SEATTLE CITY COUNCIL

Legislative Summary

CB 119218

Record No.: CB 119218 **Type:** Ordinance (Ord) **Status:** Passed

Version: 3 **Ord. no:** Ord 125679 **In Control:** City Clerk

File Created: 03/13/2018

Final Action: 10/05/2018

Title: AN ORDINANCE relating to surveillance technology implementation; amending Ordinance 125376 and Chapter 14.18 of the Seattle Municipal Code.

Date

Notes:

Filed with City Clerk:

Mayor's Signature:

Sponsors: Harrell

Vetoed by Mayor:

Veto Overridden:

Veto Sustained:

Attachments: Att 1 – Ordinance 125376

Drafter: patrick.wigren@seattle.gov

Filing Requirements/Dept Action:

History of Legislative File

Legal Notice Published: ☐ Yes ☐ No

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	City Clerk	03/13/2018	sent for review	Council President's Office			
	Action Text: The Council Bill (CB) was sent for review. to the Council President's Office **Notes:**						
1	Council President's Office	03/15/2018	sent for review	Governance, Equity, and Technology Committee			
	Action Text: The Council Bill (CB) was sent for review. to the Governance, Equity, and Technology Committee **Notes:**						
1	City Council	03/19/2018	referred	Governance, Equity, and Technology Committee			
	Action Text: The Council Bill (CB) was referred. to the Governance, Equity, and Technology Committee **Notes:**						
1	Governance, Equity, and Technology Committee	03/20/2018	discussed				

Action Text: The Council Bill (CB) was discussed.
Notes:

1	Governance, Equity, and Technology Committee	03/20/2018		
	Action Text:			
1	Governance, Equity, and Technology Committee	09/18/2018	pass as amended	Pass
	Action Text:	The Committee recommends that City Council pass as amended the Council Bill (CB). In Favor: 4 Chair Harrell, Vice Chair Herbold, Member Mosqueda, O'Brien Opposed: 0		
2	City Council	09/24/2018	passed as amended	Pass
	Action Text:	The Motion carried, the Council Bill (CB) was passed as amended by the following vote, and the President signed the Bill:		

Notes: ACTION 1:

Motion was made by Councilmember Harrell, duly seconded and carried, to amend Council Bill 119218, Section 5, first paragraph, by adding three new sentences, as shown in Attachment 1 to the Minutes.

ACTION 2:

Motion was made by Councilmember Harrell, duly seconded and carried, to amend Council Bill 119218, Section 3, by adding a new subsection D, as shown in the underlined language below:

D. When reviewing technologies that do not have SIRs, the department shall look to existing documents and policies to address the requirements of Section 14.18.050 and, whenever possible, provide the information requested for each retroactive technology.

ACTION 3:

Motion was made by Councilmember Harrell, duly seconded and carried, to amend Council Bill 119218, Section 4.B.1, last sentence, as shown in the underlined and strike through language below:

4.B.1. The Working Group shall perform the following duties:

1. Provide to the Executive and the City Council a privacy and civil liberties impact assessment for each SIR that must be included with any departmental request for surveillance technology acquisition or in-use approval. The impact assessment shall include a description of the potential impact of the surveillance technology on civil rights and liberties and potential disparate impacts on communities of color and other marginalized communities. The CTO shall share with the Working Group a copy of the SIR that shall also be posted during the period of public engagement. At the conclusion of the public engagement

period, the CTO shall share the final proposed SIR with the Working Group at least six weeks prior to submittal of the SIR to Council for approval. The Working Group shall provide its impact assessment in writing to the Executive and the City Council for inclusion in the SIR within six weeks of receiving the final proposed SIR. If the Working Group does not provide the impact assessment before such time, the Working Group must ask for a two-week extension of time to City Council in writing. If the Working Group fails to submit an impact ~~statement~~assessment within eight weeks of receiving the SIR, the department and City Council may proceed with ordinance ~~approval~~consideration without the impact ~~statement~~assessment.

ACTION 4:

Motion was made and duly seconded to pass Council Bill 119218 as amended.

In Favor: 8 Councilmember Bagshaw, Councilmember González , Council President Harrell, Councilmember Herbold, Councilmember Johnson, Councilmember Juarez, Councilmember O'Brien, Councilmember Sawant

Opposed: 0

3	City Clerk	09/26/2018	submitted for Mayor's signature	Mayor
3	Mayor	10/05/2018	Signed	
3	Mayor	10/05/2018	returned	City Clerk
3	City Clerk	10/05/2018	attested by City Clerk	

Action Text: The Ordinance (Ord) was attested by City Clerk.

Notes:

CITY OF SEATTLE

ORDINANCE 125679

COUNCIL BILL 119218

AN ORDINANCE relating to surveillance technology implementation; amending Ordinance 125376 and Chapter 14.18 of the Seattle Municipal Code.

WHEREAS, the City has undergone significant changes in its administration and department personnel since Ordinance 125376 was implemented originally; and

WHEREAS, Council approval of surveillance impact reports for existing City surveillance technology will involve the development of protocols that will more than likely act as a guide for future approvals;

WHEREAS, upon the Council's receipt of the Executive's master list of existing surveillance technologies, it became apparent that grouping similar technologies together for Council consideration would be more efficient and conducive to meaningful community engagement than transmitting one request for Council approval per department per month as outlined in the original legislation; and

WHEREAS, other events have occurred since passage of Ordinance 125376 that call for clarifications to the surveillance ordinance; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 14.18.010 of the Seattle Municipal Code, enacted by Ordinance 125376, is amended as follows:

14.18.010 Definitions

The following definitions apply to this Chapter 14.18:

* * *

"Surveillance technology" means any electronic device, software program, or hosted software solution that is designed or primarily intended to be used for the purpose of surveillance.

"Working Group" means the Community Surveillance Working Group established pursuant to Section 14.18.080, which is responsible for advising the Executive and City Council on matters concerning surveillance technology pursuant to this Chapter 14.18.

Section 2. Section 14.18.020 of the Seattle Municipal Code, enacted by Ordinance 125376, is amended as follows:

14.18.020 Council approval for acquisition of surveillance technologies

A. Unless exempted or excepted from the requirements of this Chapter 14.18 pursuant to Section 14.18.030, any City department intending to acquire surveillance technology shall, prior to acquisition, obtain Council ordinance approval of the acquisition and a surveillance impact report for the technology. A City department that directs a non-City entity to acquire or operate surveillance technology on the City's behalf is bound by the requirements of this Chapter 14.18 to the same extent as if the department were acquiring the surveillance technology.

B. 1. The Executive shall establish a process for determining whether technology is surveillance technology as defined in this Chapter 14.18. The process shall take into consideration the following factors, including but not limited to (1) potential impacts and uses that may adversely affect disadvantaged groups or communities and (2) the likelihood that individually identifiable information will be shared with non-City entities.

2. Each determination that is made pursuant to the process in subsection 14.18.020.B.1 shall be documented in writing. If the process determines that technology is not

surveillance technology subject to the requirements of this Chapter 14.18, a department may rely on that determination unless the Council designates that the technology is surveillance technology. Any such Council designation shall be filed with the City Clerk.

3. The CTO shall, by no later than 30 days following the last day of each quarter, submit to Council, by filing with the City Clerk and providing an electronic copy to the chair of the committee responsible for ((~~public safety~~)) technology matters, the co-chairs of the Working Group, the City Auditor, the Inspector General for Public Safety, and the Director of Central Staff, a surveillance technology determination list that includes all technology from that quarter that was reviewed under the process established in subsection 14.18.020.B.1, along with supporting information to explain the justification for the disposition of items on the list. The CTO shall ((~~at the same time provide an electronic copy of the lists for the previous three quarters to the Chair of the committee responsible for public safety matters and the Director of Central Staff~~)) also post the list to the City's website.

4. The Council may at any time designate that a technology is or is not surveillance technology subject to the requirements of this Chapter 14.18.

5. If the Council changes the designation of a technology on a list required by subsection 14.18.020.B.3, the Council action shall be filed with the City Clerk and the Council shall direct the CTO to file an updated list with the City Clerk.

C. Prior to requesting Council approval pursuant to subsection 14.18.020.A, the department must complete one or more community meetings with opportunity for public comment and written response. The Council may direct the department to conduct additional community engagement before approval, or after approval as a condition of approval. The community meeting or meetings should be accessible, be noticed in multiple languages, be held

in communities impacted by the proposed acquisition, and collect information about potential disparate impacts on disadvantaged groups.

D. If the CTO, in reviewing information technology resources under the process for mitigating privacy risk under subsection 3.23.030.P, determines that technology for which a department is requesting authorization for acquisition requires Council approval under this Chapter 14.18, the CTO shall inform the City department in writing of its obligation to comply with the provisions of this Chapter 14.18 and may provide technical assistance to the department for such compliance purposes.

E. The CTO shall post the latest version of all proposed and all approved SIRs to the City's website with an indication of its current approval status and, if available, the planned Council date for action.

F. Following Council approval of the acquisition and the terms of the SIR, the department may acquire and use the approved surveillance technology only in accordance with the procedures and protocols set forth in the SIR. Any material update to an SIR, such as to change the purpose or manner in which a surveillance technology may be used, shall be by ordinance; non-material updates may be made to the SIR by a department without Council action so long as the change is clearly marked as such in the SIR. For surveillance technology previously approved in accordance with this Chapter 14.18, any material change in surveillance capabilities, such as through technology upgrades, requires an updated SIR. Routine patches, firmware or software updates, and hardware lifecycle replacements that do not materially upgrade surveillance capabilities do not require an updated SIR.

G. Prior to submittal of a SIR to Council, the CTO may provide a written statement that addresses privacy rights, civil liberty or other concerns that are raised in the impact assessment created by the Working Group pursuant to Section 14.18.080.

Section 3. Section 14.18.050 of the Seattle Municipal Code, enacted by Ordinance 125376, is amended as follows:

14.18.050 Equity impact assessment

A. Every year, ((~~by no later than~~)) beginning by no later than September 15, 2019, and continuing by no later than September 15 each year thereafter, the Chief Technology Officer shall produce and submit to the City Council a Surveillance Technology Community Equity Impact Assessment and Policy Guidance Report ("equity impact assessment"), to be filed with the City Clerk with an electronic copy to the Council, the Chair of the committee responsible for ((~~public safety~~)) technology matters, the co-chairs of the Working Group, the City Auditor, the Inspector General for Public Safety, and the Director of Central Staff, and posted to the City's website. The equity impact assessment shall address, at a minimum, the following:

1. Whether this Chapter 14.18 is effectively meeting the goals of the Race and Social Justice Initiative, including whether any communities and groups in the City are disproportionately impacted by the use of surveillance technologies;

2. What adjustments to laws and policies should be made to remedy any disproportionate impacts so as to achieve a more equitable outcome in the future; and

3. Any new approaches and considerations the City Council should bring to future reviews of requests for Council approval submitted pursuant to Section 14.18.030.

B. The CTO shall consult with the co-chairs of the Working Group in the writing of the equity impact assessment, and shall include all Working Group feedback and

recommendations in the equity impact assessment; if the CTO disagrees with a recommendation, the CTO shall provide an explanation of the disagreement in the report.

((~~B~~)) C. The Inspector General for Public Safety may prepare an equity impact assessment for a specific technology proposed to be acquired by SPD. The Council may direct the CTO to prepare an equity impact assessment for a specific surveillance technology proposed to be acquired by any other City department.

D. When reviewing technologies that do not have SIRs, the department shall look to existing documents and policies to address the requirements of Section 14.18.050 and, whenever possible, provide the information requested for each retroactive technology.

Section 4. A new Section 14.18.080 is added to the Seattle Municipal Code as follows:

14.18.080 Community Surveillance Working Group

A. There is established the Community Surveillance Working Group ("Working Group") to advise the Council and Executive on matters of surveillance technology from a community perspective.

1. The Working Group shall consist of seven members appointed by the Mayor and Council, including four members by the Mayor and three members by the Council, and shall be finalized by December 1, 2018. This group shall be reevaluated 18 months after its first meeting to review its effectiveness in composition and process.

2. The Working Group shall elect co-chairs at its initial meeting. The Working Group shall meet at least once per quarter. All meetings of the Working Group shall be

open to the public and all final documents and reports to the Council shall be posted by the CTO to the City's website.

3. At least five members of the Working Group shall represent equity-focused organizations serving or protecting the rights of communities and groups historically subject to disproportionate surveillance, including Seattle's diverse communities of color, immigrant communities, religious minorities, and groups concerned with privacy and protest.

4. The seven positions on the Working Group shall be numbered one through seven. The initial terms of odd-numbered positions shall be two years and the initial terms of even-numbered positions shall be three years. All subsequent terms shall be for three years. Working Group members may serve up to two consecutive terms. Any vacancy in an unexpired term shall be filled in the same manner as the original appointment. A member whose term is ending may continue on an interim basis as a member with voting rights until such time as a successor for that position has been appointed.

5. The Working Group shall organize itself and adopt such rules and administrative procedures for its own governance, consistent with City Charter and ordinances, as are necessary for its functions and responsibilities.

B. The Working Group shall perform the following duties:

1. Provide to the Executive and the City Council a privacy and civil liberties impact assessment for each SIR that must be included with any departmental request for surveillance technology acquisition or in-use approval. The impact assessment shall include a description of the potential impact of the surveillance technology on civil rights and liberties and potential disparate impacts on communities of color and other marginalized communities. The CTO shall share with the Working Group a copy of the SIR that shall also be posted during the

period of public engagement. At the conclusion of the public engagement period, the CTO shall share the final proposed SIR with the Working Group at least six weeks prior to submittal of the SIR to Council for approval. The Working Group shall provide its impact assessment in writing to the Executive and the City Council for inclusion in the SIR within six weeks of receiving the final proposed SIR. If the Working Group does not provide the impact assessment before such time, the Working Group must ask for a two-week extension of time to City Council in writing. If the Working Group fails to submit an impact assessment within eight weeks of receiving the SIR, the department and City Council may proceed with ordinance consideration without the impact assessment.

2. The Working Group shall provide recommendations to the CTO for inclusion in the CTO's annual equity impact assessment in accordance with subsection 14.18.050.B.

3. The Working Group shall provide assistance as resources permit to the Executive and Council in ensuring members of vulnerable communities have the opportunity to provide input and feedback on Surveillance Technologies through the SIR approval process.

C. The Working Group shall be staffed by the Executive Department with Central Staff input.

Section 5. Section 3 of Ordinance 125376, which ordinance is included as Attachment 1 to this ordinance, is amended as follows:

Section 3. Notwithstanding the provisions of Chapter 14.18 of the Seattle Municipal Code, each City department may use surveillance technology that has not received prior Council approval under Chapter 14.18 when the technology is, as of the effective date of this ordinance, (1) in the department's possession or (2) in the execution or closeout phase of acquisition or has

had a purchase order issued, pursuant to the Chief Technology Officer's authority under subsection 3.23.030.C of the Seattle Municipal Code; provided, that the department complies with the procedures set forth in this section for Council approval. The SIRs on all identified retroactive technologies on the Master Technology List must be submitted to Council by March 1, 2020. If the department is not able to transmit to the City Council all SIRs on retroactive technologies by March 1, 2020, the department may submit to the Council a request for a six-month extension of the deadline. The request must explain the reasons that the department cannot complete all SIR reports before the March 1, 2020 deadline, as well as identify a timeline for submitting to the Council all outstanding SIRs. The request shall be sent to the City Clerk and added to a Clerk File, which must be passed by a majority vote of the Council to authorize an extension of the deadline. The Executive shall by September 1, 2019 submit to the Council a status report on the development of the SIRs for retroactive technologies. The report shall describe the public engagement and workgroup process that is completed or planned for each SIR as well as a timeline for when the department expects to finish work on all SIRs for retroactive technologies.

Each City department shall compile a list of all surveillance technology that it controls and is utilizing as of the effective date of this ordinance that ((~~are~~)) is not covered by an exemption or exception to the requirements of ((~~this~~)) Chapter 14.18 of the Seattle Municipal Code, and submit it to the CTO, or submit an affirmative statement that there are no such technologies. The list shall identify for each technology whether the technology has received prior Council approval under Chapter 14.18, and if so, the ordinance number. The CTO shall compile a master list that contains the information submitted by each department and ((~~a final list~~)) that identifies separately for each department the order and timeframe in which the

technology is recommended to be brought to the Council for ordinance approval. The master list shall be filed within 90 days of the effective date of this ordinance with the City Clerk, with an electronic copy to the Chair of the committee responsible for ((~~public safety~~)) technology, the Director of Central Staff, the Chief Technology Officer, and the Inspector General for Public Safety. The CTO may make corrections to the master list, which must be timely filed with the City Clerk. Each City department shall submit requests for surveillance technology ordinance approval for technologies on the master list consistent with Chapter 14.18 of the Seattle Municipal Code ((~~at a rate of at least one per month, or more when feasible,~~)) in ((~~list~~)) the order and timeframe contained in the master list, beginning no later than January 31, 2019, and at a rate of at least 12 in a 12-month period. ((~~, beginning no later than the end of the first quarter of 2018.~~)) The Council may revise or re-order the master list by resolution.

Section 6. Section 5 of Ordinance 125376 is amended as follows:

Section 5. The first annual equity impact assessment under subsection 14.18.050.A of the Seattle Municipal Code shall be filed no later than September 15, 2019 and first annual surveillance usage review under Section 14.18.060 of the Seattle Municipal Code should be filed in January of 2020 and cover activities through the end of 2018. Surveillance usage reviews in subsequent years shall be filed in September and cover the data and activities of the previous year.

Section 7. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the 24th day of September, 2018, and signed by me in open session in authentication of its passage this 24th day of September, 2018.

President _____ of the City Council

Approved by me this 5th day of October, 2018.

Jenny A. Durkan, Mayor

Filed by me this 5th day of OCTOBER, 2018.

Monica Martinez Simmons, City Clerk

(Seal)

Attachments:
Attachment 1 – Ordinance 125376

CITY OF SEATTLE

ORDINANCE 125376

COUNCIL BILL 118930

AN ORDINANCE relating to The City of Seattle's acquisition and use of surveillance technologies; repealing Chapter 14.18 of the Seattle Municipal Code (SMC), consisting of Sections 14.18.10, 14.18.20, 14.18.30, and 14.18.40 SMC; and adding a new Chapter 14.18 to the SMC, consisting of Sections 14.18.010, 14.18.020, 14.18.030, 14.18.040, 14.18.050, 14.18.060, 14.18.070, 14.18.080, and 14.18.090.

WHEREAS, in 2013, the Council via Ordinance 124142 created a new chapter in the Seattle Municipal Code, Chapter 14.18, to govern the acquisition and use of surveillance equipment, arising out of concerns about privacy and lack of process for The City of Seattle's (City's) acquisition of surveillance technologies such as drones and the installation of video cameras along Seattle's waterfront and downtown; and

WHEREAS, Chapter 14.18, by being limited to equipment, is inadequate to address new and ever-evolving surveillance technologies and build public trust in government use of those technologies, as was highlighted by public concern in 2016 over the Seattle Police Department's acquisition of the social media monitoring tools Geofeedia and Babel Street; and

WHEREAS, Seattle residents can significantly benefit from carefully considered deployments of surveillance technologies that support the City's responsibility to provide public safety and other services to the public, but such technologies can also create risks to civil liberties related to privacy, freedom of speech or association, or disparate impact on groups through over-surveillance; and

WHEREAS, a publicly transparent and accountable process for the procurement and operation of surveillance technology is fundamental to minimizing the risks posed by such technologies; and

WHEREAS, the City also recognizes the importance of transparent and accountable processes for the City's use of surveillance data, and views the institution of good management practices for the City's acquisition and use of surveillance technology as an important first step in understanding and responsibly addressing the ways that the City's use of surveillance technology and surveillance data impact individuals and communities; and

WHEREAS, the City should be judicious in its use of surveillance technologies to avoid creating a constant and pervasive surveillance presence in public life; and

WHEREAS, protocols proposed by City departments for the use of surveillance technologies should include specific steps to mitigate civil liberties concerns and the risks of information sharing with entities such as the federal government, and should incorporate racial equity principles into such protocols to ensure that surveillance technologies do not perpetuate institutionalized racism or race-based disparities; and

WHEREAS, the purpose of revising and updating Chapter 14.18 is to require City departments to obtain Council approval and to establish protocols prior to the acquisition of surveillance technology that raises concerns about privacy or other civil liberties and to be transparent in how surveillance technology and its data are used by the City; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Chapter 14.18 of the Seattle Municipal Code, enacted by Ordinance 124142, is repealed:

((~~CHAPTER 14.18 ACQUISITION AND USE OF SURVEILLANCE EQUIPMENT~~

~~**14.18.10 Definitions**~~

~~The following definitions apply to this Chapter 14.18~~

~~"Data management protocols" generally means procedures governing how data collected by surveillance equipment will be retained, stored, indexed and accessed. Information comprising data management protocols includes, at a minimum, the information required in Section 14.18.30.~~

~~"Operational protocols" generally means procedures governing how and when surveillance equipment may be used and by whom. Information comprising operational protocols includes, at a minimum, the information required in Section 14.18.20.~~

~~"Surveillance equipment" means equipment capable of capturing or recording data, including images, videos, photographs or audio operated by or at the direction of a City department that may deliberately or inadvertently capture activities of individuals on public or private property, regardless of whether "masking" or other technology might be used to obscure or prevent the equipment from capturing certain views. "Surveillance equipment" includes drones or unmanned aircraft and any attached equipment used to collect data. "Surveillance equipment" does not include a handheld or body-worn device, a camera installed in or on a police vehicle, a camera installed in or on any vehicle or along a public right-of-way intended to record traffic patterns and/or traffic violations, a camera intended to record activity inside or at the entrances to City buildings for security purposes, or a camera installed to monitor and protect the physical integrity of City infrastructure, such as Seattle Public Utilities reservoirs.~~

~~**14.18.20 Council Approval for City Department Acquisition and Operations of Surveillance Equipment**~~

~~Any City department intending to acquire surveillance equipment shall obtain City Council approval via ordinance prior to acquisition. Prior to deployment or installation of the surveillance equipment, City departments shall obtain Council approval via ordinance of operational protocols, unless applicable operational protocols were previously approved by ordinance. In requesting approval for acquisition of surveillance equipment, City departments shall include proposed operational protocols containing the following information for the City Council's consideration, along with any other information specifically requested by the City Council:~~

~~A. A clear statement describing the purpose and use of the proposed surveillance equipment.~~

~~B. The type of surveillance equipment to be acquired and used.~~

~~C. The intended specific location of such surveillance equipment if affixed to a building or other structure.~~

~~D. How and when a department proposes to use the surveillance equipment, such as whether the equipment will be operated continuously or used only under specific circumstances, and whether the equipment will be installed permanently or temporarily~~

~~E. A description of the privacy and anonymity rights affected and a mitigation plan describing how the department's use of the equipment will be regulated to protect privacy, anonymity, and limit the risk of potential abuse.~~

~~F. A description of how and when data will be collected and retained and who will have access to any data captured by the surveillance equipment.~~

~~G. The extent to which activity will be monitored in real time as data is being captured and the extent to which monitoring of historically recorded information will occur.~~

~~H. A public outreach plan for each community in which the department intends to use the surveillance equipment that includes opportunity for public meetings, a public comment period, and written agency response to these comments.~~

~~I. If a department is requesting to acquire or use drones or other unmanned aircraft, it shall propose the specific circumstances under which they may be deployed, along with clearly articulated authorization protocols.~~

~~J. If more than one department will have access to the surveillance equipment or the data captured by it, a lead department shall be identified that is responsible for maintaining the equipment and ensuring compliance with all related protocols. If the lead department intends to delegate any related responsibilities to other departments and city personnel, these responsibilities and associated departments and personnel shall be clearly identified.~~

~~K. Whether a department intends to share access to the surveillance equipment or the collected data with any other government entity.~~

~~L. A description of the training to be provided to operators or users of the surveillance equipment.~~

~~Upon review of the information required under this Section 14.18.20, and any other information deemed relevant by the City Council, the City Council may approve the acquisition and operation of surveillance equipment, approve the acquisition of surveillance equipment and require future Council approval for operations, deny the acquisition or use of surveillance equipment for the purpose proposed, or take other actions.~~

~~14.18.30 Data Management Protocols for Surveillance Equipment~~

~~Prior to operating surveillance equipment acquired after the effective date of this ordinance, City departments shall submit written protocols for managing data collected by surveillance~~

~~equipment to the City Council. The City Council may require that any or all data management protocols required under this Section 14.18.30 be approved by ordinance. These data management protocols shall address the following:~~

~~A. The time period for which any data collected by surveillance equipment will be retained.~~

~~B. The methods for storing recorded information, including how the data is to be labeled or indexed. Such methods must allow for the department personnel and the City Auditor's Office to readily search and locate specific data that is collected and determine with certainty that data was properly deleted, consistent with applicable law.~~

~~C. How the data may be accessed, including who will be responsible for authorizing access, who will be allowed to request access, and acceptable reasons for requesting access.~~

~~D. A viewer's log or other comparable method to track viewings of any data captured or collected by the surveillance equipment, including the date, time, the individuals involved, and the reason(s) for viewing the records.~~

~~E. A description of the individuals who have authority to obtain copies of the records and how the existence and location of copies will be tracked.~~

~~F. A general description of the system that will be used to store the data.~~

~~G. A description of the unit or individuals responsible for ensuring compliance with Section 14.18.30 and when and how compliance audits will be conducted.~~

~~14.18.40 Acquisition and Use of Surveillance Equipment Related to Law Enforcement Investigations~~

~~Notwithstanding the provisions of this Chapter, City departments may acquire or use surveillance equipment that is used on a temporary basis for the purpose of a criminal~~

~~investigation supported by reasonable suspicion, or pursuant to a lawfully issued search warrant, or under exigent circumstances as defined in case law. This exemption from the provisions of this ordinance does not apply to surveillance cameras mounted on drones or other unmanned aircraft.~~))

Section 2. A new Chapter 14.18, which includes new Sections 14.18.010, 14.18.020, 14.18.030, 14.18.040, 14.18.050, 14.18.060, and 14.18.070, is added to the Seattle Municipal Code as follows:

CHAPTER 14.18 ACQUISITION AND USE OF SURVEILLANCE TECHNOLOGIES

14.18.010 Definitions

The following definitions apply to this Chapter 14.18:

"Acquire" means to obtain, purchase, lease, rent, borrow, create, develop, or accept a grant, state or federal funds, or in-kind or other donations in connection with such purposes, whether pursuant to a services or subscription arrangement or otherwise, or without exchange of consideration, monies, or fees.

"City" means The City of Seattle.

"CTO" means Chief Technology Officer as defined in Section 3.23.020.

"Inspector General for Public Safety" means the Office of Professional Accountability Auditor or its successor.

"SPD" means the Seattle Police Department.

"Surveillance" or "surveil" means to observe or analyze the movements, behavior, or actions of identifiable individuals in a manner that is reasonably likely to raise concerns about civil liberties, freedom of speech or association, racial equity or social justice. Identifiable individuals also include individuals whose identity can be revealed by license plate data when

combined with any other record. It is not surveillance if an individual knowingly and voluntarily consented to provide the information, or had a clear and conspicuous opportunity to opt out of providing the information.

"Surveillance capability" means the ability to collect, capture, transmit, or record data that could be used to surveil, regardless of whether the data is obscured, de-identified, or anonymized before or after collection and regardless of whether technology might be used to obscure or prevent the capturing of certain views or types of information.

"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.

"Surveillance Impact Report" or "SIR" means the report with content enumerated in subsection 14.18.040.B.

"Surveillance technology" means any electronic device, software program, or hosted software solution that is designed or primarily intended to be used for the purpose of surveillance.

14.18.020 Council approval for acquisition of surveillance technologies

A. Unless exempted or excepted from the requirements of this Chapter 14.18 pursuant to Section 14.18.030, any City department intending to acquire surveillance technology shall, prior to acquisition, obtain Council ordinance approval of the acquisition and a surveillance impact report for the technology. A City department that directs a non-City entity to acquire or operate surveillance technology on the City's behalf is bound by the requirements of this Chapter 14.18 to the same extent as if the department were acquiring the surveillance technology.

B.

1. The Executive shall establish a process for determining whether technology is surveillance technology as defined in this Chapter 14.18. The process shall take into consideration the following factors, including but not limited to (1) potential impacts and uses that may adversely affect disadvantaged groups or communities and (2) the likelihood that individually identifiable information will be shared with non-City entities.

2. Each determination that is made pursuant to the process in subsection 14.18.020.B.1 shall be documented in writing. If the process determines that technology is not surveillance technology subject to the requirements of this Chapter 14.18, a department may rely on that determination unless the Council designates that the technology is surveillance technology. Any such Council designation shall be filed with the City Clerk.

3. The CTO shall by the last day of each quarter submit to Council, by filing with the City Clerk and providing an electronic copy to the Chair of the committee responsible for public safety matters and the Director of Central Staff, a surveillance technology determination list that includes all technology from that quarter that was reviewed under the process established in subsection 14.18.020.B.1, along with supporting information to explain the justification for the disposition of items on the list. The CTO shall at the same time provide an electronic copy of the lists for the previous three quarters to the Chair of the committee responsible for public safety matters and the Director of Central Staff.

4. The Council may at any time designate that a technology is or is not surveillance technology subject to the requirements of this Chapter 14.18. If the Council changes the designation of a technology on a list required by subsection 14.18.020.B.3, the Council action shall be filed with the City Clerk and the Council shall direct the CTO to file an updated list with the City Clerk.

C. Prior to requesting Council approval pursuant to subsection 14.18.020.A, the department must complete one or more community meetings with opportunity for public comment and written response. The Council may direct the department to conduct additional community engagement before approval, or after approval as a condition of approval. The community meeting or meetings should be accessible, be noticed in multiple languages, be held in communities impacted by the proposed acquisition, and collect information about potential disparate impacts on disadvantaged groups.

D. If the CTO, in reviewing information technology resources under the process for mitigating privacy risk under subsection 3.23.030.P, determines that technology for which a department is requesting authorization for acquisition requires Council approval under this Chapter, the CTO shall inform the City department in writing of its obligation to comply with the provisions of this Chapter 14.18 and may provide technical assistance to the department for such compliance purposes.

E. The CTO shall post the latest version of all proposed and all approved SIRs to the City's website with an indication of its current approval status and, if available, the planned Council date for action.

F. Following Council approval of the acquisition and the terms of the SIR, the department may acquire and use the approved surveillance technology only in accordance with the procedures and protocols set forth in the SIR. Any material update to an SIR, such as to change the purpose or manner in which a surveillance technology may be used, shall be by ordinance; non-material updates may be made to the SIR by a department without Council action so long as the change is clearly marked as such in the SIR. For surveillance technology previously approved in accordance with this Chapter 14.18, any material change in surveillance

capabilities, such as through technology upgrades, requires an updated SIR. Routine patches, firmware or software updates, and hardware lifecycle replacements that do not materially upgrade surveillance capabilities do not require an updated SIR.

14.18.030 Exemptions and exceptions

A. The following do not constitute surveillance data or surveillance technology, and the requirements of this Chapter 14.18 do not apply to them:

1. Information acquired where the individual knowingly and voluntarily consented to provide the information, such as submitting personal information for the receipt of City services; or

2. Information acquired where the individual was presented with a clear and conspicuous opportunity to opt out of providing the information.

B. The following constitute surveillance technology but the requirements of this Chapter 14.18 do not apply to them:

1. Body-worn cameras;

2. Cameras installed in or on a police vehicle;

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;

4. Cameras installed on City property solely for security purposes;

5. Cameras installed solely to protect the physical integrity of City infrastructure, such as Seattle Public Utilities reservoirs; and

6. Technology that monitors only City employees in the performance of their City functions.

C. The following situations are exceptions to the requirements of this Chapter 14.18:

1. In the event of an emergency situation that poses an imminent and serious risk of death or substantial bodily harm, a City department may acquire surveillance technology without prior 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 the risk. The department's use of the surveillance technology must end when such risk no longer exists or the use of the surveillance technology can no longer reasonably reduce the risk. The use must be documented in the department's annual surveillance usage report, and any future acquisition or use of such surveillance technology must be approved by the City Council as set forth in this Chapter 14.18.

2. A City department may apply a technical patch or upgrade that is necessary to mitigate threats to the City's environment, even if the patch or upgrade materially alters the surveillance capabilities of the technology. The department shall not use the new surveillance capabilities of the technology until the requirements of Section 14.18.020 are met, unless the CTO determines that the use is unavoidable; in that case, the department shall request Council approval as soon as possible. The request shall include a report to Council of how the altered surveillance capabilities were used since the time of the upgrade.

D. The provisions of this Chapter 14.18 do not apply to the Seattle Municipal Court or Seattle Public Library.

E. To the extent that a provision of this Chapter 14.18, or SIR requirement approved pursuant to this Chapter 14.18, conflicts with a superseding state law or other superseding legal authority, that provision or requirement shall not apply.

14.18.040 Surveillance impact report requirements

A. Any City department requesting Council approval for surveillance technology acquisition under Section 14.18.020.A must include an SIR with the request.

B. Each SIR will include clear and understandable statements of the following:

1. A description of the surveillance technology to be acquired and a description of the general capabilities, the type of data that the technology is reasonably likely to generate, and functionality, including reasonably foreseeable surveillance capabilities outside the scope of the City department's proposed use.

2. A description of the purpose and proposed use of the surveillance technology, including, if available, the intended benefits of the applicable surveillance technology and any data or research demonstrating those benefits.

3. A clear use and data management policy, including protocols for the following:

a. How and when the surveillance technology will be deployed or used and by whom, including but not limited to: the factors that will be used to determine where, when, and how the technology is deployed; and other relevant information, such as whether the technology will be operated continuously or used only under specific circumstances, whether the technology will be installed permanently or temporarily, and if the technology is a physical object visible to the public, a description of markings that will be used and how they will be placed in order to clearly and visibly identify the responsible department and contact information, or else an explanation of why such markings would render the surveillance ineffective. If the surveillance technology will be operated or used by another entity on the City's behalf, the SIR must explicitly include a description of the other entity's access and any applicable protocols.

b. Any additional rules that will govern use of the surveillance technology and what processes will be required prior to each use of the surveillance technology, including but not limited to what legal standard, if any, must be met before the technology is used, such as for the purposes of a criminal investigation supported by reasonable suspicion.

c. How surveillance data will be securely stored. Such methods must allow for the department personnel and any entity performing an auditing function that has lawful access to search and locate specific data to determine that data were properly deleted, consistent with applicable law.

d. How surveillance data will be retained and deleted, including the retention period; process for regular deletion after the retention period elapses; what auditing procedures will be implemented to ensure data are not improperly retained beyond the retention period; what measures will be taken to minimize the inadvertent or otherwise improper collection of data; and how any surveillance data, if identified as improperly collected, will be expeditiously destroyed. The SIR shall identify a specific departmental unit that is responsible for ensuring compliance with data retention requirements. Retention procedures and policies must be developed in compliance with the requirements of Section 3.122.040.

e. How surveillance data will be accessed, including who will be responsible for authorizing access, who will be allowed to request access, and acceptable reasons for requesting access; and what safeguards will be used to protect surveillance data from unauthorized access and to provide an audit trail, such as viewer logging or encryption and access control mechanisms, to the extent such mechanisms exist within the contemplated surveillance technology.

f. Whether a department intends to share access to the surveillance technology or the surveillance data from that surveillance technology with any other entity, including any other City department or non-City entity, and if so, with which entity and how such sharing is necessary for the purpose or purposes for which Council approval is requested; and what restrictions, if any, the department will place upon the receiving non-City entity's use of such surveillance technologies. If applicable, the SIR shall include a copy of the department's procedures for ensuring the entity's compliance with this provision.

g. How the department will ensure that all personnel who operate surveillance technology or access its surveillance data are knowledgeable about and able to ensure compliance with the use and data management policy prior to use of the surveillance technology or surveillance data from that surveillance technology.

4. A description of any community engagement held and any future community engagement plans, including statistics and demographics on attendees, a compilation of all comments received and departmental responses given, and departmental conclusions about potential neighborhood and disparate impacts that may result from the acquisition.

5. A description of how the potential impact of the surveillance on civil rights and liberties and potential disparate impacts on communities of color and other marginalized communities have been taken into account; and a mitigation plan.

6. A description of the fiscal impact of the surveillance technology, including initial acquisition costs; ongoing operating costs such as maintenance, licensing, personnel, legal compliance, use auditing, data retention, and security costs; any cost savings that would be achieved through the use of the technology; and any current or potential sources of funding, including any subsidies or free products being offered by vendors or governmental entities.

C. A City department may share surveillance technology or surveillance data to the extent required by court order, subpoena, or as otherwise required by law, notwithstanding the contents of any approved SIR.

D. When providing access to the City's surveillance technology by contract with a non-City entity, the City shall require that such entity be bound by any restrictions specified in the Surveillance Impact Report pursuant to subsection 14.18.040.B.3.f with regard to such surveillance technology. The City department providing such access shall have written procedures in place for determining how the department will ensure the receiving non-City entity's compliance with any restrictions identified in the SIR.

14.18.050 Equity impact assessment

A. Every year, by no later than September 15, the Chief Technology Officer shall produce and submit to the City Council a Surveillance Technology Community Equity Impact Assessment and Policy Guidance Report ("equity impact assessment"), to be filed with the City Clerk with an electronic copy to the Council, the Chair of the committee responsible for public safety matters, and the Director of Central Staff, and posted to the City's website. The equity impact assessment shall address, at a minimum, the following:

1. Whether this Chapter 14.18 is effectively meeting the goals of the Race and Social Justice Initiative, including whether any communities and groups in the City are disproportionately impacted by the use of surveillance technologies;

2. What adjustments to laws and policies should be made to remedy any disproportionate impacts so as to achieve a more equitable outcome in the future; and

3. Any new approaches and considerations the City Council should bring to future reviews of requests for Council approval submitted pursuant to Section 14.18.030.

B. The Inspector General for Public Safety may prepare an equity impact assessment for a specific technology proposed to be acquired by SPD. The Council may direct the CTO to prepare an equity impact assessment for a specific surveillance technology proposed to be acquired by any other City department.

14.18.060 Annual surveillance usage review

The Inspector General for Public Safety in regard to SPD and the City Auditor in regard to all other departments should conduct an annual review of the City's use of surveillance technology and the extent to which departments are in compliance with the requirements of this Chapter 14.18 and with the terms of approved SIRs, file the review with the City Clerk, and post the review to the City's website. The review should include, but not be limited to, the following:

A. How surveillance technology has been used, how frequently, and whether usage patterns are changing over time;

B. How often surveillance technology or its data are being shared with other entities, including other governments in particular;

C. How well data management protocols are safeguarding individual information;

D. How deployment of surveillance technologies impacted or could impact civil liberties or have disproportionate effects on disadvantaged populations, and how those impacts are being mitigated, including, for SPD, an examination of whether deployments are pursuant to warrants or not and how SPD's surveillance technology is used to analyze patterns to predict suspect, individual, or group-affiliation behavior;

E. A summary of any complaints or concerns received by or known by departments about their surveillance technology and results of any internal audits or other assessments of code compliance; and

F. Total annual costs for use of surveillance technology, including personnel and other ongoing costs.

14.18.070 Enforcement

A. The CTO shall direct any department not in compliance with the requirements of this Chapter 14.18 to cease acquisition or use of the surveillance technology or its data.

B. Any person who is surveilled and injured by a material violation of this Chapter 14.18 that is a proximate cause of the injury may institute proceedings against the City in a court of competent jurisdiction for injunctive relief, declaratory relief, or a writ of mandate to enforce this Chapter 14.18; if the person has given the City written notice via the City Attorney's Office specifying the alleged violation of a specific section or sections of this Chapter 14.18 stating that legal relief may be sought and giving the City at least 90 days after receipt of the written notice to respond and address the concern, and the City has not addressed the concern in the 90 days.

Section 3. Notwithstanding the provisions of Chapter 14.18 of the Seattle Municipal Code, each City department may use surveillance technology that has not received prior Council approval under Chapter 14.18 when the technology is, as of the effective date of this ordinance, (1) in the department's possession or (2) in the execution or closeout phase of acquisition or has had a purchase order issued, pursuant to the Chief Technology Officer's authority under subsection 3.23.030.C of the Seattle Municipal Code; provided, that the department complies with the procedures set forth in this section for Council approval.

Each City department shall compile a list of all surveillance technology that it controls and is utilizing as of the effective date of this ordinance that are not covered by an exemption or exception to the requirements of this Chapter 14.18 of the Seattle Municipal Code and submit it to the CTO, or submit an affirmative statement that there are no such technologies. The list shall

identify for each technology whether the technology has received prior Council approval under Chapter 14.18, and if so, the ordinance number. The CTO shall compile a master list that contains the information submitted by each department and a final list that identifies separately for each department the order in which the technology is recommended to be brought to the Council for ordinance approval. The master list shall be filed within 90 days of the effective date of this ordinance with the City Clerk, with an electronic copy to the Chair of the committee responsible for public safety, the Director of Central Staff, the Chief Technology Officer, and the Inspector General for Public Safety. The CTO may make corrections to the master list, which must be timely filed with the City Clerk. Each City department shall submit requests for surveillance technology ordinance approval consistent with Chapter 14.18 of the Seattle Municipal Code at a rate of at least one per month, or more when feasible, in list order, beginning no later than the end of the first quarter of 2018. The Council may revise or re-order the master list by resolution.

Section 4. By no later than September 15, 2017, the Executive shall convene a workgroup that includes, but is not limited to, representation from the Community Technology Advisory Board (CTAB) to make recommendations on how to utilize community expertise to advise the Council in surveillance technology policy decision-making. The recommendations shall be submitted to the Council by December 31, 2017, by filing with the City Clerk and providing an electronic copy to the Chair of the committee responsible for public safety matters and the Director of Central Staff. In the interim, the Council shall utilize the expertise of CTAB regarding Council actions on surveillance technology.

Section 5. The first annual equity impact assessment under subsection 14.18.050.A of the Seattle Municipal Code and first annual surveillance usage review under Section 14.18.060 of the Seattle Municipal Code should cover activities through the end of 2018.

Section 6. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the 31st day of July, 2017, and signed by me in open session in authentication of its passage this 31st day of July, 2017.

President _____ of the City Council

Approved by me this 2 day of August, 2017.

Edward B. Murray, Mayor

Filed by me this 2nd day of AUGUST, 2017.

Monica Martinez Simmons, City Clerk

(Seal)