



LAW DEPARTMENT

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April 14, 2021

Detroit City Council
1340 Coleman A. Young
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Detroit, Michigan 48226

RE: Proposed ordinance to amend Chapter 17 of the 2019 Detroit City Code by adding Division 12, *Community Input Over Government Surveillance*.

Honorable City Council:

Attached please find the revised version of the *Community Input Over Government Surveillance* Ordinance as amended at the Public Health and Safety Standing Committee on Monday, April 12, 2021. The ordinance has been reviewed and approved as to form by Corporation Counsel.

Respectfully submitted,

Tonja R Long

Tonja R. Long
Chief Administrative Corporation Counsel
Municipal Section

Enclosure

cc: Avery Peeples, Mayor's Liaison

SUMMARY

This proposed ordinance amends Chapter 17 of the 2019 Detroit City Code, *Finance*, by amending Article V, *Purchase and Supplies*, to add Division 12, *Community Input Over Government Surveillance*, consisting of Sections 17-5-451 through 17-5-459; to define essential terms; to require submission of a Surveillance Technology Specification Report with procurement requests to City Council and to provide for a public hearing; to identify the minimum required contents of the Surveillance Technology Specification Report; to require an annual Surveillance Technology Procurement Report from relevant City departments to City Council of all new acquisitions of surveillance technology; to require an Annual Surveillance Use Report from relevant City departments to City Council of government surveillance activities; to establish a public reporting system for government surveillance authorizations; to provide for use of unapproved surveillance technology in exigent circumstances; to prohibit certain contractual provisions and provide exceptions to such prohibition; and to establish whistleblower protections.

1 **BY COUNCIL MEMBER _____ :**

2 **AN ORDINANCE** to amend Chapter 17 of the 2019 Detroit City Code, *Finance*, by
3 amending Article V, *Purchase and Supplies*, to add Division 12, *Community Input Over*
4 *Government Surveillance*, consisting of Sections 17-5-451 through 17-5-459; to define essential
5 terms; to require submission of a Surveillance Technology Specification Report with procurement
6 requests to City Council and to provide for a public hearing; to identify the minimum required
7 contents of the Surveillance Technology Specification Report; to require an annual Surveillance
8 Technology Procurement Report from relevant City departments to City Council of all new
9 acquisitions of surveillance technology; to require an Annual Surveillance Use Report from
10 relevant City departments to City Council of government surveillance activities; to establish a
11 public reporting system for government surveillance authorizations; to provide for use of
12 unapproved surveillance technology in exigent circumstances; to prohibit certain contractual
13 provisions and provide exceptions to such prohibition; and to establish whistleblower protections.

14 **IT IS HEREBY ORDAINED BY THE PEOPLE OF THE CITY OF DETROIT**

15 **THAT:**

16 **Section 1:** Chapter 17 of the 2019 Detroit City Code, *Finance*, Article V, *Purchases and*
17 *Supplies*, Division 12, *Community Input Over Government Surveillance*, Sections 17-5-451
18 through 17-5-459 be added, to read as follows:

1 CHAPTER 17. FINANCE

2 ARTICLE V. PURCHASE AND SUPPLIES

3 DIVISION 12. COMMUNITY INPUT OVER GOVERNMENT SURVEILLANCE

4 Sec. 17-5-451. Definitions.

5 For the purpose of this division, the following words and phrases shall have the meanings
6 respectively ascribed to them by this section:

7 Surveillance means the surreptitious or non-surreptitious monitoring, observing, watching
8 listening, capturing, tracking, or recording of a person's or group of persons' movements,
9 characteristics, traits, communications, gestures, associations, or activities.

10 Surveillance data means any electronic data collected, captured, recorded, retained,
11 processed, intercepted, analyzed, or shared by surveillance technology.

12 Surveillance technology means any electronic surveillance device, hardware, or software
13 that is capable of collecting, capturing, recording, retaining, processing, intercepting, analyzing,
14 monitoring, or sharing audio, visual, digital, location, thermal, biometric, or similar information
15 or communications specifically associated with, or capable of being associated with, any specific
16 individual or group; or any system, device, or vehicle that is equipped with an electronic
17 surveillance device, hardware, or software.

18 (1) Surveillance technology includes, but is not limited to:

- 19 a. International mobile subscriber identity (IMSI) catchers and other cell site
20 simulators;
21 b. Automatic license plate readers;
22 c. Electronic toll readers;

- 1 d. Except as identified in Subsection (2)(f) of this definition, Closed-circuit
2 television cameras;
- 3 e. Biometric surveillance technology, including facial, voice, iris, and gait-
4 recognition software and databases;
- 5 f. Mobile DNA capture technology;
- 6 g. Gunshot detection and location hardware and services;
- 7 h. X-ray vans;
- 8 i. Video and audio monitoring and/or recording technology, such as
9 surveillance cameras and wide-angle cameras;
- 10 j. Surveillance enabled or capable lightbulbs or light fixtures;
- 11 k. Tools, including software and hardware, used to gain access to a computer,
12 computer service or computer network without the authorization of the
13 respective owner/user;
- 14 l. Social media monitoring software;
- 15 m. Through-the-wall radar or similar imaging technology;
- 16 n. Passive scanners of radio networks;
- 17 o. Long-range Bluetooth and other wireless-scanning devices;
- 18 p. Radio-frequency I.D. (RFID) scanners; and
- 19 q. Software designed to integrate or analyze data from Surveillance
20 Technology, including but not limited to remote video and/or audio
21 monitoring, social media monitoring, surveillance target tracking, and
22 predictive policing software.

1 (2) Surveillance technology does not include the following devices or hardware, unless
2 they have been equipped with, or are modified to become or include, a surveillance
3 technology as defined in this section:

4 a. Routine office hardware, such as televisions, computers, and printers, that
5 is in widespread public use and will not be used for any surveillance or
6 surveillance-related functions;

7 b. Parking Ticket Devices (PTDs);

8 c. Cell phones;

9 d. Manually-operated, non-wearable, handheld digital cameras, audio
10 recorders, and video recorders that are not designed to be used
11 surreptitiously and whose functionality is limited to manually capturing and
12 manually downloading video and/or audio recordings;

13 e. Body worn cameras and in-vehicle video cameras;

14 f. Closed circuit television cameras, utilized for security purposes, located
15 inside or upon a City government building or accessory structure other than
16 a school or a library;

17 g. Any technology that is procured exclusively for the purpose of controlling
18 City employee access to, or the use of, a secured City government building
19 or vehicle, even when used in conjunction with another surveillance
20 technology;

21 h. Surveillance devices that cannot record or transmit audio or video or be
22 remotely accessed, such as image stabilizing binoculars or night vision
23 goggles;

1 i. City department databases that do not and will not contain any data or other
2 information collected, captured, recorded, retained, processed, intercepted,
3 or analyzed by surveillance technology; and

4 j. Manually-operated technological devices that are used primarily for internal
5 City department communications and are not designed to surreptitiously
6 collect surveillance data, such as radios and email systems.

7 Surveillance technology procurement means the purchase or acquisition of a surveillance
8 technology whether or not the surveillance technology procurement is made through the exchange
9 of monies or other consideration.

10 **Sec. 17-5-452. City Council approval of all surveillance technology procurements;**
11 **submission of, and reliance upon, Surveillance Technology Specification Reports, public**
12 **hearing requirement.**

13 (a) No City department may engage in a surveillance technology procurement until:

14 (1) The City department has provided the City Council with a Surveillance Technology
15 Specification Report, as described in Section 17-5-453 of this Code;

16 (2) The City department has publicly released the related Surveillance Technology
17 Specification Report in accordance with Subsection (c) of this section and City
18 Council has allowed opportunity for public comment at all of the following
19 properly-noticed hearings or meetings, conducted pursuant to the Michigan Open
20 Meetings Act, being MCL 15.261 et seq., regarding the requested procurement:

21 a. The City Council Committee reviewing the procurement request;

22 b. City Council Formal Session, if the procurement request is considered
23 during Formal Session;

1 c. At a special Public Hearing, if authorized by vote of a majority of City
2 Council Members serving; and

3 d. During any other hearings and meetings, if required by law; and

4 (3) The City Council has voted to approve the surveillance technology procurement.

5 (b) All applicable Surveillance Technology Specification Reports associated with a
6 surveillance technology, as well as any other applicable existing policies, standards, and
7 procedures, shall be submitted to the City Council by the requesting City department or, in the
8 case of the Police Department, in conjunction with a copy of any applicable existing governing
9 policy approved by the Board of Police Commissioners, concurrently with any request for the
10 approval of the procurement of a surveillance technology.

11 (c) Surveillance Technology Specification Reports submitted for procurement of new
12 surveillance technology shall be made available to the public, at a designated page on the City
13 website at least 14 days prior to holding any of the hearings or meetings required under Subsection
14 (a)(2) of this section. Any Surveillance Technology Specification Report that is submitted with a
15 surveillance technology procurement approval request approved by City Council shall be made
16 available to the public for as long as the related surveillance technology remains in use by or in
17 the possession of the City department.

18 (d) The City Council shall only approve a procurement request for a surveillance
19 technology under this section if the Body determines the benefits of the surveillance technology
20 outweigh its costs, that the proposal will safeguard civil liberties and civil rights, and that the uses
21 and deployments of the surveillance technology will not be based upon discriminatory or
22 viewpoint-based factors or have a disparate impact on any community or group.

1 (e) Any City Council approval of a procurement request for a surveillance technology
2 made pursuant to this division shall be pre-conditioned and done in reliance upon the information,
3 obligations, and limitations set forth in the Surveillance Technology Specification Report provided
4 to the City Council pursuant to Subsection (b) of this section. Where the Police Department wishes
5 to use a procured surveillance technology in a manner that is inconsistent with its Surveillance
6 Technology Specification Report, and where Section 17-5-457 of this Code is inapplicable, it must
7 seek and receive permission to do so from the Board of Police Commissioners.

8 (f) Permission to acquire or use a new make or model of a surveillance technology
9 does not have to be sought where its functionality and capabilities do not differ in any significant
10 way from a previously approved version of an equivalent surveillance technology.

11 **Sec. 17-5-453. Surveillance Technology Specification Reports.**

12 (a) The contents of the Surveillance Technology Report shall reflect the complete and
13 accurate proposed use of surveillance technology being submitted.

14 (b) The surveillance Technology Report shall be a publicly released report, written by
15 the requesting City department or, in the case of the Police Department, in conjunction with the
16 Board of Police Commissioners, that includes, at a minimum, the following:

17 (1) *Description:* Information describing the surveillance technology and its
18 capabilities;

19 (2) *Purpose:* Any specific purpose the surveillance technology is intended to advance;

20 (3) *Deployment:* If the surveillance technology will not be uniformly deployed or
21 targeted throughout the City, what factors will be used to determine where the
22 technology is deployed or targeted;

23 (4) *Fiscal Impact:* The fiscal impact of the surveillance technology;

1 (5) Civil Rights/Liberties Impacts: An assessment identifying with specificity:

2 a. Any potential adverse impacts the surveillance technology, if deployed,
3 might have on civil liberties and civil rights; and

4 b. What specific, affirmative measures will be implemented to safeguard the
5 public from the potential adverse impacts identified in this section;

6 (6) Authorized Use: A complete description of the purpose and intended uses of the
7 surveillance technology, including any uses that will be expressly prohibited.;

8 (7) Data Collection:

9 a. What types of surveillance data will be collected, captured, recorded,
10 intercepted, or retained by the surveillance technology;

11 b. What surveillance data may be inadvertently collected during the authorized
12 uses of the surveillance technology, and what measures will be taken to
13 minimize the inadvertent collection of data; and

14 c. How inadvertently collected surveillance data will be expeditiously
15 identified and deleted;

16 (8) Data Protection: What safeguards will be used to protect surveillance data from
17 unauthorized access, including encryption and access control mechanisms;

18 (9) Data Retention: Insofar as the privacy of the public can be severely compromised
19 by the long-term storage of mass surveillance data, what rules and procedures will
20 govern the retention of surveillance data, including those governing:

21 a. The limited time period, if any, surveillance data will be retained. Such
22 information shall include a statement explaining why the designated
23 retention period is no greater than that which is absolutely necessary to

1 achieve the specific purpose(s) enumerated in the Surveillance Technology
2 Specification Report;

3 b. The specific conditions that must be met to retain surveillance data beyond
4 the retention period identified pursuant to Subsection (b)(9)(a) of this
5 section; and

6 c. The process utilized to regularly delete surveillance data after the retention
7 period stated in Subsection (b)(9)(a) of this section has elapsed and the
8 auditing procedures that will be implemented to ensure data is not
9 improperly retained;

10 (10) Surveillance Data Sharing: If a City department is seeking authorization to share
11 access to surveillance technology or surveillance data with any other governmental
12 agencies, departments, bureaus, divisions, or units, or non-governmental persons or
13 entities in the absence of a judicial warrant or other legal mandate, it shall detail:

14 a. Which governmental agencies, departments, bureaus, divisions, or units, or
15 non-governmental persons or entities will be approved for:

16 i. Surveillance technology sharing to the governmental agency,
17 department, bureau, division, or unit, or non-governmental person
18 or entity, and

19 ii. Surveillance technology sharing from the governmental agency,
20 department, bureau, division, or unit, or non-governmental person
21 or entity, and

22 iii. Surveillance data sharing to the governmental agency, department,
23 bureau, division, or unit, or non-governmental person or entity;

1 b. Where applicable, the type of information of surveillance data that may be
2 disclosed to the governmental agency, department, bureau, division, or unit,
3 or non-governmental person or entity; and

4 c. Where applicable, any safeguards or restrictions that will be imposed on the
5 surveillance technology or data receiving governmental agency,
6 department, bureau, division, or unit, or non-governmental person or entity
7 regarding the use or dissemination of the provided surveillance technology
8 or data;

9 (11) Demands for Access to Surveillance Data: What legal standard must be met by
10 government entities or third parties seeking or demanding access to surveillance
11 data;

12 (12) Auditing and Oversight: What mechanisms will be implemented to ensure the
13 Surveillance Technology Specification Report is followed, including what
14 independent persons or entities will be given oversight authority, if and how regular
15 audits will be conducted, and in the case of the Police Department, also how the
16 Board of Police Commissioners will be involved in the auditing and oversight
17 process;

18 (13) Training: Would specialized training be required in connection with the use of the
19 surveillance technology; and

20 (14) Complaints: What procedures will allow members of the public to register
21 complaints or concerns, or submit questions about the deployment or use of a
22 specific surveillance technology, and how the City department will ensure each
23 question and complaint is responded to in a timely manner.

1 **Sec. 17-5-454. Annual Surveillance Technology Procurement Report.**

2 (a) Not later than March 31st of each year, any City department, with the exception of
3 the police department, using a surveillance technology must submit to the City Council and make
4 available on its public website, an Annual Surveillance Technology Procurement Report.

5 (1) The Annual Surveillance Technology Procurement Report shall include the
6 following information for the previous calendar year:

7 a. The total dollar value of all contracts associated with procurement of new
8 surveillance technology;

9 b. The total number of contracts entered into for the procurement of new
10 surveillance technology; and

11 c. The number of occasions where surveillance technology was acquired
12 temporarily from other jurisdictions or entities, as well as the types(s) of
13 surveillance technology acquired.

14 (b) Included in the annual report required under Section 7-806 of the Charter, *Duties*
15 *of the Chief of Police*, the Police Department must include an Annual Surveillance Technology
16 Procurement Report as part of the annual report of operations.

17 (1) The Annual Surveillance Technology Procurement Report shall include the
18 following information for the previous calendar year:

19 a. The total dollar value of all contracts associated with procurement of new
20 surveillance technology;

21 b. The total number of contracts entered into for the procurement of new
22 surveillance technology; and

1 c. The number of occasions where surveillance technology was acquired
2 temporarily from other jurisdictions or entities, as well as the types of
3 surveillance technology acquired.

4 **Sec. 17-5-455. Annual Surveillance Use Report.**

5 (a) Not later than March 31st of each year, any City Department, with the exception of
6 the police department, using a surveillance technology must submit to the City Council, and make
7 available on its public website, an Annual Surveillance Use Report for each specific surveillance
8 technology procured at any time during the previous calendar year.

9 (1) The Annual Surveillance Use Report shall include the following information for
10 the previous calendar year:

11 a. A brief overview of how the surveillance technology collected data;

12 b. The total number of days the surveillance technology was used;

13 c. The names of the external entities with whom surveillance data from the
14 surveillance technology was shared;

15 d. The names of the external entities from whom surveillance data was
16 acquired;

17 e. In the case of social media monitoring only, the number of days the
18 surveillance technology was used to monitor internet activity, as well as the
19 number of specifically targeted people who were monitored;

20 f. A summary of complaints or concerns that were received about the
21 surveillance technology;

1 g. The results of any internal audits, any information about violations of the
2 applicable Surveillance Technology Specification Reports, and any actions
3 taken in response;

4 h. Total annual costs for the surveillance technology, including personnel and
5 other ongoing costs, and the sources of funding for the technology in the
6 next fiscal year; and

7 i. Any misuse of the technology during the reporting period.

8 **(b)** Included in the annual report required under Section 7-806 of the Charter, *Duties*
9 of the Chief of Police, the Police Department must submit an Annual Surveillance Use Report for
10 each specific surveillance technology procured at any time during the previous calendar year.

11 **(1)** The Annual Surveillance Use Report shall include the following information for
12 the previous calendar year:

13 a. A brief overview of how the surveillance technology collected data;

14 b. The total number of days the surveillance technology was used;

15 c. The names of the external entities with whom surveillance data from the
16 surveillance technology was shared;

17 d. The names of the external entities from whom surveillance data was
18 acquired;

19 e. In the case of social media monitoring only, the number of specifically
20 targeted identifiable groups and individuals who were monitored;

21 f. A summary of complaints or concerns that were received about the
22 surveillance technology;

1 g. The results of any internal audits, any information about violations of the
2 applicable Surveillance Technology Specification Reports, and any actions
3 taken in response;

4 h. Total annual costs for the surveillance technology, including personnel and
5 other ongoing costs, and the sources of funding for the technology in the
6 next fiscal year; and

7 i. Any misuse of the technology during the reporting period.

8 (c) For purposes of this section, “external entities” shall not include persons acting in
9 their individual capacities.

10 **Sec. 17-5-456. Public report of government surveillance authorizations.**

11 Not later than April 30th of each year, the City Council or its appointed designee, shall
12 release an annual public report, in print and on the City website, containing the following
13 information for the preceding calendar year:

14 (1) The number of requests for approval submitted to the City Council for the (a)
15 funding, (b) procurement, and (c) new uses of surveillance technology;

16 (2) The number of times the City Council approved requests submitted for the (a)
17 funding, (b) procurement, and (c) new uses of surveillance technology;

18 (3) The number of times the City Council rejected requests submitted for the (a)
19 funding, (b) procurement, and (c) new uses of surveillance technology; and

20 (4) All Annual Surveillance Use Reports issued within the previous year.

21 **Sec. 17-5-457. Use of unapproved surveillance technology in exigent circumstances.**

1 (a) A City department may temporarily acquire, or temporarily use, surveillance
2 technology in exigent circumstances without following the provisions of this ordinance provided
3 that the City department does all of the following:

4 (1) Use the surveillance technology to solely respond to the exigent circumstances;

5 (2) Cease using the surveillance technology within 30 calendar days, or when the
6 exigent circumstances end, whichever is sooner, if an exigent circumstance lasts
7 longer than 30 days, the City department shall request an extension of no more than
8 30 days from the City Council, and in the case of the Police Department, also the
9 Board of Police commissioners, multiple extensions may be individually requested
10 if exigent circumstances so require;

11 (3) Keep and maintain only data related to the exigent circumstances and dispose of
12 any data that is not relevant to an ongoing investigation, unless its retention is:

13 a. Necessary to address the exigent circumstance,

14 b. Authorized by a court based on a finding of probable cause to believe the
15 information constitutes evidence of a crime; or

16 c. Otherwise required by law;

17 (4) Not disclose to any third party any information acquired during exigent
18 circumstances unless such disclosure is:

19 a. Authorized by a court based on a finding of probable cause to believe the
20 information constitutes evidence of a crime; or

21 b. Otherwise required by law; and

22 (5) Within 45 days of the conclusion of the exigent circumstances submit a written
23 report to the City Council identifying that acquisition and/or use. Any subsequent

1 City Council questions regarding the exigent circumstances-use may be answered
2 in a closed City Council session, if such a closed session is requested by the
3 reporting department and set by resolution of the City Council.;

4 (b) Any surveillance technology temporarily acquired in exigent circumstances shall
5 be returned within seven days following the end of the exigent circumstances.

6 **Sec. 17-5-458. Certain contracts prohibited; exceptions.**

7 (a) It shall be unlawful for any City department to enter into any contract or agreement
8 that conflicts with the provisions of this ordinance.

9 (1) Notwithstanding the prohibition in Subsection 17-5-458(a) of this section, the
10 Police Department may enter into a contract or agreement containing a non-
11 disclosure agreement if:

12 a. The Police department provides a copy of the proposed contract or
13 agreement, and related non-disclosure agreement to the City Council;

14 b. The Police Department provides a written explanation to the City Council
15 explaining why the use of a non-disclosure agreement is essential and in the
16 public interest and why no alternatives to using the non-disclosure
17 agreement are available or practicable; and

18 c. The City Council votes to allow the use of the non-disclosure agreement
19 pursuant to 3/4 vote of City Council Members serving.

20 (2) Where, pursuant to Subsection 17-5-458(a)(1) of this section, the use of a non-
21 disclosure agreement is approved, any public disclosures of information required
22 by this ordinance shall not be required.

1 (b) It shall be unlawful for any City department to enter into any contract or agreement
2 that facilitates the exchange of surveillance data in return for monetary or any other form of
3 consideration, including the assessment of additional fees or surcharges on unpaid fines or debts.

4 **Sec. 17-5-459. Prohibitions; whistleblower protections.**

5 (a) It shall be unlawful for any City Department to violate any provision of this
6 ordinance, including but not limited to, funding, acquiring, or using a surveillance technology that
7 has not been approved pursuant to this ordinance or utilizing a surveillance technology in a manner
8 or for a purpose that has not been enumerated in a Surveillance Technology Specification Report
9 that accompanied an approved surveillance technology procurement request submitted pursuant to
10 Section 17-5-452 of this Code.

11 (b) City employees or agents shall not use any surveillance technology in a manner that
12 is inconsistent with or exceeds the terms of the Surveillance Technology Specification Report that
13 accompanied an approved surveillance technology procurement pursuant to Section 17-5-452 or
14 Section 17-5-457 of this Code, and may in no circumstances utilize surveillance technology in a
15 manner which is discriminatory, viewpoint-based, or violates the Charter, State Constitution, or
16 United States Constitution.

17 (c) Any City employee or agent who violates this ordinance shall be subject to
18 appropriate disciplinary measures.

19 (d) No City department or anyone acting on behalf of a City department may take or
20 fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or
21 applicant for employment, including but not limited to discrimination with respect to
22 compensation, terms, conditions, access to information, restrictions on due process rights,
23 privileges of employment, or civil or criminal liability, because the employee or applicant was

1 perceived to, about to, or assisted in, any lawful disclosure of information concerning the funding,
2 acquisition, or use of a surveillance technology or surveillance data, to any relevant City
3 department, City law enforcement, prosecutorial, or investigatory office, or City Council Member,
4 based upon a good faith belief that the disclosure evidenced a violation of this ordinance.

5 **Secs. 17-5-460 – 17-5-470. Reserved.**

6 **Section 2.** All ordinances, parts of ordinances, that conflict with this ordinance are
7 repealed.

8 **Section 3.** This ordinance is hereby declared necessary for the preservation of the public
9 peace, health, safety, and welfare of the People of the City of Detroit.

10 **Section 4.** Where this ordinance is passed by two thirds (2/3) majority of City Council
11 Members serving, it shall be given immediate effect and shall become effective upon publication
12 in accordance with Section 4-118(1) of the 2012 Detroit City Charter. Where this ordinance is
13 passed by less than two thirds (2/3) majority of City Council members serving, it shall become
14 effective thirty (30) days after publication in accordance with Section 4-118(2) of the 2012 Detroit
15 City Charter.

Approved as to form:


Lawrence T. Garcia
Corporation Counsel