



The City of San Diego

Staff Report

DATE ISSUED: 7/6/2020

TO: City Council

FROM: Council District 4

SUBJECT: Proposal For The Creation Of An Ordinance Establishing Rules For The City's Acquisition And Use Of Surveillance Technology And An Ordinance Establishing A Privacy Commission

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Council District(s): Citywide

OVERVIEW:

The goal of the proposed ordinances is to provide San Diegans and the public with the information and opportunity to participate in important decisions about surveillance technology.

The Transparent and Responsible Use of Surveillance Technology Ordinance requires essential transparency, accountability, and oversight for all surveillance technology proposals, and it ensures the public has the opportunity to learn about the civil rights and civil liberties impact of surveillance technologies before local officials acquire them. If acquired, technologies must be reexamined to ensure any benefits outweigh the civil liberties and civil rights costs.

The Privacy Advisory Commission would 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.

PROPOSED ACTIONS:

Staff recommends that the adoption of An Ordinance Establishing Rules for the City's Acquisition and Use Of Surveillance Technology, which prescribes the rules for the acquisition and use of surveillance equipment and technology, establishes oversight, auditing and reporting requirements, and an Ordinance Establishing a Privacy Advisory Commission, Providing for the Appointment of Members Thereof, Defining the Duties and Functions of Said Commission.

DISCUSSION OF ITEM

On December 13, 2016, City Council approved an agreement with General Electric (GE) to upgrade City lighting infrastructure with intelligent streetlights from GE. The City claimed that the sensor location of the intelligent streetlights were designed to help the City extract meaningful data, such as traffic data, pedestrian data, parking data, bicycle data and environmental data in a manner that would best represent the cross-section of our core activity areas. However, community members voiced concerns around: oversight and use of the video footage, specifically authorization to access video footage, equal access in criminal investigations and sharing of video footage with entities external to the City (e.g., multi-agency law enforcement joint task forces), potential technical capabilities, whether in use currently or not (e.g., shot spotter), process for determining distribution of streetlight sensors across the city, and event data protection and use authorization.

On January 29, 2020, the Sustainability Department introduced a draft Council policy on Streetlight Sensor Data Use for consideration and adoption to the Public Safety & Livable Neighborhoods Committee (PS&LN). The Committee unanimously voted to reject the proposed policy and directed the City Attorney and City Staff to work with the PS&LN Committee Consultant to draft an ordinance that is:

- Comprehensive and inclusive in defining surveillance technology
- Establishes both an annual data use report and data use policy,
- Establishes processes for encouraging transparency, accountability, and public deliberation,
- Establishes rules and approval processes for the acquisition and use of surveillance technology, as well as specifies guidelines around authorized usage and third-party data sharing,
- Includes safeguards to protect the civil rights and civil liberties of residents.
- And come back to PS&LN after legal review for further discussion and action.

The Transparent and Responsible Use of Surveillance Technology Ordinance requires:

- **Informed Public Debate at Earliest Stage of Process:** Public notice, distribution of information about the proposal, and public debate prior to seeking funding or otherwise moving forward with surveillance technology proposals.
- **Determination that Benefits Outweigh Costs and Concerns:** Local leaders, after facilitating an informed public debate, expressly consider costs (fiscal and civil liberties) and determine that surveillance technology is appropriate or not before moving forward.
- **Thorough Surveillance Use Policy:** Legally enforceable Surveillance Use Policy with robust civil liberties, civil rights, and security safeguards approved by policymakers.
- **Ongoing Oversight & Accountability:** Proper oversight of surveillance technology use and accountability through annual reporting, review by policymakers, and enforcement mechanisms.
- **City Council Approval Required:** Prior to accepting funds or donations for surveillance technology, acquiring new technology, using existing technology in an un-approved manner, or entering into an agreement with a non- City entity to share or use technology, a City department must first obtain City Council approval. Proposals will first be considered by the appropriate reviewing commission. When making the determination as to whether the benefits outweigh the concerns, the City Council must consider the commission's recommendation.
- **Informed Decision Making And Ongoing Oversight:** With each proposal, two documents are required. During the approval seeking stage, an Impact Report and a draft Use Policy will inform the public, appropriate reviewing commission, and the City Council as to the potential impact to civil liberties from use of surveillance equipment, and the draft use policy will demonstrate how the proponent intends to use the technology. The Impact Report requires that an analysis be

performed by the proponent. Among other requirements, the report must discuss implementation of safeguards designed to mitigate the impact to our civil liberties, analysis of the track record of the surveillance technology in other jurisdictions, discuss alternatives that were considered, the data that will be collected and how it will be secured, and generally how the equipment works and how it is intended to be used. The draft Use Policy will describe the intended authorized uses, the data to be collected, who may access it and under what conditions, the length of data retention, whether third party data sharing is expected, and provisions for training and auditing. For approved proposals, a third required document is the Annual Report, necessary for ongoing oversight and possible policy modifications. This document will summarize how the technology was used in the preceding year, whether data was shared with outside entities and for what purpose, where the technology was deployed, and the results of any internal audits. The report will also provide for information including crime statistics to help demonstrate success (or the lack thereof), and summarize total costs, providing for oversight and to help the Council make the determination.

- **Determination That Benefits Outweigh Costs And Concerns:** The ordinance requires that the City Council determine that the benefits of a new use or acquisition, or continued use of an existing technology, outweigh the costs and concerns at two different stages: during the up-front approval process, and then again after review of the Annual Report. If the City Council does not make a favorable determination, a new proposal is denied. For existing technology with an adverse analysis, use must cease or modifications to the policy must occur, sufficient to result in a favorable determination as to continued use. At each determination stage, the recommendation of the appropriate reviewing commission will be considered.
- **Whistleblower Protections, Prohibition On Non-Disclosure Agreements:** The ordinance provides for whistleblower protections, and a prohibition on non-disclosure agreements. The public policy benefits of each should be self-evident.

The duties and functions of the Privacy Advisory Commission include:

- 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.
- Conduct meetings and use other public forums to collect and receive public input on the above subject matter.
- 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.
- 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.
- 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.
- 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.
- 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.

Approval of the Transparent and Responsible Use of Surveillance Technology Ordinance will also require all City entities to seek City Council approval before accepting grant funds for, or the purchase or use of any new surveillance technology or equipment. The approval process for acquiring and using such technology will include completing a Surveillance Technology Impact Report, a Surveillance Use Policy, and the City Council making a determination that the benefits of the technology outweigh the costs. The Ordinance will also require that current surveillance technology undergo a similar public review and approval process and that annual oversight of all surveillance uses be conducted by the proposed Privacy Advisory Commission and reported to the City Council.

The adoption of a Surveillance and Community Safety Ordinance and an ordinance establishing a Privacy Advisory Commission provide residents with a public process to evaluate how the City monitors its residents. Having such a process indicates that the City is responding appropriately to concerns about civil liberties and privacy during a time of rapidly evolving technology. By establishing safeguards to prevent potential abuse of technology, the City strengthens residents' faith in local government and allows for robust public dialogue and increased trust.

Beginning with Santa Clara County in June of 2016, seven California jurisdictions encompassing millions of people are presently operating with a similar technology vetting framework as the one being proposed here, including Oakland, San Francisco, and the Bay Area Rapid Transit District (BART). Across the country, an additional thirteen jurisdictions have adopted similar ordinances, including major cities like Seattle that are, like San Diego, moving to regulate the rapidly evolving technologies present in Smart Cities and police departments.

Fiscal Considerations:

The passage of both ordinances has no direct fiscal impact. However, it requires all City departments to embark on a lengthier public process before acquiring or using new technology than previously required and to report annually on the use of such technology. It also requires staff to submit to a similar process for existing technology. This will require an unknown amount of additional staff time depending on how often new technology or equipment is sought.

Charter Section 225 Disclosure of Business Interests:

N/A; there is no contract associated with this action

City Strategic Plan Goal(s)/Objective(s):

Goal #1: Provide high quality public service

Objective #4: Ensure equipment and technology are in place so that employees can achieve high quality public service

Goal #2: Work in partnership with all of our communities to achieve safe and livable neighborhoods.

Objective #5: Cultivate civic engagement and participation

Environmental Impact:

N/A

Equal Opportunity Contracting Information (if applicable):

N/A

Previous Council and/or Committee Actions:

This item will be heard at the Public Safety & Livable Neighborhoods Committee prior to Council.

Key Stakeholders and Community Outreach Efforts:

Trust SD

Residents of the City of San Diego

Henry Foster

Chief of Staff