

Chapter X.X Public Oversight of Surveillance Technology Ordinance

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Section 1.1 Purpose

The purpose of this Chapter is to replace Somerville's Executive Order of October 4, 2017 entitled "Executive Policy on Surveillance Technology," and to provide for formal public oversight of Surveillance Technology acquisition or use by the City of Somerville or the use of the Surveillance Data it provides. The provisions herein safeguard the right of individuals to privacy, balance the public's right to privacy with the need to promote and ensure safety and security, provide protocols for use of Surveillance Technology or Surveillance Data that include specific steps to mitigate potential impacts on the civil rights and liberties of any individuals, communities or groups including communities of color or other marginalized communities in the City, to balance any decision to use Surveillance Technology with an assessment of the costs and protection of privacy, civil liberties and civil rights, to allow for informed public discussion before deploying Surveillance Technology, to provide for transparency, oversight, and accountability, and to minimize the risks posed by use of Surveillance Technology in the City.

Section 1.2. Definitions

The following definitions apply to this Chapter:

- (A) **"Annual Surveillance Report"** means a written report submitted by the Mayor's Office on an annual basis concerning specific Surveillance Technology used by any City department during the previous year and containing the information set forth in 1.6(B) of this Chapter.
- (B) **"Exigent Circumstances"** means the Police Chief's or the Police Chief's designee's good faith and reasonable belief that an emergency involving danger of death, physical injury, or significant property damage or loss, similar to those that would render impracticable to obtain a warrant, requires use of the Surveillance Technology or the Surveillance Data it provides; provided that it was not foreseeable that the Police Chief or the Police Chief's designee's actions would create the exigency, even if their conduct was lawful. The use of Surveillance Technology in Exigent Circumstances shall not infringe upon an

individual's right to peacefully protest and exercise other lawful and protected Constitutional Rights.

- (C) **“Identifiable Individuals”** means an individual whose identity can be revealed by data, including Surveillance Data, or revealed by data when it is analyzed and/or combined with any other type of record.
- (D) **“Surveillance”** means the act of observing or analyzing the movements, behavior, or actions of Identifiable Individuals.
- (E) **“Surveillance Data”** means any electronic data collected, captured, recorded, retained, processed, intercepted, or analyzed by Surveillance Technology acquired by the City or operated at the direction of the City.
- (F) **“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, location, thermal, biometric, or similar information specifically associated with, or capable of being associated with, any Identifiable Individual or group; or any system, device, or vehicle that is equipped with an electronic surveillance device, hardware, or software.
 - 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) Closed-circuit television cameras except as otherwise provided herein;
 - (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 wearable body cameras;
- (j) Surveillance enabled or capable lightbulbs or light fixtures;
- (k) Tools, including software and hardware, used to gain unauthorized access to a computer, computer service, or computer network;
- (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) Thermal imaging or “Forward Looking Infrared” devices or cameras;
- (q) Radio-frequency identification (RFID) scanners; and
- (r) Software designed to integrate or analyze data from Surveillance Technology, including surveillance target tracking and predictive policing software.

2. For the purposes of this Chapter, “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 above:

- 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”) and related databases.
- c) Manually-operated, non-wearable, handheld digital cameras, audio recorders, and video recorders that are not designed to be used surreptitiously and whose functionality is used for manually capturing and manually downloading video and/or audio recordings;
- d) Surveillance devices that cannot record or transmit audio or video or be remotely accessed, such as image stabilizing binoculars or night vision goggles;

- e) City databases that do not and will not contain any Surveillance Data or other information collected, captured, recorded, retained, processed, intercepted, or analyzed by Surveillance Technology;
 - f) Manually-operated technological devices that are used primarily for internal City communications and are not designed to surreptitiously collect Surveillance Data, such as radios and email systems;
 - g) Parking access and revenue control systems, including proximity card readers and transponder readers at City- owned or controlled parking garages; and
 - h) Card readers and key fobs used by City employees and other authorized persons for access to City- owned or controlled buildings and property.
- . (H) **“Surveillance Technology Impact Report”** means a written report submitted by the Mayor’s Office with a request for approval of acquisition or use of Surveillance Technology, and which includes, at a minimum, the requirements set forth in Subsection 1.3(C).
 - . (I) **“Surveillance Use Policy”** means a policy for the City’s use of Surveillance Technology, approved by the City Solicitor and the Mayor’s Office, and submitted by the Mayor’s Office to and approved by the City Council. The Surveillance Use Policy shall at a minimum satisfy the requirements set forth in Subsection 1.5(B).
 - . (J) **“Technology-Specific Surveillance Use Policy”** means a policy governing the City’s use of a specific Surveillance Technology not already covered under the City’s Surveillance Use Policy, approved by the City Solicitor and the Mayor, and submitted by the Mayor to the City Council with a Surveillance Technology Impact Report under Section 1.3(A), 1.3(B), or 1.4 of this Chapter.

Section 1.3 Submission to the City Council of Surveillance Technology Impact Report and Technology-Specific Surveillance Use Policy

The Mayor’s Office must seek approval from the City Council as set forth in this Section prior to the City seeking funds for, acquiring, using or entering into an agreement to acquire, share or otherwise use, Surveillance Technology as defined in this Chapter.

- (A) **Acquisition of Surveillance Technology by City Departments Other than the Police Department.** For any department other than the Police Department, for which approval under Section 1.3 of this Chapter is sought, the Mayor's Office must submit to the City Council a Surveillance Technology Impact Report,

and, if necessary, a Technology-Specific Surveillance Use Policy pertaining to the specific Surveillance Technology for which approval is sought and obtain City Council approval before doing any of the following:

- (1) Seeking funds for Surveillance Technology, including but not limited to, applying for a grant, or accepting state or federal funds, or in-kind or other donations;
- (2) Acquiring new Surveillance Technology, including but not limited to procuring that Surveillance Technology without the exchange of monies or other consideration;
- (3) Using Surveillance Technology for a purpose, in a manner, or in a location not previously approved; or
- (4) Entering into an agreement with a non-City entity to acquire, share, or otherwise use Surveillance Technology or the Surveillance Data it provides.

(B) **Acquisition of Surveillance Technology by the Police Department.** Other than with respect to Surveillance Technology limited to use in Exigent Circumstances in law enforcement investigations and prosecutions as specifically defined in Section 1.4 of this Chapter, the Mayor's Office must submit a Surveillance Technology Impact Report, and, if necessary, a Technology-Specific Surveillance Use Policy pertaining to the specific Surveillance Technology for which approval is sought to the City Council and obtain City Council approval, before the Police Department does any of the following:

- (1) Seeking funds for Surveillance Technology, including but not limited to, applying for a grant, or accepting state or federal funds, or in-kind or other donations;
- (2) Acquiring new Surveillance Technology, including but not limited to procuring that technology without the exchange of monies or other consideration;
- (3) Using Surveillance Technology for a purpose, in a manner, or in a location not previously approved; or
- (4) Entering into an agreement with a non-City entity to acquire, share, or otherwise use Surveillance Technology.

(C) **Contents of Surveillance Technology Impact Report.** A Surveillance Technology Impact Report submitted pursuant to Subsections (A) or (B) above shall include all of the following:

- (1) Information describing the Surveillance Technology and how it works;
- (2) Information on the proposed purpose(s) for the Surveillance Technology;
- (3) Information describing the kind of surveillance the Surveillance Technology is going to conduct and what Surveillance Data is going to be gathered;
- (4) The location(s) it may be deployed and when;
- (5) The potential impact(s) on privacy in the City; the potential impact on the civil rights and liberties of any individuals, communities or groups, including, but not limited to, communities of color or other marginalized communities in the City, and a description of whether there is a plan to address the impact(s);
- (6) The fiscal costs for the Surveillance Technology, including initial purchase, personnel and other ongoing costs, and any current or potential sources of funding; and
- (7) An explanation of how the Surveillance Use Policy will apply to this Surveillance Technology and, if it is not applicable, a Technology-Specific Surveillance Use Policy.

(D) **Contents of Technology-Specific Surveillance Use Policy.** A Technology Specific Surveillance Use Policy submitted under Subsections (A) or (B) above or Section 1.4 below shall not conflict with any provision of the City's Surveillance Use Policy. To the extent a conflict arises between the provisions of the City's Surveillance Use Policy and a Technology-Specific Surveillance Use Policy, the City's Surveillance Use Policy shall govern. A Technology-Specific Surveillance Use Policy submitted under Subsections (A) or (B) above or Section 1.4 below shall include all of the following:

- (1) Purpose: The specific purpose(s) for the Surveillance Technology;
- (2) Authorized Use: The uses that are authorized, the rules and processes required before that use, and the uses that are prohibited;
- (3) Data Collection: The Surveillance Data that can be collected by the Surveillance Technology;
- (4) Data Access: The individuals who can access or use the collected Surveillance Data, and the rules and processes required before access or use of the information;
- (5) Data Retention: The time period, if any, for which information collected by

the Surveillance Technology will be routinely retained, the reason that retention period is appropriate to further the purpose(s), the process by which the information is regularly deleted after that period has elapsed, and the conditions that must be met to retain information beyond that period;

- (6) Public Access: If and how collected Surveillance Data can be accessed by members of the public, including criminal defendants;
 - (7) Third-Party Data-Sharing: If and how other City or non-City entities can access or use the Surveillance Data, including any required justification and legal standard necessary to do so, and any obligation(s) imposed on the recipient of the Surveillance Data;
 - (8) Training: The training, if any, required for any individual authorized to use the Surveillance Technology or to access information collected by the Surveillance Technology, including whether there are training materials; and
 - (9) Oversight: The mechanisms to ensure that the Surveillance Use Policy is followed, including, but not limited to, identifying personnel assigned to ensure compliance with the policy, internal record keeping of the use of the technology or access to information collected by the Surveillance Technology, technical measures to monitor for misuse, any independent person or entity with oversight authority, and the sanctions for violations of the policy.
- (E) In approving, and/or disapproving any acquisition of Surveillance Technology, the City Council shall consider the safeguarding of individuals' right to privacy as well as the investigative and prosecutorial functions of the Police Department and promoting and ensuring the safety and security of the general public.
- (F) Any Surveillance Technology Impact Report, and, if necessary, Technology-Specific Surveillance Use Policy submitted to the City Council under Section 1.3(A) or 1.3(B) shall be made publicly available no fewer than seven (7) calendar days prior to the date of the Council meeting where it shall be discussed.

Section 1.4 Temporary Acquisition and Use of Surveillance Technology in Exigent Circumstances

Notwithstanding the provisions of this Chapter, the Police Department may temporarily acquire or temporarily use Surveillance Technology in Exigent Circumstances for a period not to exceed 90 days without following the provisions of this Chapter before that acquisition or use. However, if the Police Department acquires or uses Surveillance Technology in Exigent Circumstances under this Section, the Police Chief must (1)

report that acquisition or use to the City Council in writing within 90 days following the end of those Exigent Circumstances; (2) submit a Surveillance Technology Impact Report, and, if necessary, a Technology-Specific Surveillance Use Policy to the City Council regarding that Surveillance Technology within 90 days following the end of those Exigent Circumstances; and (3) include that Surveillance Technology in the Police Department's next Annual Surveillance Report to the City Council following the end of those Exigent Circumstances. If the Police Commissioner is unable to meet the 90-day timeline to submit a Surveillance Technology Impact Report, and, if necessary, a Technology-Specific Surveillance Use Policy to the City Council, the Police Commissioner may notify the City Council in writing requesting to extend this period. The City Council may grant extensions beyond the original 90-day timeline to submit a Surveillance Technology Impact Report, and, if necessary, a Technology-Specific Surveillance Use Policy. Any Surveillance Technology Impact Report, and, if necessary, Technology-Specific Surveillance Use Policy submitted to the City Council under this Section shall be made publicly available no fewer than seven (7) calendar days prior to the date of the Council meeting where it shall be discussed.

Section 1.5 Submission to the City Council of Surveillance Use Policy

- (A) The Mayor shall submit to the City Council for its review and approval a proposed Surveillance Use Policy applicable to each City department that possesses or uses Surveillance Technology before the effective date of this Chapter or for future use and acquisition of Surveillance Technology, no later than one-hundred eighty (180) days following the effective date of this Chapter, for review and approval by the City Council. If the Mayor is unable to meet this 180-day timeline, the Mayor may notify the City Council in writing requesting to extend this period. The City Council may grant an extension to the Mayor to submit a proposed Surveillance Use Policy. Any Surveillance Use Policy submitted under Section 1.5 shall be made publicly available no fewer than seven (7) calendar days prior to the date of the Council meeting where it shall be discussed.
- (B) A Surveillance Use Policy shall at a minimum specify the following:
- (1) Purpose: The specific purpose(s) for the Surveillance Technology;
 - (2) Authorized Use: The uses that are authorized, the rules and processes required before that use, and the uses that are prohibited;
 - (3) Data Collection: The Surveillance Data that can be collected by the Surveillance Technology;
 - (4) Data Access: The individuals who can access or use the collected

Surveillance Data, and the rules and processes required before access or use of the information;

- (5) Data Protection: The safeguards that protect information from unauthorized access, including, but not limited to, encryption, access-control, and access-oversight mechanisms;
- (6) Data Retention: The time period, if any, for which information collected by the Surveillance Technology will be routinely retained, the reason that retention period is appropriate to further the purpose(s), the process by which the information is regularly deleted after that period has elapsed, and the conditions that must be met to retain information beyond that period;
- (7) Public Access: If and how collected Surveillance Data can be accessed by members of the public, including criminal defendants;
- (8) Third-Party Data-Sharing: If and how other City or non-City entities can access or use the Surveillance Data, including any required justification and legal standard necessary to do so, and any obligation(s) imposed on the recipient of the Surveillance Data;
- (9) Training: The training, if any, required for any individual authorized to use the Surveillance Technology or to access information collected by the Surveillance Technology, including whether there are training materials; and
- (10) Oversight: The mechanisms to ensure that the Surveillance Use Policy is followed, including, but not limited to, identifying personnel assigned to ensure compliance with the policy, internal record keeping of the use of the technology or access to information collected by the Surveillance Technology, technical measures to monitor for misuse, any independent person or entity with oversight authority, and the sanctions for violations of the policy.

(C) In considering the Surveillance Use Policy, the City Council shall balance the safeguarding of individuals' right to privacy as well as the investigative and prosecutorial function of the Police Department and promoting and ensuring the safety and security of the general public.

(D) Once enacted, the Surveillance Use Policy shall override Somerville's Executive Order of October 4, 2017 entitled "Executive Policy on Surveillance Technology."

Section 1.6 Submission to the City Council of Annual Surveillance Report

- . (A) Within twelve (12) months of City Council approval, and annually thereafter on or before March 1, the Mayor must submit an Annual Surveillance Report pertaining to each City department for which approval for the use of Surveillance Technology or Surveillance Data has been obtained under Section 1.3 or Section 1.4 of this Chapter. Any Annual Surveillance Report submitted under this section shall be made publicly available no fewer than seven (7) calendar days prior to the date of the Council meeting where it shall be discussed.
- . (B) The Annual Surveillance Report submitted pursuant to this Section shall include all of the following:
 - (1) A description of how the Surveillance Technology has been used, including whether it captured images, sound, or information regarding members of the public who are not suspected of engaging in unlawful conduct;
 - (2) Whether and how often data acquired through the use of the Surveillance Technology was shared by outside entities, the name of any recipient entity, the type(s) of data disclosed, under what legal standard(s) the information was disclosed, and the justification for the disclosure;
 - (3) A summary of community complaints or concerns about the Surveillance Technology, if any;
 - (4) The results of any non-privileged internal audits, any information about violations of the Surveillance Use Policy, and any actions taken in response;
 - (5) Whether the Surveillance Technology has been effective at achieving its identified purpose;
 - (6) Statistics on public records requests received by the City seeking documents concerning Surveillance Technology approved during the previous year;
 - (7) Total annual costs for the Surveillance Technology, including personnel and other ongoing costs, and what source of funding will fund the technology in the coming year; and
 - (8) Whether the civil rights and liberties of any communities or groups, including communities of color or other marginalized communities in the City are disproportionately impacted by the deployment of the Surveillance Technology.
- (C) Based upon information provided in the Annual Surveillance Report, the City Council shall determine whether the benefits to the impacted City department(s) and the community of the Surveillance Technology outweigh the financial and operational costs and whether reasonable safeguards exist to address reasonable concerns regarding

privacy, civil liberties, and civil rights impacted by deployment of the Surveillance Technology. If the benefits or reasonably anticipated benefits do not outweigh the financial and/or operational costs or civil liberties or civil rights are not reasonably safeguarded, the City Council may (1) recommend modifications to the Surveillance Use Policy that are designed to address the City Council's concerns to the Mayor for his consideration; and/or (2) request a report back from the Mayor regarding steps taken to address the City Council's concerns; and/or (3) disapprove further use of the Surveillance Technology.

(D) No later than May 31 of each year, the City Council shall hold a meeting to discuss the City departments' Annual Surveillance Reports, and shall publicly release a report that includes a summary of all requests for approval of Surveillance Technology Impact Reports received by the City Council during the prior year pursuant to Section 1.3 or Section 1.4 of this Chapter, including whether the City Council approved, disapproved, or required modifications to the Surveillance Technology Impact Report.

Section 1.7 Exemptions and Exceptions

- (A) **Exemptions.** For the purposes of this Chapter, the following Surveillance Technology is exempt from the requirements of this Chapter:
- (1) Surveillance Data acquired where the individual knowingly and voluntarily consented to provide the information, such as submitting personal information for the receipt of City services;
 - (2) Surveillance Data acquired where the individual was presented with a clear and conspicuous opportunity to opt out of providing the information;
 - (3) Cameras installed pursuant to state law authorization in or on any vehicle or along a public right-of-way solely to record traffic violations, provided that the Surveillance Data gathered is used only for that purpose;
 - (4) Cameras installed on City property solely for security purposes, including closed circuit television cameras installed by the City to monitor entryways and outdoor areas of City-owned or controlled buildings and property for the purpose of controlling access, maintaining the safety of City employees and visitors to City buildings, and protecting City property;
 - (5) Security cameras including closed circuit television cameras installed by the City to monitor cashiers' windows and other cash-handling operations and to maintain the safety of City employees and visitors to such areas;
 - (6) Cameras installed solely to protect the physical integrity of City infrastructure; or
 - (7) Technology that monitors only City employees in response to complaints of wrongdoing or in order to prevent waste, fraud, or abuse of City resources.

- . **(B) Exceptions.** The following situations constitute Surveillance, but are exceptions to the requirements of this Chapter:

(1) Surveillance conducted pursuant to a warrant issued by a judge under probable cause using previously approved Surveillance Technology. Surveillance conducted pursuant to a warrant using previously approved Surveillance Technology is excepted from the requirements of 1.3(B) and 1.6 where: i) the City is prohibited from publicly releasing information pertaining to the surveillance under federal or state law, or pursuant to a Court Order; or ii) the Police Chief has determined that the release of information pertaining to the surveillance would compromise public safety and security, provided that the information is released in the next Annual Surveillance Report following the Police Commissioner's determination that public safety and security concerns pertaining to the release of such information no longer exist.

(2) A City department head may, with the approval of the Mayor's Office, apply a technical patch or upgrade that is necessary to mitigate threats to the City's environment. The department shall not use the new surveillance capabilities of the technology until the requirements of Section 1.3 are met, unless the Mayor's Office determines that the use is unavoidable; in that case, the Mayor shall request City Council approval as soon as possible. The request shall include a report to the City Council of how the altered surveillance capabilities were used since the time of the upgrade.

Section 1.8 Enforcement

- . (A) Enforcement Officials. This Chapter shall be enforced by the Mayor's Office or the Mayor's designee.
- . (B) Violation. Any person injured by a violation of this Chapter may institute proceedings for injunctive relief, declaratory relief, or a court order in a court of competent jurisdiction to enforce the provisions of this Chapter. Any action initiated under this Subsection (B) shall be brought against the City of Somerville, but not against City employees. No monetary damages shall be allowed in any legal proceeding for any alleged injuries arising out of any alleged violation(s) of this Chapter.
- . (C) Whistleblower Protections. Subject to the limitations and requirements set forth in G. L. c. 149, §185 (the "Massachusetts Whistleblower Statute" or "Section 185") as it may be amended from time to time, any City employee as defined in Section 185 who reports an alleged violation of this Ordinance, shall be afforded protections against retaliation if applicable pursuant to Section 185, as set forth in and subject to the limitations and requirements of Section 185.
- . (D) Nothing in this Chapter shall be construed to limit or affect any individual's rights under state or federal laws.

Section 1.9 Severability

The provisions in this Chapter are severable. If any part or provision of this Chapter, or the application of this Chapter to any person or circumstance, is held invalid by a court of competent jurisdiction, the remainder of this Chapter shall not be affected by such holding and shall continue to have full force and effect.

Section 1.10 Effective Date

This Chapter shall take effect nine months after its adoption.