

ORDINANCE NO XX
DATE OF FINAL PASSAGE _____

PRIVACY ADVISORY COMMISSION ORDINANCE

**AN ORDINANCE ESTABLISHING A PRIVACY ADVISORY COMMISSION,
PROVIDING FOR THE APPOINTMENT OF MEMBERS THEREOF, DEFINING THE
DUTIES AND FUNCTIONS OF SAID COMMISSION**

WHEREAS, the City of San Diego has recognized the importance of open data for an informed public debate and the creation of improved knowledge, technologies, and services;

WHEREAS, the City Council finds that the installation of surveillance technology may hinder the privacy of San Diego residents; and the City’s acquisition, installation and use of surveillance technology is a question of public consequence for democracy and governance;

WHEREAS, emergent technologies can promise valuable approaches but can also balloon in unexpected costs, thus responsible adoption requires prudent analysis of fiscal and social costs and benefits;

WHEREAS, San Diego City Council acknowledges the privacy rights of its individual citizens, it also recognizes that surveillance technology may be a valuable tool to support community safety and investigation and prosecution of crimes; and

WHEREAS, San Diego Police Department is accountable to this municipality; responsible for its public safety while granted limited resources; and charged with a mission to serve and protect its residents, rather than to monitor, harass, or intimidate them;

WHEREAS, the City Council finds that surveillance technology includes not just technology capable of accessing non-public places or information (such as wiretaps) but also may include technology which aggregates publicly available information, because such information, in the aggregate or when pieced together with other information, has the potential to reveal a wealth of detail about a person’s familial, political, professional, religious, or sexual associations; and awareness that the Government may be watching chills associational and expressive freedoms; and awareness that social control can operate through behavioral data targeting rather than privacy violations.

WHEREAS, we recognize the historical use of surveillance data — both by design or in ways unintended by policy — to intimidate and oppress certain groups more than others, including those

that are defined by a common race ethnicity, religion, national origin, income level, sexual orientation, or political perspective;

WHEREAS, the City Council finds that no decisions relating to the City’s use of surveillance technology should occur without strong consideration being given to the impact such technologies may have on civil rights and civil liberties, including those rights guaranteed by the California and United States Constitutions; and

WHEREAS, the City Council finds that any and all decisions regarding if and how the City’s surveillance technologies should be funded, acquired, or used should include meaningful public input and that public concern should be given significant weight in policy decisions; and

WHEREAS, the City Council finds that legally enforceable safeguards, including robust transparency, oversight, and accountability measures must be in place to protect civil rights and civil liberties before any City surveillance technology is deployed; and

WHEREAS, the City Council finds that if a surveillance technology is approved, data reporting measures must be adopted that empower the City Council and the public to verify that mandated civil rights and civil liberties safeguards have been strictly adhered to.

NOW, THEREFORE, BE IT ORDAINED by the Council that the City of San Diego adopts the following:

Ordinance which hereby establishes a PRIVACY ADVISORY COMMISSION and establishes processes for ensuring transparency, accountability, and public deliberation informing the City’s acquisition and usage of surveillance technology.

SECTION 1. DEFINITIONS. The following definitions apply to this Section:

1. “Commission” means the Privacy Advisory Commission established by this Chapter (hereinafter referred to as the "Privacy Commission" or “Commission”).
2. “City” as defined in Section 1 of the Transparent and Responsible Use Of Surveillance Technology Ordinance.
3. “Surveillance” or “surveil” as defined in Section 1 of the Transparent and Responsible Use Of Surveillance Technology Ordinance.
4. “Surveillance technology” as defined in Section 1 of the Transparent and Responsible Use Of Surveillance Technology Ordinance.
5. “Surveillance Impact Report” as defined in Section 1 of the Transparent and Responsible Use Of Surveillance Technology Ordinance.
6. "Surveillance Use Policy" as defined in Section 1 of the Transparent and Responsible Use

Of Surveillance Technology Ordinance.

SECTION 2. ESTABLISHING PRIVACY ADVISORY COMMISSION

Creation of Commission. Pursuant to (Section 43 of the City of San Diego Charter), there is hereby created a San Diego Privacy Advisory Commission.

SECTION 3. DUTIES AND FUNCTIONS

It shall be the duty and function of the Privacy Commission to:

- a. Provide advice and technical assistance to the City of San Diego on best practices to protect citizen privacy rights in connection with the City's purchase and use of surveillance equipment and other technology that collects or stores citizen data.
- b. Conduct meetings and use other public forums to collect and receive public input on the above subject matter.
- c. Draft for City Council consideration, model legislation relevant to the above subject matter, including an Ordinance establishing rules for the City's acquisition and use of Surveillance Technology.
- d. Review all new and existing surveillance technology's Surveillance Impact Report and Surveillance Use Policy and make recommendations prior to seeking City Solicitation of Funds and Proposals for Surveillance Technology.
- e. Submit annual reports and recommendations to the City Council regarding: (1) the City's use of surveillance equipment, and (2) whether new City surveillance equipment privacy and data retention policies should be developed, or such existing policies be amended.
- f. Provide analyses to the City Council of pending federal, state, and local legislation relevant to the City's purchase and/or use of technology that collects, stores, transmits, handles, or processes citizen data.
- g. The Privacy Commission shall make reports, findings, and recommendations either to the City Administrator or the City Council, as appropriate. An annual report will be presented in writing to the City Council. The Commission may submit recommendations to the City Council following submission to the City Administrator.

SECTION 4. MEMBERSHIP AND QUORUM

- a. The Commission shall consist of nine (9) members, at least six (6) of whom are San Diego residents. Pursuant to Section 43 of the San Diego Charter, Advisory Commissions may be created through ordinance by the City Council. The Mayor shall appoint Commission members through City Council recommendations who will then be confirmed by Council as identified through the Charter. The Mayor is vested with authority to appoint the members of the Commission and if the Mayor does not take such action within forty-five (45) days after the commission is established or a vacancy occurs, the Council shall then make appointments.
- b. Five (5) members shall constitute a quorum.
- c. Each commission member shall serve as a volunteer without pay.
- d. The members shall be appointed to overlapping terms of three (3) years beginning on March 15th of each year and ending on March 15th three years later, or until a successor is appointed and confirmed pursuant to Section 601 of the City Charter. An appointment to fill a vacancy shall be for the unexpired term only. To assure that terms overlap, appointments shall be as follows: three (3) initial members will serve a three-year initial term, three (3) initial members will serve a two-year initial term, and the other three (3) initial members will serve a one-year initial term.
- e. In the event an appointment to fill a vacancy has not occurred by the expiration of a member's term, that member may remain in a holdover capacity for up to one year only following the expiration of his or her term or until a replacement is appointed, whichever is earlier.
- f. No member of the Privacy Commission shall serve more than three (3) consecutive terms.
- g. All members of the Privacy Commission shall be persons who have an interest in privacy rights as demonstrated by work experience, civic participation, and/or political advocacy. No member may be an elected official. Members of the Privacy Commission must represent the following criteria, with no more than 9 members:
 1. At least one attorney or legal scholar with expertise in privacy, civil rights, or a representative of an organization with expertise in the same such as but not limited to the American Civil Liberties Union, etc.

2. One auditor or certified public accountant;
 3. One hardware, software, or encryption security professional;
 4. One member of an organization which focuses on government transparency and openness or an individual, such as a University researcher, with experience working on government transparency and openness.
 5. At least four members shall represent equity-focused organizations serving or protecting the rights of communities and groups historically subject to disproportionate surveillance, including diverse communities of color, immigrant communities, religious minorities, and groups concerned with privacy and protest.
- h. No member may have a financial interest, employment, or policy-making position in any commercial or for profit facility, research center, or other organization that sells data products, surveillance equipment, or otherwise profits from decisions made by the Commission.

SECTION 5. VACANCY AND REMOVAL

a. A vacancy on the Privacy Commission will exist whenever a member dies, resigns, or is removed as per charter, or whenever an appointee fails to be confirmed by the Council within 60 days of appointment. Vacancies shall be filled for any unexpired term provided, however, that if the Mayor does not submit for confirmation a candidate to fill the vacancy within 45 days of the date the vacancy first occurred, the Council may fill the vacancy. If the Mayor does submit for confirmation a candidate to fill a vacancy within the 45-day time frame and the Council does not confirm the candidate, the 45-day period shall commence anew. For purposes of this Section, a seat filled by a holdover appointment will be considered vacant as of the expiration of the holdover's prior term of office.

SECTION 6. COMMISSION GOVERNANCE

a. OFFICERS AND ELECTIONS

At the first regular meeting, and subsequently at the first regular meeting of each year, members of the Privacy Commission shall elect a chairperson and a vice chairperson.

b. MEETINGS AND VOTING

The Privacy Commission shall meet at an established regular interval, day of the week,

time, and location suitable for its purpose. Such meetings shall be designated regular meetings. Other meetings scheduled for a time or place other than the regular day, time and location shall be designated special meetings. Written notice of special meetings shall be provided to the Privacy Commission members and all meetings of the Commission shall comport with the Ralph M. Brown Act and the City's Sunshine Act (Chapter 2.2 of San Diego Municipal Code).

The Privacy Commission shall, in consultation with the City Administrator, establish bylaws, rules and procedures for the conduct of its business by a majority vote of the members present. Voting shall be required for the adoption of any motion or resolution.

Any action by the Commission shall be approved by a majority of members present provided a quorum exists.

c. STAFF

Staff assistance may be provided to the Privacy Commission as determined by the City Administrator pursuant to his or her authority under the Charter to administer all affairs of the City under his or her jurisdiction.

SECTION 7 SEVERABILITY

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause, or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses, or phrases may be declared invalid or unconstitutional.

SECTION 8 EFFECTIVE DATE

This ordinance shall become effective immediately on final adoption if it receives five or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.