

CITY OF ALAMEDA ORDINANCE NO. _____

New Series

REQUIRING CITY DEPARTMENTS TO OBTAIN CITY COUNCIL
APPROVAL BEFORE ACQUIRING SURVEILLANCE TECHNOLOGY
AND TO REQUIRE AN ANNUAL SURVEILLANCE REPORT
CONCERNING THE CITY'S USE OF SURVEILLANCE TECHNOLOGY

The City Council of the City of Alameda does ordain as follows:

Section 1. Article V of Chapter II of the Alameda Municipal Code is amended by adding
Section 2-68 (Surveillance Technology).

“2.68.010 Purpose and findings.

This Ordinance shall be known as the “Surveillance Technology Ordinance.”

The purpose and intent of this Ordinance is to impose safeguards to protect the community's rights to privacy before any surveillance technology is deployed.

The city council finds that any decision to use surveillance technology must be balanced with the need to: investigate and prevent crimes; protect crime victims and society from those who commit crimes; protect the community's right to privacy; and consider the costs to the city to obtain such technology.

The city council finds that proper transparency, oversight and accountability for the acquisition and use of surveillance technology is fundamental to protecting the community right to privacy.

The city council finds that if surveillance technology is approved, there must be continued oversight and annual evaluation to ensure that safeguards are being followed and that the surveillance technology's benefits outweigh its costs.

2.68.020 Definitions.

For purposes of this Ordinance, the following words, terms and phrases shall have these definitions:

Annual surveillance report means an annual written report concerning a specific surveillance technology.

(a) The annual surveillance report will include all of the following:

(1) A general description of how the surveillance technology was used;

- (2) A general description of whether and how often data acquired through the use of the surveillance technology item was shared with outside entities, the name of any recipient entity, the type(s) of data disclosed, and, if known the justification for the disclosure(s);
- (3) A summary of any community complaints about the surveillance technology item;
- (4) The results of any internal audits required by the Surveillance Use Policy, any information about violations of the Surveillance Use Policy, and a general description of any actions taken in response;
- (5) Information that help the city council assess whether the surveillance technology has been effective at achieving its identified purposes;
- (6) Statistics and information about any related Public Records Act requests;
- (7) Total annual costs for the surveillance technology;
- (8) Any requested modifications to the Surveillance Use Policy and the basis for the request;
- (9) Where applicable and using general descriptive terms, (i) for surveillance technology hardware, a general breakdown of what physical objects upon which the hardware was installed and (ii); for surveillance technology software, a general breakdown of what data sources to which the surveillance technology was applied; and
- (10) A summary of all requests for city council approval for the use of a surveillance technology item, including whether the city council approved or rejected the proposal and/or required changes to the Surveillance Use Policy before approval.(b) The annual surveillance report shall not contain the specific records that a surveillance technology item collects, stores, exchanges, or analyzes and/or information protected, restricted and/or sealed pursuant to state and/or federal laws, including information not required to be released by the Public Records Act.

City department means any city department and its employees.

Exigent circumstances means a city department's good faith belief that an emergency involving imminent danger of death or serious physical injury to any person, or imminent danger of significant property damage, requires the use of the surveillance technology or the information it provides.

Personal communication device means a cellular telephone that has not been modified beyond stock manufacturer capabilities, a personal digital assistant, a wireless capable tablet or similar wireless two-way communications and/or portable Internet accessing devices, whether procured or subsidized by a city entity or personally owned, that is used in the regular course of conducting city business.

Surveillance impact report means a written report including at a minimum the following:

- (a) Information describing the surveillance technology and how it works, including product descriptions from manufacturers;
- (b) Information on the proposed purpose(s) for the surveillance technology;
- (c) If applicable, the location(s) it may be deployed to the extent that the disclosure is not detrimental to public safety;
- (d) An assessment identifying any potential community impacts and any plans to address such impacts;
- (e) The costs for the surveillance technology, and any current or potential sources of funding;
- (f) Whether use or maintenance of the technology will require data gathered by the technology to be handled or stored by a third-party vendor on an ongoing basis; and
- (g) A summary of the experience, if any, other governmental entities have had with the proposed technology, including information about the effectiveness and any known adverse information about the technology such as unanticipated costs or failures of the technology.

Surveillance technology means any software, electronic device, system utilizing an electronic device, or similar used, designed, or primarily intended to collect, retain, process, or share audio, electronic, visual, location, thermal, olfactory or similar information specifically associated with, or capable of being associated with, any individual or group by a city department. Examples of surveillance technology, include, but are not limited to, the following: cell site simulators (Stingrays); automatic license plate readers; gunshot detectors (ShotSpotter); facial recognition software; or gait analysis software.

(a) “Surveillance technology” does not include the following devices, hardware or software:

- (1) Office hardware, such as televisions, computers, credit card machines, copy machines, cell phones, tablets, telephones and printers, that is in widespread use by city departments and used for routine city business and transactions;
- (2) City databases and enterprise systems that contain information kept in the ordinary course of city business, including, but not limited to, human resource, permit, license and business records;

- (3) City databases and enterprise systems that do not contain any data or other information collected, captured, recorded, retained, processed, intercepted, or analyzed by surveillance technology, including, payroll, accounting, or other fiscal databases;
- (4) Information technology security systems, including firewalls and other cybersecurity systems;
- (5) Physical access control systems, employee identification management systems including cameras, and other physical or access control systems;
- (6) Infrastructure and mechanical control systems, including those that control or manage street lights, traffic lights, electrical, natural gas, or water or sewer functions;
- (7) Manually-operated technological devices used primarily for internal city and department communications and are neither designed nor intended to collect surveillance data, such as radios, personal communication devices and email systems;
- (8) Manually-operated cameras, audio recorders and video recorders whose functionality is limited to manually capturing and manually downloading video and/or audio recordings;
- (9) Surveillance devices that cannot record or transmit audio or video or be remotely accessed, such as image stabilizing binoculars or night vision equipment;
- (10) Computers, software, hardware or devices used in monitoring the work and work-related activities involving city buildings, employees, contractors and volunteers or used in conducting internal investigations involving city employees, contractors and volunteers;
- (11) Medical equipment and systems used to record, diagnose, treat, or prevent disease or injury and are used and/or kept in the ordinary course of providing city services;
- (12) Parking ticket devices;
- (13) Police department interview room, holding cell and police department internal security audio/video recording systems; and
- (14) Police department computer aided dispatch (CAD), records/case management, LiveScan, booking, Department of Motor Vehicles, California Law Enforcement Telecommunications Systems (CLETS), 9-1-1 and related dispatch and operation or emergency services systems; and
- (15) Police Body Worn Cameras

2.68.030 City council approval.

- A. A city department shall obtain city council approval prior to any of the following:

- (1) Seeking funds for surveillance technology, including, but not limited to, applying for a grant or soliciting or accepting state or federal funds or in-kind or other donations for the purpose of acquiring surveillance technology;
- (2) Acquiring new surveillance technology, including, but not limited to, procuring such technology without the exchange of monies or consideration;
- (3) Using new surveillance technology, or using existing surveillance technology for a purpose, in a manner or in a location not previously approved by the city council; or
- (4) Entering into a formal written agreement with a non-city entity to acquire, share or otherwise use surveillance technology or the information it provides, including data sharing agreements.

B. The city department seeking approval under subsection A shall submit to the city council a Surveillance Impact Report.

C. The city council may approve any action described in subsection A after considering the Surveillance Impact Report.

D. Notwithstanding any other provision in this Ordinance, nothing herein shall be construed to prevent, restrict or interfere with any person providing evidence derived from surveillance technology to a law enforcement agency for the purposes of conducting a criminal investigation.

2.68.040 Use of unapproved technology during exigent circumstances.

Subject to department head approval, a city department may temporarily acquire or use surveillance technology in exigent circumstances without following the provisions of this Ordinance before that acquisition or use. If the city department acquires or uses a surveillance technology pursuant to this section, the city department shall:

- A. Use the surveillance technology to solely respond to the exigent circumstances;
- B. Cease using the surveillance technology when the exigent circumstances ends;
- C. Only keep and maintain data related to the exigent circumstances and dispose of any data that is not relevant to an ongoing investigation;
- D. Following the end of the exigent circumstances, report the acquisition or use to the city council; and
- E. Unless otherwise approved as provided by this Ordinance, any technology temporarily acquired in exigent circumstances shall be returned when the exigent circumstances end.

2.68.050 Annual review.

Annually, a city department that uses surveillance technology must present a written surveillance report at a city council meeting for city council review.

Section 2. Severability.

The provisions of this article are declared to be separate and severable. The invalidity of any clause, phrase, sentence, paragraph, subdivision, section or portion of this article, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this article, or the validity of its application to other persons or circumstances.

Section 3. This Ordinance shall be in full force and effect from and after the expiration of thirty (3) days from the date of its final passage.

Presiding Officer of the City Council

Attest:

Lara Weisiger, City Clerk

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I hereby certify that the foregoing Ordinance was introduced, and passed and adopted by the City Council of the City of Alameda at a regular meeting thereof held on this ____ day of _____ 202_ by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said City this ____ day of _____ 202_.

Lara Weisiger, City Clerk
City of Alameda

APPROVED AS TO FORM:

Yibin Shen, City Attorney
City of Alameda