

**ORDINANCE NO. 2021-17
CHAPTER 17
ARTICLE V**

AN ORDINANCE to amend Chapter 17 of the 2019 Detroit City Code, *Finance*, Article V, *Purchase and Supplies*, by adding Division 12, *Community Input Over Government Surveillance*, which consists of Sections 17-5-451 through 17-5-459; to define the terms “surveillance”, “surveillance data”, “surveillance technology”, and “surveillance technology procurement”; to require submission of a Surveillance Technology Specification Report with procurement requests to City Council and for a public hearing; to identify minimum required content of the Surveillance Technology Specification Report; to require an annual Surveillance Technology Procurement Report of all new acquisitions of surveillance technology from relevant City departments to City Council; to require an Annual Surveillance Use Report of government surveillance activities from relevant City departments to City Council; 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 with exceptions; and to establish whistleblower protections.

IT IS HEREBY ORDAINED BY THE PEOPLE OF THE CITY OF DETROIT THAT:

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

**CHAPTER 17. FINANCE
ARTICLE V. PURCHASE
AND SUPPLIES**

DIVISION 11. RESERVED.

Secs. 17-5-401 – 17-5-450. Reserved.

**DIVISION 12. COMMUNITY INPUT
OVER GOVERNMENT SURVEILLANCE**

Sec. 17-5-451. Definitions.

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

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

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

Surveillance technology means any electronic surveillance device, hardware, or software that is capable of collecting, capturing, recording, retaining, processing, intercepting, analyzing, monitoring, or sharing audio, visual, digital, locational, thermal, biometric, or similar information or communications specifically associated with, or capable of being associated with, any specific individual or group, or any system, device, or vehicle that is equipped with an electronic surveillance device, hardware, or software as follows:

- (1) Surveillance technology includes, but is not limited to:
 - a. International mobile subscriber identity (IMSI) catchers and other cell site simulators;
 - b. Automatic license plate readers;
 - c. Electronic toll readers;
 - d. Except as identified in Subsection (2)(f) of this definition, closed-circuit television cameras;
 - e. Biometric surveillance technology, including facial voice, iris, and gait-recognition software and databases;
 - f. Mobile DNA capture technology;
 - g. Gunshot detection and location hardware and services;
 - h. X-ray vans;
 - i. Video and audio monitoring and/or recording technology, such as surveillance cameras and wide-angle cameras;
 - j. Surveillance enabled or capable light bulbs or light fixtures;
 - k. Tools, including software and hardware, used to gain access to a computer, computer service, or computer network without the authorization of the respective owner or user;
 - l. Social media monitoring software;
 - m. Through-the-wall radar or similar imaging technology;
 - n. Passive scanners of radio networks;
 - o. Long-range Bluetooth and other wireless-scanning devices;
 - p. Radio-frequency I.D. (RFID) scanners; and
 - q. Software designed to integrate or analyze data from surveillance technology, including, but not limited to, remote video and/or audio monitoring,

social media monitoring, surveillance target tracking, and predictive policing software.

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

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

b. Parking Ticket Devices (PTDs);

c. Cell phones;

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

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

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

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

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

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

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

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

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

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

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

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

a. The City Council Committee reviewing the procurement request;

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

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

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

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

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

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

(d) The City Council shall only approve a procurement request for a surveillance technology under this section if the Body determines that the benefits of the surveillance technology outweigh its costs, that

the proposal will safeguard civil rights and civil liberties, and that the use and deployment of the surveillance technology will not be based upon discriminatory or viewpoint-based factors or have a disparate impact on any community or group.

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

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

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

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

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

(1) *Description.* Information describing the surveillance technology and its capabilities;

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

(3) *Deployment.* If the surveillance technology will not be uniformly deployed or targeted throughout the City, the factors that will be used to determine where the technology is deployed or targeted;

(4) *Fiscal impact.* The fiscal impact of the surveillance technology;

(5) *Civil rights and liberties impacts.* An assessment identifying with specificity:

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

b. What specific, affirmative measures will be implemented to safeguard the pub-

lic from the potential adverse impacts identified in this section;

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

(7) *Data collection.*

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

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

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

(8) *Data protection.* The safeguards will be used to protect surveillance data from unauthorized access, including encryption and access control mechanisms;

(9) *Data retention.* Insofar as the privacy of the public can be severely compromised by the long-term storage of mass surveillance data, the regulations and procedures that govern the retention of surveillance data, including those governing:

a. The limited time period, if any, surveillance data will be retained. Such information shall include a statement explaining why the designated retention period is no greater than that which is absolutely necessary to achieve the specific purpose or purposes enumerated in the Surveillance Technology Specification Report;

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

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

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

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

i. For surveillance technology sharing

to the governmental agency, department, bureau, division or unit, or non-governmental person or entity, and

ii. For surveillance technology sharing from the governmental agency, department, bureau, division or unit, or non-governmental person or entity; and

iii. For surveillance data sharing to the governmental agency, department, bureau, division or unit, or non-governmental person or entity;

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

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

(11) *Demands for access to surveillance data.* What legal standard must be met by government entities or third parties seeking or demanding access to surveillance data;

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

(13) *Training.* Would specialized training be required in connection with the use of the surveillance technology; and

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

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

(a)(1) Not later than March 31st of each year, any City department, with the exception of the Police Department, using a surveillance technology must submit to the City Council and make available on its public website, an Annual Surveillance Technology Procurement Report.

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

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

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

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

(b)(1) When submitting the annual report required under Subsection (6) of Section 7-806 of the Charter, *Duties of the Chief of Police*, the Police Department must include an Annual Surveillance Technology Procurement Report as part of the annual report of operations.

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

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

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

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

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

(a)(1) Not later than March 31st of each year, any City Department, with the exception of the Police Department, using a surveillance technology must submit to the City Council, and make available on its public website, an Annual Surveillance Use Report for each specific surveillance technology procured at any time during the previous calendar year.

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

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

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

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

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

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

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

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

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

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

(b)(1) When submitting the annual report required under Subsection 6 of Section 7-806 of the Charter, *Duties of the Chief of Police*, the Police Department must include an Annual Surveillance Use Report for each specific surveillance technology procured at any time during the previous calendar year.

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

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

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

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

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

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

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

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

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

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

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

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

Not later than April 30th of each year, the City Council or its appointed designee shall release an annual public report, in

print and on the City website, containing the following information for the preceding calendar year:

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

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

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

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

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

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

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

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

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

a. Necessary to address the exigent circumstance;

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

c. Otherwise required by law;

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

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

b. Otherwise required by law; and

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

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

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

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

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

(b) Notwithstanding the prohibition in Subsection (a) of this section, the Police Department may enter into a contract or agreement containing a non-disclosure agreement if:

(1) The Police department provides a copy of the proposed contract or agreement, and related non-disclosure agreement to the City Council;

(2) The Police Department provides a written explanation to the City Council explaining why the use of a non-disclosure agreement is essential and in the public interest and why no alternatives to using the non-disclosure agreement are available or practicable; and

(3) The City Council votes to allow the use of the non-disclosure agreement pursuant to three-fourths vote of City Council Members serving.

(c) Where, pursuant to Subsection (b) of this section, the use of a non-disclosure agreement is approved, any public disclosures of information required by this division shall not be required.

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

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

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

(b) City employees or agents shall not

use any surveillance technology in a manner that is inconsistent with or exceeds the terms of the Surveillance Technology Specification Report that accompanied an approved surveillance technology procurement pursuant to Section 17-5-452 of this Code or Section 17-5-457 of this Code, and, in no circumstances, may utilize surveillance technology in a manner, which is discriminatory, viewpoint-based, or violates the Charter, 1963 Michigan Constitution, or the United States Constitution.

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

(d) No City department, or anyone acting on behalf of a City department, may take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment, including, but not limited to, discrimination with respect to compensation, terms, conditions, access to information, restrictions on due process rights, privileges of employment, or civil or criminal liability, because the employee or applicant was perceived to, about to, or assisted in, any lawful disclosure of information concerning the funding, acquisition, or use of a surveillance technology or surveillance data, to any relevant City department, City law enforcement, prosecutorial, or investigatory office, or City Council Member, based upon a good faith belief that the disclosure evidenced a violation of this division.

Secs. 17-5-460 – 17-5-480. Reserved.

Section 2. All ordinances, or parts of ordinances, that conflict with this ordinance are repealed.

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

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

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JANICE M. WINFREY
City Clerk