate the controls that have been put in place to secure data stored in Evidence.com. As of the publication of this report, some of the most

recognizable certifications that have been achieved include but are not limited to: ISO/IEC 27001:2013 Information Security Management Standard certified; ISO/IEC 27018:2014 Code of Practice for Protecting Personal Data in the Cloud certified; FBI CJIS certified; and SOC 2+ Reporting. To achieve these certifications, the vendor is evaluated by 3rd parties against a set of specific controls or principles and will not achieve certification unless the requirements of the standard are met. To maintain these levels of certification, the vendor coordinates directly with 3rd parties to conduct audits and demonstrate their compliance with each certification. ***Data security concerns were addressed by IT staff. In Attachments III and IV, the auditing of stored videos is addressed under UAS Program Operations Manual Sections 5.1 and 9.3 and HPD Policy Sections 610.7 and 610.9.***

- 3. The HPD policy includes vague or ambiguous language and should include language explicitly identifying when UAS will or will not be used, and requests to include language prohibiting the use of facial recognition or wiretap technology.**

Policy modifications were made based upon CAP feedback, including removal of some vague language and inclusion of language that prohibits the use of facial recognition technology. ***In Attachments III and IV, this specific concern is addressed under UAS Program Operations Manual Section 3 and HPD Policy Sections 610.6 and 610.8.***

- 4. Use of data and Fourth Amendment issues.**

UAS will be used only in circumstances where reasonable suspicion, probable cause, or exigent circumstances exist or pursuant to a valid warrant. ***In Attachments III and IV, this specific concern is addressed under UAS Program Operations Manual and HPD Policy Sections 610.3, 610.6, and 610.7.***

- 5. Use of UAS during protests or demonstrations.**

Mass gatherings of any kind remain a public safety concern as they can present targets for extremists/terrorists, devolve into rioting, or result in counter-protests, which have erupted in violence in other communities. UAS will not be used for protests or demonstrations as a matter of routine, but can be used in circumstances where security concerns exist or criminal activity is occurring (e.g., vandalism, looting, rioting, assaults on officers, violent counter-protests, etc.). ***In Attachments III and IV, this specific concern is addressed under UAS Program Operations Manual Section 3 and HPD Policy Section 610.8.***

- 6. Oversight of the UAS program.**

HPD will be prepared to share data, information, and address concerns regarding the program to Council during periodic updates or during the Chief's annual report presentation. Data and information could include flight plans, UAS usage, UAS training, written reports, or redacted video examples of UAS usage in the field. Additionally, as part of maintaining our Certificate of Authorization, the FAA oversees the UAS

program. ***In Attachment III, this specific concern is addressed under UAS Operations Manual section 5.1.***

Staff recommends that the CIC review the Citywide Policy and HPD's UAS Operations Manual and recommend approval to the Council.

FISCAL IMPACT

The review and approval of the Citywide Policy, as well as HPD's UAS Program Operations Manual does not result in any new fiscal impact. The UAS Program approved by Council in July requires the purchase of equipment and special training for personnel. The total initial cost of the required equipment (4 UAS aircraft, cameras, and other equipment) with tax included, is estimated to be **\$14,000**. The total initial cost for training and certification of eight pilots is estimated to be **\$4,700** (based on over time, price would go down on any adjusted time). The total initial cost to begin this program is estimated to be **\$18,700**. The City currently has the funds for this expenditure within HPD's existing operating budget. According to local agencies, they expect to replace their UAS units every two to three years.

NEXT STEPS

Upon recommendation by the CIC, City staff will recommend that the Council review and approve the Citywide Policy, as well as HPD's UAS Program Operations Manual. Once approved by the Council, HPD will commence implementation of HPD's UAS Program consistent with both policies.

Prepared by: Bryan Matthews, Captain

Recommended by: Kelly McAdoo, City Manager
Toney Chaplin, Chief of Police

Approved by:



Kelly McAdoo, City Manager