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APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

*Arnold Sotol*  
CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL  
ORDINANCE NO. 18457 C.M.S.

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**ORDINANCE ADDING CHAPTER 9.72.010 TO CHAPTER 9 OF THE OAKLAND MUNICIPAL CODE TO ENSURE GREATER TRANSPARENCY AND ESTABLISH A PROTOCOL FOR CITY PARTICIPATION IN FEDERAL LAW ENFORCEMENT SURVEILLANCE OPERATIONS**

**WHEREAS**, the City Council finds it is essential to set City policy regarding City's participation in federal counterterrorism activities; and

**WHEREAS**, the City Council finds that it is essential that a public discussion occur at the Privacy Advisory Commission before the execution of any Memorandum of Understanding with the Federal Bureau of Investigation or other federal law enforcement agency regarding the Joint Terrorism Task Force or other similar agreement regarding the City's participation in federal law enforcement efforts; and

**WHEREAS**, the City Council finds that no decisions relating to participation in federal counterterrorism or other federal law enforcement activities should occur without strong consideration being given to the impacts such participation may have on civil rights and civil liberties, including those rights guaranteed by the California and United States Constitutions; and

**WHEREAS**, the City Council finds that all decisions regarding if and how the City, and in particular, its Police Department participates in federal counterterrorism or other federal law enforcement activities requires meaningful public input and that public opinion should be given significant weight; and

**WHEREAS**, under Oakland City Charter section 504(l) (Charter section 504(l)), any interagency agreement between the City and another public agency for joint governmental actions, such as a "Memorandum of Understanding" (MOU), must be approved by the City Council and the public has a right to speak on the item; and

**WHEREAS**, the City Council desires to have the Privacy Advisory Commission review proposed surveillance agreements and provide input to the City Council to provide an additional layer of review and public discussion; and

**WHEREAS**, the City Council finds that if Police Department participation in federal counterterrorism or other federal law enforcement activities is approved by Council, reporting measures must be adopted and provided in an annual report that empowers the City Council and public to verify that mandated civil rights and civil liberties safeguards have been strictly adhered to.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**SECTION 1.** That the City Council finds and determines the foregoing recitals to be true and correct and hereby makes them a part of this Ordinance.

**SECTION 2.** Oakland Municipal Code Chapter 9.72.010, is hereby added as set forth below (chapter and section numbers are indicated in **bold type**, as follows:

**9.72.010 City Participation in Federal Law Enforcement Activities.**

1) The City of Oakland, including but not limited to the Oakland Police Department, may assist federal agencies, including but not limited to, the Federal Bureau of Investigation ("FBI") through its Joint Terrorism Task Force, or any successor task force, joint operation, assignment, or enforcement activity (collectively, "JTTF") in preventing and investigating possible acts of terrorism and other criminal activity only in a manner that is fully consistent with the laws of the State of California, including but not limited to the inalienable right to privacy guaranteed by Article 1, Section 1 of the California Constitution, as well as the laws and policies of the City of Oakland, including but not limited to Police Department policies, procedures, and orders.

2) Before execution of any Memorandum of Understanding or other written agreement, contract or arrangement (collectively, "MOU") between the Oakland Police Department and the FBI, or other federal law enforcement agency, regarding the Police Department's participation on the JTTF or other federal law enforcement agency task force, or any amendment to any such existing MOU, the Chief of Police shall submit the proposed MOU and any orders, policies, and procedures relevant to the subject matter of the MOU for discussion and public comment at an open meeting of the Privacy Advisory Commission.

3) By January 31 of each year, the Chief of Police shall provide to the Privacy Advisory Commission and City Council, a public report with appropriate public information on the Police Department's work with the JTTF or other federal law enforcement agency task force in the prior calendar year, including any issues related to compliance with this Section.

**SECTION 3. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance 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 Chapter.

The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

**SECTION 4. Effective Date.** This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE: **OCT 0 3 2017**

AYES - BROOKS, CAMPBELL-WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLÉN, KALB, KAPLAN AND PRESIDENT REID. *8*

NOES - *0*

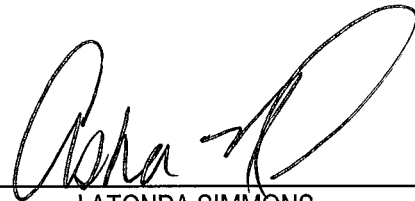
ABSENT - *0*

ABSTENTION *0*

*Introduction Date*

**JUL 1 8 2017**

ATTEST: \_\_\_\_\_



LATONDA SIMMONS  
City Clerk and Clerk of the Council  
of the City of Oakland, California

Date of Attestation: October 6, 2017

## NOTICE AND DIGEST

### **ORDINANCE ADDING CHAPTER 9.72.010 TO CHAPTER 9 OF THE OAKLAND MUNICIPAL CODE TO ENSURE GREATER TRANSPARENCY AND ESTABLISH A PROTOCOL FOR CITY PARTICIPATION IN FEDERAL LAW ENFORCEMENT SURVEILLANCE OPERATIONS**

This ordinance adds Chapter 9.72.010 to Chapter 9 of the Oakland Municipal Code to ensure greater transparency and establish a protocol for City participation in federal law enforcement surveillance operations, by providing that:

- A. The City of Oakland may assist federal agencies in preventing and investigating possible acts of terrorism and other criminal activity only in a manner that is fully consistent with the laws of the State of California and the laws and policies of the City of Oakland, including but not limited to Police Department policies, procedures, and orders.
- B. Before execution of any Memorandum of Understanding or other written agreement, contract or arrangement (collectively, "MOU") between the Oakland Police Department and the Federal Bureau of Investigation, or other federal law enforcement agency, regarding the Police Department's participation on the Joint Terrorism Task Force or other federal law enforcement agency task force, or any amendment to any such existing MOU, the Chief of Police shall submit the proposed MOU and any orders, policies, and procedures relevant to the subject matter of the MOU for discussion and public comment at an open meeting of the Privacy Advisory Commission.
- C. By January 31 of each year, the Chief of Police shall provide to the Privacy Advisory Commission and City Council, a public report with appropriate public information on the Police Department's work with the JTTF or other federal law enforcement agency task force in the prior calendar year, including any issues related to compliance with this Section.