

CITY OF MADISON, WISCONSIN

AN ORDINANCE

Creating Section 23.61 of the Madison General Ordinances to establish Surveillance Technology guidelines for Departments.

PRESENTED REFERRED

President's Work Group
to Develop City-Wide Surveillance Equipment & Data Management Policies

Drafted by: Marci Paulsen

Date: March 11, 2019

SPONSORS: Alder Kemble

DRAFT

DRAFTER'S ANALYSIS: This ordinance establishes several definitions including surveillance data and surveillance technology. The ordinance requires all Departments to obtain approval from the Mayor and Common Council before obtaining or using surveillance technology. It requires all Departments to provide public notice and to hold a public meeting whenever the Department plans to obtain or use new surveillance technology. The ordinance requires all Departments to provide an annual report on its use of surveillance technology to the Common Council and public. The ordinance creates several exceptions for the approval process outlined within the ordinance, including when there is an emergency situation or when the surveillance technology involves information that must remain confidential. The ordinance establishes an oversight board to review the exception of sensitive surveillance technology.

The Common Council of the City of Madison do hereby ordain as follows:

1. Section 23.61 entitled "Use of Surveillance Technology" of the Madison General Ordinances is created to read as follows:

"23.61 USE OF SURVEILLANCE TECHNOLOGY.

- (1) Intent and Purpose. City of Madison agencies have identified a wide variety of legitimate business reasons to use surveillance technology. The Common Council recognizes the need to carefully balance the need for surveillance for public safety and prosecution of crimes with the public's right to privacy and protection from unreasonable searches and protection of civil liberties including freedom of speech or association. The Common Council desires to adopt a city-wide surveillance technology and surveillance data management policy that is consistent for all City Departments and covers all type of surveillance equipment usage and surveillance data management.

- (2) Definitions.

"Department" means any agency, department, or division of the City.

"Surveillance" means observation of a place, person, group, or ongoing activity in order to gather information.

"Sensitive Surveillance Technology Oversight Board (SSTOB)" means a board which reviews exceptions to this section. The SSTOB members are the Mayor, the Common Council President, and the Chief Information Officer.

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

"Surveillance Review Team" (SRT) means a staff team consisting of the Common Council President or designee and a designee from each of the following departments:

Approved as to form:

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Commented [KK2]: Changed by workgroup

Commented [p3]: Is this the head of IT?

Commented [ES4R3]: Yes

Commented [E55]: APM has a very similar process but is comprised of City staff, representatives from Mayor's Office and Council. This way we have key departments providing feedback on the request which should strengthen the process and provide better accountability.

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Mayor's Office, Police, Information Technology, City Attorney, Finance, Civil Rights and Traffic Engineering. The SRT will establish overall enterprise policy, insure consistency among departments, conduct annual audits of departmental use of surveillance technology and review the potential impact of surveillance technology on civil liberties or privacy.

"Surveillance technology" means any software, electronic device, or system utilizing an electronic device, owned by the City or under contract with the City, designed, or primarily intended, to collect, retain, process, or share audio, electronic, visual, location, thermal, biometric, olfactory or other personally identifiable information of members of the public for the purpose of surveillance. Surveillance technology includes but is not limited to the following: cell site simulators; automatic license plate readers; gunshot detection systems; facial recognition software; gait analysis software; video cameras that record audio or video and can transmit or be remotely accessed; and unmanned aircraft systems equipped with remote video capabilities. Surveillance Technology does not include the following devices, hardware or software:

1. Office hardware, such as televisions, computers, credit card machines, copy machines, telephones and printers, that are widespread in use by the City;
2. Audio/video teleconference systems;
3. City databases and enterprise systems that contain information, including, but not limited to, human resource, permit, license and business records;
4. 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;
5. Information technology security systems, including firewalls and other cybersecurity systems;
6. Systems or databases that capture information where an individual knowingly and voluntarily consented to provide the information, such as applying for a permit, license or reporting an issue;
7. Physical access control systems, employee identification management systems, and other physical control systems;
8. Infrastructure and mechanical control systems, including those that control or manage street lights, traffic lights, or water or sewer functions;
9. Manually-operated technological devices used primarily for internal City and Department communications and are not designed to surreptitiously collect surveillance data, such as radios, cell phones, personal communications devices and email systems;
10. Manually-operated, non-wearable, handheld cameras, audio recorders and video recorders that are not designated to be used surreptitiously and whose function is limited to manually capturing and manually downloading video and/or audio recordings;
11. Devices that cannot record or transmit audio or video or electronic data or be remotely accessed, such as vision-stabilizing binoculars or night vision goggles;
12. 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;
13. Medical equipment and systems used to record, diagnose, treat, or prevent disease or injury and are used and/or kept in the court of providing City services;
14. Parking Ticket Devices;
15. Equipment used on a temporary basis for investigations and in accordance with City policies;
- ~~15-16. Cameras intended to record activities at City facilities in nonpublic areas;~~
- ~~16-17. Police Department interview rooms, holding cells, and police Department internal security audio/video recording systems; and~~
- ~~17-18. Police Department systems and databases, including but not limited to, records/case management systems, Live Scan, Computer Aided Dispatch (CAD).~~

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- (3) **Applicability.** This ordinance applies to all Departments that do any of the following:
- (a) Seek funds for new surveillance technology including applying or accepting grants, state or federal funds or other donations;
 - (b) Acquire new surveillance technology, with or without a cost;
 - (c) Use surveillance technology for a purpose or in a manner or in a location not previously approved; or
 - (d) Enters into an agreement with any other entity to share surveillance technology or surveillance data.
- (4) **Approval Process.** Prior to any use of surveillance technology all Departments must comply with this subsection.
- (a) Departments shall submit a request in writing ~~for~~ to the Common Council ~~for the purchase and/or use of surveillance technology per MGO 23.61(3).~~ The request ~~should~~ ~~shall~~ be in the form of a report and ~~should~~ ~~shall~~ include the following information specified in the APM related to surveillance technology, as applicable:
 - 1. ~~A description of the surveillance technology, its capabilities and the surveillance data or information it will generate.~~
 - 2. ~~A surveillance technology use policy including, which will include the following:~~
 - a. ~~Who is (The lead Department responsible for the surveillance technology;~~
 - b. ~~The training protocols the Department will put in place, which shall minimally include appropriate uses of surveillance technology and access to data;~~
 - c. ~~The intended location and/or deployment of the surveillance technology;~~
 - d. ~~How and when the Department will use the surveillance technology;~~
 - e. ~~How the surveillance technology will be captured, including whether it will be by real-time or historical data capture;~~
 - f. ~~Whether there are any privacy rights affected by the surveillance technology. If there is the potential for a privacy impact what is the Department's mitigation plan for said impact;~~
 - g. ~~Identification of groups of people on whom this surveillance technology may have a disparate impact, and explanation of the Department's public notification plan for each potentially disparately impacted group. Whether the surveillance technology potentially has an impact on any minority groups. What is the Department's public notification plan for each group potentially impacted;~~
 - h. ~~What is (The potential fiscal impact of the surveillance technology;~~
 - i. ~~Whether the Department has agreements with other entities for the use or access of the surveillance technology;~~
 - j. ~~How the surveillance technology access and usage will be shared, managed and monitored;~~
 - k. ~~Who will be using the surveillance technology;~~
 - l. ~~How the surveillance technology will be used; and~~
 - m. ~~How the surveillance data will be stored, retained and deleted.~~
 - (b) The Department will post ~~notice of~~ notice of its ~~plan intent~~ to obtain or use surveillance technology to the public on ~~the website dedicated for that purpose, and will notify all alders.~~ The Department will hold a public engagement meeting ~~at least thirty (30) days after posting the notice. The public engagement meeting will be accessible, be noticed in multiple languages, and be held in communities potentially impacted by the proposed use or acquisition of the surveillance technology. The Department will collect information about potential disparate impacts, per the process established by the SRT, on disadvantaged groups.~~ The Department may amend the initial request based on public comment and submit the amended request to the Common Council.
 - (c) The Department's request for surveillance technology will be ~~accepted~~ ~~approved~~ by the Common Council only upon the determination that the benefits to the citizens and residents of the City outweigh the costs; that the proposal will safeguard civil liberties and civil rights; and that, in the judgment of the Common Council, no alternative with a lesser economic cost or impact upon civil rights or civil liberties would be as effective.
- (54) **Annual Review Report.**

Commented [p11]: This seems far too broad...adding a new traffic camera on the City Enterprise system would trigger this...even re-positioning the direction of an existing City traffic camera would do so. It also is not clear how broadly or narrowly "purpose" is in this context...

Commented [ES12R11]: Agree

Commented [ES13]: I believe that this whole section should be in the APM and not in the ordinance. The ordinance should be the scaffolding but the APM should establish the work process/rules that City staff will follow. Having the process in the APM will allow the City to be more agile if the process needs to be re-worked.

Commented [ES14]: The process has too many owners – Common Council, the requesting agency and IT.

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Commented [p17]: I think this process will be burdensome for agencies and duplicates the process set forth in the APM.

Commented [ES18R17]: Agree

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Commented [ES19]: This should be pulled out from the agency's request and not be part of the approval process. It's two separate asks of agencies. The agency policy should be (b).

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Commented [p21]: I'm not sure how an agency will be able to predict this

Commented [KK22]: Change requested by Alder Kemble and Zellers

Commented [KK23]: Changed by workgroup

Commented [p24]: Is this just the cost of the equipment? Revenue it might generate?

Commented [ES25]: The Common Council website.

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Commented [PM26]: How are they going to be able to do this? From who?

Commented [p27]: I'm not clear on what this means or how an agency can collect it...

Commented [KK28]: Changed by workgroup

Commented [p29]: I think that there has to be some recognition that not every new use or acquisition of surveillance technology merits a public meeting...requiring a public meeting before adding a new traffic camera at an intersection seems unnecessary and will create a significant burden for agencies.

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Commented [p31]: I think requiring full council approval has the potential to be burdensome for agencies and create significant delays...approval by a committee or council leadership seems more workable; also, this would leave two parallel approval processes (ordinance and APM) that have ...

Commented [ES32R31]: agree

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- (a) Each Department will conduct an annual audit review of its surveillance technology and insure compliance with this section. Each Department will complete an Annual Surveillance Technology Report that will be audited by the Chief Information Officer and provided to the Common Council and the public. Who will have an opportunity to comment on the Annual Surveillance Technology Report.
- (b) The Annual Surveillance Technology Report will include:
1. An inventory of current surveillance technology and the applicable policies;
 2. How the Department has used its surveillance technology;
 3. How any surveillance data is being shared with other entities;
 4. How well surveillance data management protocols are safeguarding individual information;
 5. How the surveillance technology has impacted or could impact civil liberties on disadvantaged populations;
 56. Whether the Department has received any complaints or concerns about its surveillance technology use;
 - 6.7. The results of the Department's internal audit; and
 8. Whether the Department is in compliance with this section.
- (c) The Chief Information Officer SRT shall audit the Annual Surveillance Technology Reports for accuracy and completeness. The Chief Information Officer will and provide a report containing the results of the audit along with the departmental reports to the Common Council through resolution.
- (de) The Common Council will shall review and take action on the Annual Surveillance Technology Reports and the Chief Information Officer's audit. And will either accept the report or place the report on file. Approval for the use of surveillance technology may be rescinded by the Common Council or modified by the Common Council through resolution.
- (65) Noncompliance. The Chief Information Officer Mayor will shall direct any Department out of compliance with this section to remedy the deficiency and report back in a timely manner how the Department has gained compliance. Under no circumstances shall surveillance technology be used to visually or auditorily access private spaces. Any violation of this ordinance by staff shall be subject to disciplinary processes as set forth in the Employee Handbook APM related to surveillance technology. Any violation of the section or the Mayor's Administrative Procedure Memorandum governing use of surveillance technology shall be handled through disciplinary processes as set forth in the Employee Handbook.
- (76) Exceptions.
- (a) Law Enforcement Federal Property Disposition Programs. Law enforcement is exempted from this section if the surveillance technology is available through federal property disposition programs and the purchase or acquisition decision must be executed quickly, such purchase may be made. However, if, If the surveillance technology is obtained under this subdivision, the Department must apply for approval as described in sub. (4) before installation or use of said equipment. If approval is denied the surveillance technology shall be returned within sixty (60) days after approval was denied.
- (b) Emergency Situations. In the event of an emergency situation that poses an imminent and serious risk of death or substantial bodily harm, a Department may acquire surveillance technology without prior Common Council approval, for the sole purpose of preventing or mitigating such risk, if the Department reasonably believes the acquisition of such surveillance technology will result in reduction of said risk. The Department's use of the surveillance technology must cease when such risk no longer exists or the use of the surveillance technology can no longer reasonably reduce the risk. The use of the surveillance technology must be documented in the Department's Annual Surveillance usage Technology R report, and any future acquisition or use of such surveillance technology must be approved as outlined in this section prior to said use.
- (c) Technical Patch or Upgrade. The City IT Department A Department, without approval, may apply a technical patch or upgrade that is necessary to mitigate threats to the City's infrastructure, even if the patch or upgrade materially alters the surveillance capabilities of the technology. However, such patch or upgrade, if it does

Commented [KK34]: Changed by workgroup

Commented [KK35]: Change requested by Alders Kemble & Zellers

Commented [p36]: I think this process will be very burdensome for agencies and for IT

Commented [ES37R36]: Agree. And IT does not have the resources to support this process. Since the owner is the Common Council, I would recommend that the Common Council Office will audit, and will provide to CC and the public.

Commented [p38]: Not sure agencies will know this

Commented [PM39]: How would a department prove this?

Commented [PM40]: I removed this because I don't believe any department is going to say "we aren't in compliance with the ordinance?"

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Commented [ES42]: IT does not have the capacity to handle this for each agency. Since the owner is the Common Council, I would recommend that the Common Council Office will provide results of audit to CC.

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Commented [PM44]: All of this would have to come through a resolution:

Issue recommendations as necessary to improve surveillance technology usage. This may include a directive to the Department that the use of the surveillance technology cease, that modifications be made to the Department's surveillance...

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Commented [PM48]: How is a "department" to be disciplined?

Commented [PM49]: Is this just for law enforcement or can other departments use this exception?

Commented [p50]: Not a purchase...probably should read "acquisition"

Commented [PM51]: Is it possible to "return" some of the technology?

Commented [KK52]: Per Alder Zellers: "Under (7) Exceptions (a), why is the return not for a shorter period than 60 days? Seem..."

Commented [KK53]: Per Alder Zellers: "Under (7) Exceptions sub. (b), it seems we should have a requirement that the surveillat..."

Commented [KK54]: Change requested by Alders Kemble & Zellers

Commented [PM55]: Would a department do this or should it say IT?

Commented [ES56R55]: IT oversees the patching program.

- (d) materially alter the surveillance capability of the technology, must be highlighted in the Annual Surveillance Technology Report.
- Sensitive Information and Data. Departments that use surveillance technology that is of a sensitive or confidential nature may utilize an alternative approval process to use said technology through the Sensitive Surveillance Technology Oversight Board (SSTOB). Departments ~~will~~ shall submit an explanation of why the surveillance technology is considered sensitive, along with all required elements of this section to the SSTOB for review and approval. The SSTOB ~~will~~ shall evaluate the proposal and make a determination regarding approval within thirty (30) days of a complete application. The SSTOB ~~can~~ may revoke approval for a surveillance technology at any time, at which time it may no longer be used. The Chief Information Officer ~~will~~ shall maintain the records of all sensitive technology reviewed by the SSTOB."

Commented [KK57]: Changed by workgroup

Commented [ES58]: There is no way for IT to know if a security patch will alter the technology. Owner agency will need to be responsible for highlighting changes in the software/hardware.

Commented [PM59]: What happens if it is revoked?

Commented [KK60]: Change requested by Alders Kemble & Zellers