



## SPECIAL COUNCIL INFRASTRUCTURE COMMITTEE MEETING

Remote Participation - Digital Zoom Meeting

December 1, 2021

5:30 p.m.

### MEETING MINUTES

**CALL TO ORDER:** Meeting called to order at 5:30 PM by Chair Elisa Márquez

#### **ROLL CALL:**

##### Members Present:

- Elisa Márquez, Chair
- Angela Andrews, City Council Member
- Mark Salinas, City Council Member

##### Staff Present:

- Alex Ameri, Director of Public Works
- Toney Chaplin, Police Chief
- Garrett Contreras, Fire Chief
- Kathy Garcia, Deputy Director of Public Works
- Adam Kostrzak, Direct of Information Technology
- Michael Lawson, City Attorney
- Corey Linteo, Police Lieutenant
- Bryan Matthews, Police Captain
- Kelly McAdoo, City Manager
- Mark Ormsby, Police Lieutenant
- Jennifer Ott, Assistant City Manager
- Nathaniel Roush, Information's Systems Manager
- Michael Wolny, Senior Secretary (Meeting Recorder)

#### **PUBLIC COMMENTS:**

City Manager McAdoo reported two written comments from the public that support the use of drone surveillance.

#### **1. 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**

City Manager McAdoo, Police Chief Toney Chaplin and Captain Bryan Matthews provided the report and presentation.

##### **Public Comments**

Ms. Suzanne Luther called in support of the use of surveillance drone technology for Hayward Police.

## **Committee Questions / Discussion**

Council Member Salinas asked staff to be mindful and include equity and race language in the Hayward Police Department (HPD) Unmanned Aerial Systems (UAS) Operations Manual. City Manager McAdoo recommended adding an equity and race statement to the "Philosophy and Mission Statement" section of the draft policy from the draft council resolution value statements that would acknowledge the city's commitment to equity and inclusion.

Council Member Salinas asked what consequences would be imposed on staff who broke policy. Captain Matthews and Chief Chaplin responded that any policy violation or misconduct issues will be reviewed by HPD internal affairs and reported to the Chief. City Manager McAdoo suggested adding a bullet point to page seven, Section 5.3, under "Personnel" to include that "any violation or misuse of UAS or policy would be referred to internal affairs for investigation". Captain Matthews suggested adding that language to section 5.6, under the "Miscellaneous" section of the policy which the committee agreed to.

Council Member Salinas asked staff to clarify how HPD could potentially limit the use of UAS on private property on private property as someone's backyard except for when it is needed given certain circumstances or level of investigation. City Manager McAdoo suggested adding an additional sentence to the value statements in the draft resolution that the city would strive to limit the use of drones on private property unless in case of emergency or incident escalation.

Council Member Salinas also asked staff to provide information on the finding the balance of how potential surveillance footage could be made public. City Manager McAdoo informed the committee that the City can potentially limit some access based on the Public Records Act, however if video footage is released, the City may have to blur members of the public as needed to meet the public records requirements but at the same time protect an individual's privacy. City Manager McAdoo also added that with cell phone recordings being made public by media, the City may want to release footage for an incident if it provides better coverage and understanding to a story or incident that may have occurred. Police Chief Chaplin added that current HPD policy for body camera footage would be in a similar vein for UAS surveillance releasement. Captain Matthews added that there is no possible way to come up with every single scenario to justify an all-encompassing policy that governs a program and suggested that releasing video footage would need to be reviewed on a case by case basis.

Council Member Andrews asked what happens when a policy is not followed versus a value statement. City Manager McAdoo clarified that the City Council would adopt the values and policy statements and the City Manager under the charter would create the administrative rules and procedures which would then outline the implications of what would happen if a department violates Council's adopted value and policy direction.

Council Member Andrews asked what would happen if a HPD drone damages private property. Captain Matthews clarified that if private property is damaged, a member of the public would be able to file a claim with the city to seek reimbursement which would be reviewed by the City Attorney's Office and investigated by HPD internal affairs. Police Chief Chaplin and Captain Matthews also added that there would be a limited amount of authorized HPD staff that would have access to UAS technology and would still be investigated by internal affairs if there was an event of misuse or breach of policy and then receive disciplinary consequences. City Manager McAdoo added that Federal Aviation Administration (FAA) guidelines may also be used for disciplinary action and potential penalties in addition to the city's policy. Lieutenant Ormsby clarified that if there is an incident that breaks FFA policy, HPD must report it to the FAA or could potentially lose their UAS license for not following the FFA guidelines.

Council Member Andrews asked if there could be a third-party investigation in addition to HPD internal affairs added to the policy. City Manager McAdoo clarified that historically, a third-party investigation is brought in for much more serious incidents, and if an HPD UAS incident warranted a third-party external investigation, the city could always ask for it. Annual reporting to the council would now include any incident where a drone was utilized for council's review and staff could provide more details of incidents by council request if needed. Council Member Andrews also asked staff if it was possible to include language in the HPD UAS policy, that if City Council deemed an incident necessary of third-party investigation, council could request an external agency. Police Chief Chaplin responded that if a major misuse of UAS occurred, the FAA would investigate and file a report that would meet council's third-party request. City Manager McAdoo confirmed to the committee that if an investigation is done by the FAA for misuse of HPD UAS, council could request that report from staff for their review. Chair Márquez asked staff if it was possible for the quarterly HPD report to include the use of drones moving forward. City Manager McAdoo and Police Chief Chaplin agreed that it could be added to the statistics of the HPD quarterly report and could include FAA reports if applicable.

Council Member Andrews asked staff if there was any other feedback or concerns from the public. Lieutenant Ormsby reported that from the four community meetings they have held, the feedback has been positive and in support of UAS.

Chair Márquez asked if the HPD policy would transfer to the Fire Department when adopted. City Manager McAdoo answered that the citywide administrative rules would provide similar guidelines for the Fire Department but under different circumstances for Fire Department emergencies and use. Fire Chief Contreras added that the Fire Department would adopt the city policy but adapt it to fit their department for specific fire related incidents, events, and use.

Chair Márquez asked how the four requested drones would be utilized and if they would be shared with the Fire Department. Staff clarified that the four drones would be used for HPD services.

Chair Márquez asked staff what the current process is for requesting UAS and drones. Fire Chief Contreras explained that the city requests drones from outside agencies during extreme events such as the Calpine fire, where the drones were used to give aerial sight to help fire fighters on the ground safely navigate the area. Captain Matthews added that for HPD, a drone is requested similarly to a helicopter from a neighboring agency and policy defaults to whatever agency can respond to the request. City Manager McAdoo added that having Hayward's own policy and UAS will now be inline and consistent with Council's values and could act if there is any misuse.

Chair Márquez asked staff how many times drones have been requested from outside agencies and staff answered that the number will be included in the next HPD quarterly report.

Chair Márquez referenced section 610.3 in the UAS Operations policy manual and asked staff to elaborate when a warrant is required. Captain Matthews clarified that the policy is within the 4<sup>th</sup> Amendment and depending on the circumstances of the incident, HPD would follow existing warrant policy.

Council Member Andrews also asked with recent incidents throughout the area, how would UAS be applied. Police Chief Chaplin shared that the UAS could follow vehicles in the air that police vehicles may not be able to follow on streets due to illegal roadblocks. He also added UAS is a force multiplier and will help staff's effectiveness overall. Lieutenant Ormsby also shared a recent event of a successful use of a drone that helped prevent a kidnapping since the drone was able to follow the suspect and track a vehicle which then helped HPD officers on the ground to successfully apprehend.

Chair Marquez also asked what public notification would potentially be done for drone deployment. Captain Matthews shared that it would be dependent on a case by case basis and mostly for critical incidents. The public would be notified most likely after the drone has been deployed depending on the circumstances of the situation or event.

The item was moved by Chair Márquez and seconded by Council Member Salinas to move forward with staff's recommendation to City Council, the resolution and policy statement regarding the citywide use of surveillance technologies and the operational policy for the Hayward Police Department's Unarmed Aerial Systems (UAS) program but with the following amendments:

- 1) Add bullet two from the value statement to section II of the operations manual "Philosophy and Mission Statement" and,
- 2) Add language to section 5.7 of the policy for when staff doesn't comply and list consequences and
- 3) Council will receive quarterly updates of UAS use and be notified of any concerns from the FAA and
- 4) To elaborate and add language to the value statements to limit the use of UAS in private areas.

AYES: COUNCIL MEMBERS Andrews, Márquez, Salinas

NOES: None

Council Member Andrews also advised staff to include the requested changes in the staff report when the item goes to Council for review and final approval. She also suggested the city reach out to different advocacy groups within Hayward to invite them and hear their concerns for this item.

## **FUTRE AGENDA ITEMS**

Director Ameri let the committee know that a bicycle and pedestrian infrastructure improvements item and an update for interstate 880 Winton and A St item is anticipated to be brought to the committee for the January 26<sup>th</sup> meeting.

## **ORAL UPDATES**

There were no oral updates.

## **2. COMMITTEE MEMBER/STAFF ANNOUNCEMENTS AND REFERRALS**

Council Member Andrews toured the wastewater treatment facility and was impressed by what she saw and wanted to thank staff for their effort and time.

## **ADJOURNMENT**

Chair Márquez adjourned the meeting at 6:52 p.m.

Attendance	MEETINGS			
	Present 12/01/20 Meeting	Present to Date This Fiscal Year	Excused to Date This Fiscal Year	Absent to Date This Fiscal Year
Elisa Márquez	✓	8	0	0
Angela Andrews	✓	6	0	0
Mark Salinas	✓	8	0	0