

Concord City Council  
City Hall, 5th Floor  
1950 Parkside Dr.  
Concord, CA 94519

October 12, 2021

***Re: Unmanned Aircraft System (UAS) Program***

Dear Concord City Council:

We are a group of civil rights groups that urge the city council not to approve the Unmanned Aerial Surveillance (UAS) program sought by Concord police department, given the risks to civil rights and civil liberties, the lack of showing of need, and the absence of an adequate proposed privacy policy. The law enforcement technology that can be attached to a drone is disconcerting, and capable of highly advanced and near-constant surveillance. Instead of moving forward with a drone program that risks supercharging racist policing in our community, the City Council should devote resources to programs that actually increase the health and safety of Concord residents. If Concord does adopt a UAS program (contrary to our recommendation), the city council should require ample safeguards that protect civil rights and civil liberties.

1. Drone capabilities

Drones are unmanned aerial vehicles that can be equipped<sup>1</sup> with high definition, live-feed video cameras, thermal infrared video cameras,<sup>2</sup> heat sensors, and radar—all of which allow for sophisticated and persistent surveillance.<sup>3</sup> Drones can record video or still images in daylight or at night (with infrared lenses). They can also be equipped with software tools like license plate readers, face recognition, and GPS trackers. There have even been proposals for law enforcement to attach lethal and non-lethal weapons to drones. Additionally, newly developed drone automation allows for automatic tracking of vehicles and individuals.<sup>4</sup>

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<sup>1</sup> Richard M. Thompson, *Drones in Domestic Surveillance Operations: Fourth Amendment Implications and Legislative Responses*, CONGRESSIONAL RESEARCH SERVICE (Apr. 2, 2013) (available at <https://fas.org/sgp/crs/natsec/R42701.pdf>).

<sup>2</sup> Lt. E. Quinn, *Wanted Subject Located With Help From Drone*, STAFFORD COUNTY SHERIFF (Sept. 27, 2017), [https://www.staffordsheriff.com/apps/public/news/newsView.cfm?News\\_ID=1129](https://www.staffordsheriff.com/apps/public/news/newsView.cfm?News_ID=1129) (Virginia police used a drone equipped with thermal imaging to locate a suspect hiding in the woods).

<sup>3</sup> Jennifer Lynch, *Are Drones Watching You?*, ELECTRONIC FRONTIER FOUNDATION (Jan. 10, 2012) <https://www EFF.org/deeplinks/2012/01/drones-are-watching-you>.

<sup>4</sup> Thomas Brewster, *Drones With 'Most Advanced AI Ever' Coming Soon To Your Local Police Department*, FORBES (Mar. 3, 2021) <https://www.forbes.com/sites/thomasbrewster/2021/03/03/drones-with-most-advanced-ai-ever-coming-soon-to-your-local-police-department/?sh=83f5b2b3f0bd>.

In short, as Concord police use more drones, they could collect and store more video of life in Concord, which could undermine the expectation of privacy once one leaves the home.

## 2. Why Concord should not adopt a UAS program

There are many reasons why the Concord city council should deny the UAS proposal from the Concord police department.

First, police drones often cost \$35,000 - \$50,000 – including long distance cameras, other sensors, and software.<sup>5</sup> Additional cost of a UAS program lies in the many officers needed to operate the drones, training, increased salary, and certifications. These long-term costs should not be disregarded in light of a short-term or one-time grant.

Second, government use of drones in public places will chill people from engaging in protests. Courts have long recognized that government surveillance of First Amendment activity has a “deterrent effect.” *See, e.g., Lamont v. Postmaster*, 381 U.S. 301 (1965). Empirical research confirms this problem. *See, e.g.,* Stoycheff, “Facebook’s spiral of silence effects in the wake of NSA Internet monitoring” (2016); Penney, “Online surveillance and Wikipedia use” (2016).<sup>6</sup> For example, in 2020, Concordians gathered in Todos Santos Plaza to exercise their First Amendment rights and express their discontent after the murder of George Floyd. Police dispatched a drone to monitor the crowd.<sup>7</sup> Police elsewhere in Northern California have repeatedly deployed drones over protests in support of immigrants’ rights.<sup>8</sup> Participants who noticed the drone may already be thinking twice before going to the next protest.

Third, police frequently turn surveillance technologies against people of color, immigrants, and other vulnerable populations. Governments have, for example, used them to spy on advocates

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<sup>5</sup> CBS SF Bay Area, *Walnut Creek Police Seeks To Acquire Drones For Law Enforcement Scenarios* (Apr. 6, 2020) (available at <https://sanfrancisco.cbslocal.com/2020/04/06/walnut-creek-police-seeks-to-acquire-drones-for-law-enforcement-scenarios/>); Cade Metz, *Police Drones Are Starting to Think for Themselves*, NEW YORK TIMES (Dec. 5, 2020) <https://www.nytimes.com/2020/12/05/technology/police-drones.html>.

<sup>6</sup> Elizabeth Stoychef, *Under Surveillance: Examining Facebook’s Spiral of Silence Effects in the Wake of NSA Internet Monitoring*, SAGE JOURNALS (Mar. 8, 2016), <https://journals.sagepub.com/doi/pdf/10.1177/1077699016630255>; <https://scholarship.law.berkeley.edu/btlj/vol/iss1/5/>.

<sup>7</sup> Concord PD received a private grant for a pilot drone program and has used the drone on numerous occasions.

<sup>8</sup> Dave Maass and Mike Katz-Lacabe, *Alameda and Contra Costa County Sheriffs Flew Drones Over Protests*, ELECTRONIC FRONTIER FOUNDATION (Dec. 5, 2018), <https://www.eff.org/deeplinks/2018/12/alameda-and-contra-costa-county-sheriffs-flew-drones-over-protests>.

for racial justice.<sup>9</sup> Surveillance technologies often criminalize entire neighborhoods.<sup>10</sup> Using drones to increase the police presence in our communities raises the likelihood that residents will have unnecessary contacts with police that routinely lead to police violence against Black and Brown people. For example, watch lists are often over-inclusive and error-riddled, and cameras often are over-deployed in minority areas.<sup>11</sup> And these spying tools increasingly are being used in conjunction with powerful mathematical algorithms, which often amplify bias. Drone systems can easily entrench some of our society's worst racial disparities.

Fourth, the Concord police department has not shown a need for this UAS program. At the May 13 Neighborhood Meeting, Lt. Gartner first cited the popularity and adoption of drone programs in other cities. Indeed, drone programs have increasingly been adopted by police departments across the nation. It does not follow that these programs are a good idea. California's experience with mission creep is instructive. In Chula Vista, for example, their police department first developed a drone first responder program. But now drones are dispatched on nearly every 911 call. As of March of this year, drones in were deployed 5,400 times in Chula Vista.<sup>12</sup> These dispatches include a "person sleeping on the sidewalk," a "water leak," a report of someone "drunk in public," and on more than one occasion for "fake COVID testing."<sup>13</sup> Such situations do not warrant aerial surveillance.

In unusual cases where aerial surveillance may be warranted, e.g., to find a missing child or elder, the fire department is already equipped with a drone. The police department does not need one, too.

### 3. If a UAS program is adopted, we strongly encourage ample safeguards

Again, for the reasons above, EFF recommends that the Concord police should not acquire a UAS program. If the Concord city council disagrees, we urge adoption of ample safeguards to protect civil rights and civil liberties.

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<sup>9</sup> Sam Levin, *ACLU finds social media sites gave data to company tracking black protesters*, THE GUARDIAN (Oct. 11, 2016)

<https://www.theguardian.com/technology/2016/oct/11/aclu-geofeedia-facebook-twitter-instagram-black-lives-matter>; Antonio Farzan, *Memphis police used fake Facebook account to monitor Black Lives Matter; trial reveals*, THE WASHINGTON POST (Aug. 23, 2018)

[https://www.washingtonpost.com/news/morning-mix/wp/2018/08/23/memphis-police-used-fake-facebook-account-to-monitor-black-lives-matter-trial-reveals/?utm\\_term=.13db56fe4bb8](https://www.washingtonpost.com/news/morning-mix/wp/2018/08/23/memphis-police-used-fake-facebook-account-to-monitor-black-lives-matter-trial-reveals/?utm_term=.13db56fe4bb8).

<sup>10</sup> Diala Shamas, *Mapping Muslims: NYPD Spying and its Impact on American Muslims*, Clear Project (available at <https://www.law.cuny.edu/wp-content/uploads/page-assets/academics/clinics/immigration/clear/Mapping-Muslims.pdf>) (last visited Aug. 11, 2021).

<sup>11</sup> Dave Maas, *EFF Urges Further Reforms for California's Unfair Gang Databases*, ELECTRONIC FRONTIER FOUNDATION (Apr. 27, 2017), <https://www.eff.org/deeplinks/2017/04/next-steps-toward-reforming-californias-unfair-gang-databases>; Dave Maas, *What You Can Learn from Oakland's Raw ALPR Data*, ELECTRONIC FRONTIER FOUNDATION (Jan. 21, 2015), <https://www.eff.org/deeplinks/2015/01/what-we-learned-oakland-raw-alpr-data>.

<sup>12</sup> Faine Greenwood, *The California City That Sends a Drone Almost Every Time Police Are Dispatched on a 911 Call*, SLATE (May 17, 2021) <https://slate.com/technology/2021/05/chula-vista-police-drone-program.html>.

<sup>13</sup> *Id.*

First, drones should be deployed only with a warrant, or in an emergency that threatens death or serious bodily injury to a person. All deployments should be thoroughly documented, and that documentation must be made publicly available.

Second, facial recognition technology, artificial intelligence, automated tracking, heat sensors, license plate readers, cell-phone interception, and lethal and non-lethal weapons should be prohibited as incorporated technologies to UAS drones.

Third, there must be clear rules regarding access to UAS footage. Officers suspected of misconduct must not be allowed to view footage until they have made an initial statement regarding the episode. People depicted in footage must have access to the footage. Also, footage depicting police use of force must be available to the public. Similar to the flaws in body worn cameras, police can exercise too much control over the video before the public sees it without police oversight.

More generally, Concord should adopt a Community Control Over Police Surveillance (CCOPS) ordinance.<sup>14</sup> A CCOPS law acts to promotes transparency, the public's welfare, civil rights, and civil liberties in all decisions regarding the funding, acquisition, and deployment of surveillance equipment by local police.<sup>15</sup> Such a law would appropriately require city departments to provide the public with information about surveillance proposals, including a draft usage policy, weeks rather than days before the proposals are debated before the City Council. We are glad that the Concord city council is considering whether to allow the Concord police to initiate a UAS program. A CCOPS law would ensure that this council and the public have an opportunity to review all proposed police surveillance technologies.

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Thank you for considering our suggestions. We urge you to protect civil rights and civil liberties in Concord by not approving the Concord police departments' request for a UAS program.

Sincerely,

ACLU Northern California  
Concord Communities Alliance  
Contra Costa Central Labor Council  
Contra Costa Defender Association  
Contra Costa Immigrant Rights Alliance  
Defund Concord Police Department  
Electronic Frontier Foundation  
Lift Up Contra Costa

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<sup>14</sup> ACLU, Community Control Over Police Surveillance (CCOPS) (Apr. 2021) (available at <https://www.aclu.org/legal-document/community-control-over-police-surveillance-ccops-model-bill>).

<sup>15</sup> *Id.*

Monument Impact  
Mt. Diabole Peace and Justice Center  
Mt. Diablo Unitarian Universalist Church Racial Justice Team  
Reimagine Public Safety Campaign  
Sunflower Alliance  
SURJ (Showing Up for Racial Justice) Contra Costa County CA



Together, building a stronger community

