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To the Pasadena City Council,

2023 OCT 23 AM 8:27

I am writing to express my strong opposition to the proposed installation of cell site simulators within Pasadena. While I understand the significance of law enforcement's role in maintaining public safety, the use of these devices presents a host of troubling concerns that cannot be overlooked.

First and foremost, the use of cell site simulators raises profound privacy issues. These devices indiscriminately collect data from all mobile devices in their vicinity, including those of innocent individuals who are not under any suspicion. This mass data collection without proper oversight and safeguards is deeply problematic and could lead to unwarranted invasions of privacy, potentially violating our constitutional rights. Furthermore, the secretive nature of the agreements between law enforcement agencies and the manufacturers of these devices raises concerns about transparency and accountability. Pasadena should be committed to ensuring that residents' rights and liberties are upheld, and installing cell-site simulators without comprehensive usage policies and guidelines in place runs counter to that commitment. For these reasons, I strongly urge the City Council to reconsider the installation of these devices and instead prioritize the community's privacy and civil liberties.

David Fang
Pasadena City Council
October 23, 2023
Agenda Item 14

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14. PURCHASE OF CELL SITE SIMULATOR

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The Pasadena Police Department is requesting that the Pasadena City Council approve the acquisition of a cell site simulator - a form of surveillance technology that works by exploiting network security of cell phones and other electronic devices to access communications and private data of the public - at the cost of over \$1 million dollars.

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Pasadena PD informed the Public Safety Committee in April 2023 that they would be purchasing a cell site simulator (CSS). In their presentation, PPD indicated that they have previously used CSS equipment that they borrow from other neighboring law enforcement agencies, but a CSS is not always available for use when PPD requests it. Despite indicating that the CSS would be purchased using asset forfeiture funds, PPD did not disclose that it would cost almost a million dollars at that time. I discuss the problematic use of asset forfeiture funds by law enforcement further below. Furthermore, PPD did not disclose much information about cell site simulators, for example, why the equipment is so expensive and if any additional equipment will have to be purchased - such as a vehicle on which to mount said CSS, or any existing guardrails.

Despite PPD claims for transparency, public records furnished regarding the use or possession of CSS are mostly redacted. In addition, although PPD stated in its presentation that they share CSS equipment, no corresponding public records have been produced to verify this claim. This makes it extremely difficult for the public to learn about PPD's actual use of cell site simulator and ascertain if purchasing one is even necessary.

Moreover, the purchase of a cell site simulator will require amending the Police Department's Fiscal Year (FY) 2024 Operating Budget by appropriating an additional \$1,281,614. That will more than double the Police Department's proposed FY 2024 Asset Forfeiture Fund line item.

Pasadena Asset Forfeiture Fund & Homeland Security Grant Fund (in thousands)

	FY 2024 (proposed)	FY 2023	FY 2022	FY 2021	FY 2020
Asset Forfeiture Fund	801 (+45.6%)	550 (+4.3%)	527 (+61.2%)	327 (+6.8%)	306
Homeland Security Grant	213 (-72.2%)	767 (+141.2%)	318 (+113.4%)	149 (-1.3%)	151

Pasadena PD's ever-growing dependence on asset forfeiture funds and homeland security grants perfectly demonstrates that the asset forfeiture process is a lucrative endeavor for law enforcement, incentivizes bad policing practices, and harms everyday people. Despite recent reforms, law enforcement departments across the state are supplementing their budgets significantly with asset forfeiture. Law enforcement is left with the task of unilaterally deciding

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what is “nice to have”. Instead of supporting community programs, law enforcement utilize these fund for other priorities, such as:

- Acquiring military equipment¹
- Acquiring surveillance equipment²

The ability for law enforcement to benefit from asset forfeiture incentivizes law enforcement to seize and try to keep more of private individual's assets. This is evidenced by the overwhelming amount of assets being seized from regular everyday people and not drug or criminal rings. According to a 2022 report, research suggests that law enforcement agencies who collect higher shares of their revenue from fines, fees, and forfeitures solve crime at significantly lower rates and can have a detrimental effect on community and police relations.³

The general public does not agree with law enforcement being able to keep property that has been seized. According to a 2016 YouGov survey, 84% of people oppose the ability for police to “seize a person's money or property that is suspected to have been involved in a drug crime before the person is convicted”. In addition, 76% do not think law enforcement should not keep seized assets, instead, 48% think the funds should go to the state's General Fund.⁴

Asset forfeiture funds are not “pennies from heaven”⁵ and should not be supplementing Pasadena PD's slush fund to acquire surveillance equipment or arm our local law enforcement to the teeth.

Furthermore, the use of grants to purchase surveillance equipment - or any equipment - does not mean it gets to circumvent checks, balances or oversight. The public has not been provided with information on how CSS will be used, guardrails that are in place, or have the opportunity to give input on how any of that.

Despite claims in PPD's cell site simulator presentation, surveillance tech - by definition - cannot also be privacy protecting. The exigent circumstances loophole to warrants is often exploited. The Homeland Security Inspector General reported earlier in 2023 that many law enforcement agencies often used cell site simulators without obtaining the appropriate search warrants.⁶

As I stated in April, and I still emphasize: it would be reckless and negligent for Pasadena City Council to permit PPD to acquire and use surveillance technologies with no adequate oversight or guardrails. We have yet to receive any material assurances that our privacy rights like the 4th

¹ https://afsc.org/sites/default/files/2022_Equipped_for_wa_CA_web.pdf

² https://www.normantranscript.com/community/agenda-item-pulled-amid-concerns-about-armored-vehicle-purchase/article_cf8f5954-5ef5-11ed-8d74-2fa1e8fa0b01.html

³ <https://americansforprosperity.org/wp-content/uploads/2022/02/AFP-Sheriff-Ret-Currie-Meyers-White-paper-The-impact-of-fines-fees-and-forfeitures-on-policing.pdf>

⁴ <https://www.cato.org/survey-reports/policing-america-understanding-public-attitudes-toward-police-results-national>

⁵ <https://www.columbiaheartbeat.com/columbia-life/crime/932-100714>

⁶ <https://www.oig.dhs.gov/sites/default/files/assets/2023-03/OIG-23-17-Feb23-Redacted.pdf>

14. PURCHASE OF CELL SITE SIMULATOR

amendment, the California Electronic Communications Privacy Act, and other privacy protection laws won't be violated.

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Pasadena City Council Meeting

October 23, 2023

14. Purchase of Cell Site Simulator



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2023 OCT 23 PM 4: 29
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October 20, 2023

VIA EMAIL

Mayor Victor Gordo, Vice Mayor Felicia Williams and Honorable Members of the Pasadena City Council: Tyron Hampton, Justin Jones, Gene Masuda, Jess Rivas, Steve Madison, Jason Lyon

Re: Proposed Purchase of Cell Site Simulator

Dear Mayor Gordo and Honorable Members of the Pasadena City Council,

We write to ask you to deny the proposed purchase of a cell site simulator (CSS) as it is not in the best interests of the community and fails to comply with California state law.

Oakland Privacy is a citizens' coalition that works regionally to defend the right to privacy and enhance public transparency and oversight regarding the use of surveillance techniques and equipment. We were instrumental in the creation of the first standing municipal citizens' privacy advisory commission in the City of Oakland, and we have engaged in privacy enhancing legislative efforts with several Northern California cities and regional entities. As experts on municipal privacy reform, we have written use policies and impact reports for a variety of surveillance technologies, conducted research and investigations, and developed frameworks for the implementation of equipment with respect for civil rights, privacy protections and community control.

The staff report fails to note that use of a CSS can interfere with cell phone service for cell phones within the device's vicinity. The potential for disruption of cell phone service when people are attempting to call 911 or their doctor is something about which the City Council and public should be aware.

The purchase of this expensive tracking device is being put forward without a requirement to report on a regular basis about how the technology was used and whether the use of the technology achieved the goals. How will the City Council know if the technology is being properly utilized in conformance with a policy that doesn't yet exist? As surveillance experts, we always advise the City Council be presented with the usage policy for new equipment at the time of approval of the purchase.

In 2015, the California State Legislature passed laws regulating law enforcement use of CSSs due to inappropriate secrecy and abuse. The California Electronic Communications Privacy Act requires officers to obtain a warrant before using CSSs (except in exigent circumstances) and to disclose the use of CSSs to the California Department

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of Justice.¹ Meanwhile, SB 741 requires an open and transparent process before a local government agency may acquire CSS technology.²

This law lays out the process for acquiring a CSS:

a local agency shall not acquire cellular communications interception technology unless approved by its legislative body by adoption, at a regularly scheduled public meeting held pursuant to the Ralph M. Brown Act ... of a resolution or ordinance authorizing that acquisition and the usage and privacy policy...³

The law requires an agency to articulate and publish online for public review a policy that ensures “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.”⁴

Such a policy must include, at a minimum, the authorized purposes for using the technology, the retention period for data collected with the CSS, information about with whom data will be shared, and an explanation of how the agency will ensure accuracy and compliance with laws (such as the California Electronic Communications Privacy Act).⁵

No policy has been presented for the October 23, 2023, City Council meeting. Such a policy is absent from the agenda packet and the City of Pasadena’s website.

We believe there is no pressing need for Pasadena to purchase its own CSS. The Alameda County District Attorney, the Oakland Police Department and the Fremont Police Department all share one CSS without any problem - it has been used a total of 11 times from 2019-2022.

The combined populations of Oakland and Fremont alone are nearly five times that of the City of Pasadena: it seems a waste of taxpayer funds to purchase equipment which should need to be used so infrequently.

Cell site simulators pose profound civil liberties issues. While we are not opposed to using the technology in limited circumstances, under warrant, to locate and apprehend those posing a significant risk to the community, the potential for abusing this powerful tool is high. Cell site simulators have the ability to eavesdrop on calls and text messages, limited not by hardware but by software configuration.

Finally, the City Council should not be approving the purchase of any surveillance equipment, let alone a piece of hardware costing more than \$1 million,

- without prior publication, for public comment and input, of a usage and privacy policy;
- without a requirement for reporting back annually on the use of the equipment, as is now being done in Oakland and Alameda County, so as to gauge the appropriateness and effectiveness of the technology.

We ask you to delay the purchase of this item until it can be discussed with a prepared draft usage and privacy policy for review as required by state law and with an annual reporting requirement.

¹ Cal. Penal Code §§ 1546.1(c), 1546.2(c), *available at* https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1546.1.&lawCode=PEN.

² Cal. Govt. Code § 53166 *et seq.*, *available at* https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=53166.&lawCode=GOV.

³ *Id.* at § 53166(c)(1).

⁴ *Id.* at § 53166(b)(2).

⁵ *Id.*

Thank you for your consideration.

Sincerely,

Mike Katz-Lacabe
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