ORDINANCE NO. NS-300.920

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA AMENDING SECTIONS A40-2, A40-6, AND A40-7 OF DIVISION A40 OF TITLE A OF THE COUNTY OF SANTA CLARA ORDINANCE CODE RELATING TO SURVEILLANCE-TECHNOLOGY AND COMMUNITY-SAFETY

Summary

This Ordinance amends Sections A40-2, A40-6 and A40-7 to clarify when an Annual Surveillance Report is required and to amend the definition of surveillance technology to clarify the types of electronic devices included in that definition.

THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA ORDAINS AS FOLLOWS:

SECTION 1. Section 2 of Division A40 of the Ordinance Code of the County of Santa Clara relating to Board approval requirement for acquisition and operation of surveillance equipment, and for related surveillance use policy is hereby amended to read as follows:

Sec. A40-2. Board approval requirement for acquisition and operation of surveillance equipment, and for related surveillance use policy

(a) *County Departments Other than the Sheriff's Office and District Attorney's Office.* Each County department other than the Sheriff's Office and District Attorney's Office must obtain Board approval at a properly-noticed public meeting, on the regular (non-consent) calendar, before 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 by the Board; or

(4) Entering into an agreement with a non-County entity for the County to acquire, share, or otherwise use surveillance technology or the information it provides.

Those County departments must also obtain Board approval of a Surveillance Use Policy at a properly-noticed public meeting, on the regular (non-consent) calendar, before engaging in any of the activities described in subsections (a)(2), (a)(3), and (a)(4).

(b) *Sheriff's Office and District Attorney's Office.* Other than with respect to surveillance technology limited to use in law enforcement investigations and prosecutions as specifically defined in Section A40-9 of this Division, and subject to Section A40-2(c) below, the Sheriff's Office and District Attorney's Office must notify the Board, and obtain Board approval, at a properly-noticed public meeting, on the regular (non-consent) calendar, before 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 by the Board; or
(4) Entering into an agreement with a non-County entity for the County to acquire, share, or otherwise use surveillance technology.

The Sheriff's Office and the District Attorney's Office must also notify the Board, and obtain Board approval, of a Surveillance Use Policy at a properly-noticed public meeting, on the regular (non-consent) calendar, before engaging in any of the activities described in subsections (b)(2), (b)(3), and (b)(4).

(c) In enacting this Division, the Board is not limiting its rights under Government Code section 25303, including without limitation, its right to supervise the official conduct of all county officers, to require reports, or to exercise budgetary authority over the district attorney and sheriff.

(d) Consistent with California Government Code section 25303, however, in receiving notification and approving or denying the actions in subsections (b)(1), (b)(2),

(b)(3), and (b)(4), and approving, and/or denying any Surveillance Use Policy, the Board shall not "obstruct the investigative function of the sheriff of the county nor shall it obstruct the investigative and prosecutorial function of the district attorney."

(e) To the extent the Board or a court of law determines that approving or denying the actions in subsections (b)(1), (b)(2), (b)(3), or (b)(4), or approving or denying the Surveillance Use Policy would unlawfully "obstruct" the applicable function of the sheriff or district attorney under Government Code section 25303, the Board shall simply receive and discuss notification from the Sheriff's Office or District Attorney's Office regarding subsections (b)(l), (b)(2), (b)(3), or (b)(4) and receive and discuss the applicable Surveillance Use Policy at a properly-noticed public meeting, on the regular (non-consent) calendar.

SECTION 2. Section 6 of Division A40 of the Ordinance Code of the County of Santa Clara relating to Oversight following Board approval is hereby amended to read as follows:

Sec. A40-6. Oversight following Board approval

(a) Unless excluded from the Annual Surveillance Report requirement as provided in this subdivision, a County department that obtained Board approval of a Surveillance Use Policy must submit an Annual Surveillance Report for that surveillance technology within twelve (12) months of Board approval, and annually thereafter on or before November 1. Similarly, if the Board received but did not approve a Surveillance Use Policy from the Sheriff's Office or District Attorney's office because of limitations of the Board's authority under Government Code section 25303, the Sheriff's Office or District Attorney's Office, as applicable, must still submit an Annual Surveillance Use Report for that surveillance technology within twelve (12) months of the Board's receipt of the Surveillance Use Policy, and annually thereafter on or before November 1.

An Annual Surveillance Report is not required for County-owned cell phones with the capacity to capture audio or video footage; or for recording devices used exclusively with the express consent of everyone captured on the recording devices.

(b) Based upon information provided in the Annual Surveillance Report, the Board shall determine whether the benefits to the impacted County department(s) and the

community of the surveillance technology outweigh the 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 costs or civil liberties or civil rights are not reasonably safeguarded, the Board shall consider:

(1) Directing that the use of the surveillance technology cease;
(2) Requiring modifications to the Surveillance Use Policy that are designed to address the Board's concerns; and/or
(3) Directing a report-back from the department regarding steps taken to address the Board's concerns.

(c) No later than January 15 of each fiscal year, the Board shall hold a public meeting, with Annual Surveillance Reports agendized on the regular (non-consent) calendar, and publicly release a report that includes the following information for the prior year:

(1) A summary of all requests for Board approval and all notifications and Surveillance Use Policies received by the Board pursuant to Section A40-2 or Section A40-5 of this Division, including whether the Board approved, rejected, or received the proposal or notification, and/or required changes to a proposed Surveillance Use Policy before approval; and
(2) All Annual Surveillance Reports submitted.

SECTION 3. Section 7 of Division A40 of the Ordinance Code of the County of Santa Clara relating to Definitions is hereby amended to read as follows:

Sec. A40-7. Definitions

The following definitions apply to this Division:

(a) "Annual Surveillance Report" means a written report concerning specific surveillance technology that includes all of the following:

(1) A description of how the surveillance technology was 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 with 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;
(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 and information about public records act requests;
(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.

(b) "County department" means any County department with a recognized County budget unit.

(c) "Surveillance technology" means any electronic device, system using an electronic device, or similar technological tool used, designed, or primarily intended to collect, retain, process, or share audio, electronic, visual, location, thermal, olfactory or similar information specifically associated with, or capable of being associated with, any individual or group. Examples of surveillance technology include, but are not limited to, drones with cameras or monitoring capabilities, automated license plate readers, closed-circuit cameras/televisions, cell-site simulators, International Mobile Subscriber Identity (IMSI) trackers, Global Positioning System (GPS) technology, radio-frequency identification (RFID) technology, biometrics-identification technology, and facial-recognition technology.

For purposes of this Division, surveillance technology does not include, for example, standard business software applications; information-technology-protection tools; medical equipment used to diagnose, treat, or prevent disease or injury; County department data repositories; publicly available databases; standard telephone-message equipment; or machines to process financial transactions, such as credit, debit, and ACH payments.

For purposes of the acquisition requirements in this Division, surveillance technology also does not include County-owned cell phones with the capacity to capture audio or video footage; or recording devices used exclusively with the express consent of everyone captured on the recording devices. Board-approved

Surveillance Use Policies are required for those cell-phones and express-consent-only recording devices; and use of a County-owned cell phone or recording device for an illegal or unauthorized surveillance purpose violates this Division.

(d) "Anticipated Surveillance Impact Report" means a publicly released written report including at a minimum the following:

(1) Information describing the surveillance technology and how it works;
(2) Information on the proposed purpose(s) for the surveillance technology;
(3) The location(s) it may be deployed;
(4) The potential impact(s) on civil liberties and privacy, and a description of whether there is a plan to address the impact(s); and
(5) The fiscal costs for the surveillance technology, including initial purchase, personnel and other ongoing costs, and any current or potential sources of funding.

(e) "Surveillance Use Policy" means a publicly released policy for use of the surveillance technology, vetted through County Counsel and the Chief Privacy Officer, or their designees, and then submitted to and approved by the Board at a properly noticed public meeting on the regular (non- consent) calendar. The 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 information that can be collected by the surveillance technology.
(4) *Data Access:* The individuals who can access or use the collected information, 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 lapses, and the conditions that must be met to retain information beyond that period.
(7) *Public Access:* If and how collected information can be accessed by members of the public, including criminal defendants.

(8) *Third-Party Data-Sharing:* If and how other County or non-County entities can access or use the information, including any required justification and legal standard necessary to do so, and any obligation(s) imposed on the recipient of the information.

(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.

(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 recordkeeping of the use of the technology or access to information collected by the technology, technical measures to monitor for misuse, any independent person or entity with oversight authority, and the sanctions for violations of the policy.

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(f) "Exigent circumstances" means the County Sheriff's Office or District Attorney's Office's good faith belief that an emergency involving danger of death or serious physical injury to any person requires use of the surveillance technology or the information it provides.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara, State of California, on _____ by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

_____
S. JOSEPH SIMITIAN, President
Board of Supervisors

ATTEST:

_____
MEGAN DOYLE
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

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ROBERT M. COELHO
Assistant County Counsel

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