



February 13, 2017

Councilmember Charles Jones
Councilmember Sergio Jimenez
Councilmember Raul Peralez
Councilmember Lan Diep
Councilmember Devora Davis
Councilmember Tam Nguyen
Councilmember Sylvia Arenas
Councilmember Donald Rocha
Councilmember Johnny Khamis
Mayor Sam Liccardo
Vice Mayor Magdalena Carrasco
200 E. Santa Clara St.
San Jose, CA 95113

Re: “Smart cities,” surveillance, and streetlights

To the members of the San Jose City Council, Mayor Liccardo, and Vice Mayor Carrasco:

The undersigned organizations, all dedicated to civil liberties and civil rights, are troubled by the potential privacy impact of the pending proposal that San Jose purchase “smart” streetlights. To ensure that these streetlights will not become another tool of government surveillance, we urge the City

Council to adopt an ordinance requiring transparency, accountability, and oversight of all surveillance technologies.

1. “Smart” streetlights have the potential to turn into a network of 39,000 surveillance hubs across the city.

City staff have presented the City Council with a proposal to contract with Siemens and anyCOMM to convert some 39,000 city streetlights to LED luminaires. According to the Memorandum prepared by city staff, the proposed streetlights include the following feature:

AnyCOMM has invented a controller unit (the “node”) that includes the smart streetlight controls and a variety of Smart City features, including the capacity to accommodate up to four video cameras with digital recording devices, four color tunable LED indicator lights, audio sensor (for gunshot, car crash, and graffiti detection), and can also expand to include two-way public address for emergencies. Through partnerships with third-party providers, the company states that Wi-Fi hotspots, LTE small cells, and wireless backhaul could be provided via the node.¹

While the proposed streetlights are not themselves a surveillance technology, they have (in the words of the staff Memorandum) “the capacity to accommodate” surveillance technology, including video cameras and audio sensors.

A web of surveillance technology is rapidly spreading across our urban landscapes.² Devices capable of monitoring and recording residents invade

¹ Memorandum of Jan. 11, 2017, from the Office of the City Manager to the City Council, concerning Innovative LED Streetlight Replacement RFP, at http://sanjose.granicus.com/Viewer.php?view_id=&event_id=2668&meta_id=611439. See also Heather Somerville, *San Jose tests Internet of Things startup to become a smarter city*, San Jose Mercury News (June 3, 2015) (describing anyCOMM’s existing pilot program to install its nodes on City streetlights), at <http://www.mercurynews.com/2015/06/03/san-jose-tests-internet-of-things-startup-to-become-a-smarter-city/>.

² See, e.g., EFF, *Street Level Surveillance*, at <https://www.eff.org/sls>; ACLU of Northern California, *Making Smart Decisions About Surveillance: A Guide A Guide for Community Transparency, Accountability & Oversight*, at

privacy, chill free speech, and disparately impact communities of color. Certain technologies, adopted for benevolent purposes in the name of “smart cities,” may gather and store information about how residents live their lives in public places, including churchgoing habits, participation in political protests, or visits to an abortion clinic.

In short, these 39,000 streetlights are readymade for potentially invasive surveillance. Now is the time for the Council to consider the civil liberties and civil rights implications of these devices.

2. The City Council should now adopt a surveillance technology ordinance to ensure community oversight and control.

All too often, municipal agencies deploy surveillance technology without a robust public debate or consideration of safeguards to prevent against misuse. Even worse, the public often is denied any opportunity to have their voices heard before government deploys these new surveillance tools.

If the City Council approves the Siemens/anyCOMM proposal, it should ensure that in the future, no surveillance technology will be added to these streetlights without prior express approval from the City Council, preceded by notice to the public and an opportunity to be heard.

The best way to do this would be to adopt an ordinance that ensures democratic control over whether or not to acquire *any* new surveillance technology, and if so, what specific rules would safeguard civil liberties and civil rights. The Oakland Privacy Advisory Commission advanced an ordinance like this earlier this month.³ Last year, Santa Clara County enacted such an ordinance.⁴ Similar measures are being considered by Palo Alto⁵ and

<https://www.aclunc.org/publications/making-smart-decisions-about-surveillance-guide-community-transparency-accountability>.

³ Darwin Bond Graham, *Oakland Privacy Commission approves surveillance transparency and oversight law*, East Bay Express (Jan. 6, 2017), at <http://www.eastbayexpress.com/SevenDays/archives/2017/01/06/oakland-privacy-commission-approves-surveillance-transparency-and-oversight-law>.

⁴ Kevin Forestieri, *Santa Clara County cracks down on police surveillance technology*, Palo Alto Online (June 20, 2016), at <http://www.paloaltoonline.com/news/2016/06/18/county-cracks-down-on-police-surveillance-technology>.

the BART Board of Directors.⁶

Such an ordinance would place the City Council and residents in control of decisions to adopt new surveillance technologies. The City Council could not approve a new surveillance technology unless it first determined that the benefits outweighed the costs, and that the proposed use policy protected civil rights and civil liberties. Most importantly, members of the public would be assured the opportunity to participate in the decision-making process.

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In sum, the City Council should enact an ordinance ensuring City Council control over whether any city agencies acquire any new surveillance technology. This would include the decision of whether or not to install atop any new “smart” streetlights any video cameras and audio sensors that collect personal information from passersby.

Sincerely,

ACLU of Northern California, Santa Clara Valley Chapter
Asian Americans Advancing Justice – Asian Law Caucus
Coalition for Justice and Accountability
Council on American-Islamic Relations – SF-Bay Area Office
Center for Employment Training – Immigration and Citizenship Program
Electronic Frontier Foundation
Japanese American Citizens League, San Jose Chapter
Japanese American Citizens League, Sequoia Chapter
Japanese American Citizens League, Silicon Valley Chapter
Nihonmachi Outreach Committee
Peninsula Peace and Justice Center
TURN – The Utility Reform Network

cc: Police Chief Edgardo Garcia, City Manager Norberto Dueñas, City Attorney Richard Doyle

⁵ Gennady Sheyner, *Policing surveillance in Palo Alto*, Palo Alto Online (Apr. 29, 2016), at <http://www.paloaltoonline.com/news/2016/04/29/policing-surveillance-in-palo-alto>.

⁶ Joe Kukura, *BART considers measure to limit surveillance*, SF Weekly (Jan. 26, 2017), at <http://www.sfweekly.com/news/bart-considers-measure-to-limit-surveillance/>.