



August 11, 2014

*Via electronic mail and facsimile*

San Jose City Council  
200 East Santa Clara Street  
San José, CA 95113

**Re: Need for a public debate and new vote on drone use in San Jose**

Dear San Jose City Councilmembers:

We are very concerned that the San Jose Police Department sought funds and acquired an unmanned aerial vehicle, or drone, without any public debate. Community members did not have the proper opportunity to voice their concerns about the potential purchase of a drone, and City Council members were not able to vote on the budget request with these concerns in mind. The City Council should show its commitment to respecting civil liberties and civil rights by bringing this issue back for a robust public debate and a new vote.

Drones pose significant threats to privacy and free expression because they can operate surreptitiously, enable warrantless dragnet surveillance, and can be easily misused for discriminatory purposes. Before any community makes the important decision whether to unleash drones into the skies, it needs to engage in an open and informed debate. Recently, Alameda County, San Mateo County, and San Francisco have each considered and rejected drone purchases after properly weighing the benefits of the technology and the grave concerns of residents.<sup>1</sup>

Unfortunately, San Jose's drone purchase flew entirely under the community radar screen. This important decision was tucked into the November 19, 2013 consent calendar whose summary contained no reference to a drone.<sup>2</sup> There was no discussion about a drone during that meeting.<sup>3</sup> The only mention of the drone appears in a separate memo from Police Chief Larry Esquivel to the City Council that was linked to the meeting agenda.<sup>4</sup> It was not until almost nine months later that we learned about this purchase when the ACLU of Northern California and investigative reporters found documents and revealed the existence of the drone.<sup>5</sup>

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<sup>1</sup> See Angela Woodall, *War on terror money funding drones, surveillance in the Bay Area*, San Jose Mercury News, Apr. 7, 2013, available at [http://www.mercurynews.com/top-stories/ci\\_22971059/war-terror-money-funding-drones-surveillance-bay-area](http://www.mercurynews.com/top-stories/ci_22971059/war-terror-money-funding-drones-surveillance-bay-area).

<sup>2</sup> City of San Jose, City Council Meeting Agenda (Nov. 19, 2013), available at <http://sanjoseca.gov/DocumentCenter/View/23727>.

<sup>3</sup> City of San Jose, City Council Meeting Minutes (Nov. 19, 2013), available at <http://sanjoseca.gov/DocumentCenter/View/27731>.

<sup>4</sup> Memo from Police Chief Larry Esquivel et al. to the San Jose Mayor and City Council (Nov. 1, 2013), available at <http://sanjoseca.gov/DocumentCenter/View/23693>.

<sup>5</sup> See Shawn Musgrave, "Despite Repeated Denials, San Jose Police Definitely Have a Drone," Vice, July 29, 2014, available at [motherboard.vice.com/read/despite-repeated-denials-san-jose-police-definitely-have-a-drone](http://motherboard.vice.com/read/despite-repeated-denials-san-jose-police-definitely-have-a-drone); Thomas Mann Miller, "San Jose Police Department's Secret Drone Purchase: Where's the Accountability?" ACLU of Northern California, July 30, 2014,

It is especially troubling that the City Council allowed the police department to purchase a drone without public debate in light of San Jose's history of police misconduct and discriminatory treatment of communities of color.<sup>6</sup> The Council approved the drone for "hazardous materials investigations," yet the police department has now admitted that it hopes to use it in far broader circumstances, such as situations it believes "threaten public safety."<sup>7</sup> We are particularly concerned that a drone in San Jose could end up being used to surveil political activities or target vulnerable communities.

The goal of building and maintaining community trust is hampered when invasive surveillance technologies are purchased without public input. We are forced to question why the City has taken a much more extensive and thoughtful approach with regards to the potential acquisition of another technology, police body cameras. Why did the City approve a drone purchase on consent without debate and analysis rather than initiating a process similar to that being utilized for body cameras? Why has there been no committee to study technology needs, evaluate potential systems, consider civil liberties concerns, and develop a comprehensive use policy before any next steps?<sup>8</sup> In other communities where implementation of surveillance technologies has been rushed, the result has been a waste of time and resources; Oakland has had to return federal grant money in connection with the scaling down of its Domain Awareness Center, and Seattle had to find a way to dispose of its drones after a huge community outcry.

The *San Jose Mercury News* recently emphasized the need for legal safeguards against drone use. Silicon Valley "needs to be proactive in helping write laws to prevent unwarranted intrusions into our privacy," the paper wrote in a strongly worded editorial last month.<sup>9</sup> It is very disappointing that in the capital of Silicon Valley, just the opposite has happened.

When communities are considering drones or other surveillance technologies that can easily be used to invade privacy and free expression, community members should be able to easily learn what is happening and why and have meaningful opportunities to weigh in early in the process. Here, the process fell very short.

The police department has acknowledged that it "should have done a better job of communicating the purpose and acquisition" of the drone to the community.<sup>10</sup> Now is the time to make sure that this now happens in the right way by putting the matter back onto the City Council agenda for a proper debate on the merits and a new vote. To avoid similar problems in

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available at <https://www.aclunc.org/blog/san-jose-police-departments-secret-drone-purchase-where-accountability>; Robert Salonga, "San Jose police drone inflames surveillance-state rumblings," *San Jose Mercury News*, July 30, 2014, available at [http://www.mercurynews.com/crime-courts/ci\\_26253376/san-jose-surveillance-state-rumblings-inflamed-by-sjpd](http://www.mercurynews.com/crime-courts/ci_26253376/san-jose-surveillance-state-rumblings-inflamed-by-sjpd); Vivian Ho, "New San Jose police drone awaits guidelines for its use," *San Francisco Chronicle*, August 1, 2014, available at <http://www.sfgate.com/crime/article/New-San-Jose-police-drone-awaits-guidelines-for-5661123.php>.

<sup>6</sup> See history of San Jose in 2013 Report of the Independent Police Auditor, <http://www.sanjoseca.gov/index.aspx?nd=702>.

<sup>7</sup> Press Release,

San Jose Police Provide Statement Regarding Purchase of Unmanned Aerial System (UAS), Aug. 5, 2014, available at <https://www.sjpd.org/inews/viewPressRelease.asp?ID=1874>.

<sup>8</sup> Memo from Police Chief Larry Esquivel to the San Jose Mayor and City Council (Mar. 19, 2014), available at <http://www.piersystem.com/external/content/document/1914/2126242/1/03-21-14Police.PDF>.

<sup>9</sup> *San Jose Mercury News*, "Editorial: Drone law is urgent for California," June 6, 2014, available at [http://www.mercurynews.com/opinion/ci\\_25905222/mercury-news-editorial-drone-law-is-urgent-california](http://www.mercurynews.com/opinion/ci_25905222/mercury-news-editorial-drone-law-is-urgent-california).

<sup>10</sup> Press Release,

San Jose Police Provide Statement Regarding Purchase of Unmanned Aerial System (UAS), Aug. 5, 2014, available at <https://www.sjpd.org/inews/viewPressRelease.asp?ID=1874>.

the future, the Council should also reform its procedures for properly engaging the public when surveillance technology is being considered.<sup>11</sup>

We will contact your office to schedule a meeting so that we can discuss next steps to ensure that city agencies are working to protect both public safety and civil rights.

Sincerely,

American Civil Liberties Union of Northern California

Asian Law Alliance

Center for Media Justice

Coalition for Justice and Accountability

Electronic Frontier Foundation

**cc:** Mayor Reed, Vice Mayor Nguyen, Councilmembers Constant, Kalra, Liccardo, Chu, Campos, Oliverio, Herrera, Rocha, and Khamis, and The Honorable LaDoris H. Cordell (Ret.), San Jose Independent Police Auditor.

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<sup>11</sup> The San Jose police department's own recommendation to purchase the drone acknowledges that no additional process to facilitate public notice or community meetings was necessary under current City law. *See* Memo from Police Chief Larry Esquivel et al. to the San Jose Mayor and City Council (Nov. 1, 2013), available at <http://sanjoseca.gov/DocumentCenter/View/23693>.