

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 2 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "ADMINISTRATION," BY AMENDING ARTICLE VI, ENTITLED "PROCUREMENT," BY AMENDING DIVISION 6, SECTIONS 2-411 THRU 2-425, ENTITLED "RESERVED," BY CREATING DIVISION 7, TO BE ENTITLED "SURVEILLANCE TECHNOLOGY CONTRACT PROCEDURES," AND BY ESTABLISHING NEW SECTIONS 2-411 THRU 2-415 THEREOF, TO BE ENTITLED "DEFINITIONS; CITY COMMISSION APPROVAL REQUIRED; OLD TECHNOLOGIES TO BE APPROVED; ANNUAL SURVEILLANCE REPORT; AND PENALTY FOR VIOLATIONS"; WHICH SETS FORTH THE PURPOSE, OBLIGATIONS AND RESPONSIBILITIES SURROUNDING THE UTILIZATION OF SURVEILLANCE TECHNOLOGY THROUGHOUT THE CITY OF MIAMI BEACH; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City Commission finds it is essential to have an informed public debate as early as possible about decisions related to surveillance technology and that no decisions relating to 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 First, Fourth, and Fourteenth Amendments to the United States Constitution; and

WHEREAS, the City Commission finds that, while surveillance technology may threaten the privacy of all citizens, throughout history, surveillance efforts have been used to intimidate and oppress certain communities and groups more than others, including those that are defined by a common race, ethnicity, religion, national origin, income level, sexual orientation, or political perspective; and

WHEREAS, the City Commission finds that any and all decisions regarding if and how surveillance technologies should be funded, acquired, or used should include meaningful public input and that public opinion should be given significant weight; and

WHEREAS, the City Commission 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 surveillance technology is deployed; and

WHEREAS, the City Commission finds that the full cost of a surveillance technology should be considered and made publically available to analyze whether its financial benefits outweigh its costs and whether an expenditure on such a technology is in the best interest of the City; and

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

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AS FOLLOWS:

SECTION 1. That Division 6 of Article VI of Chapter 2 of the Code of the City of Miami Beach, Florida, is hereby amended as follows:

**CHAPTER 2
ADMINISTRATION**

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Article VI. PROCUREMENT

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Division 6. LIVING WAGE REQUIREMENTS FOR SERVICE CONTRACTS AND CITY EMPLOYEES

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~~Section 2-411 - 2-425. Reserved.~~

SECTION 2. That Division 7 of Article VI of Chapter 2 of the Code of the City of Miami Beach, Florida, is hereby created, and to be entitled "Surveillance Technology Contract Procedures," with new Sections 2-411 through 2-415, as follows:

**CHAPTER 2
ADMINISTRATION**

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Article VI. PROCUREMENT

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Division 7. Surveillance Technology Contract Procedures

Section 2-411. Definitions.

For the purposes of this Ordinance:

The City shall mean the City government of the City of Miami Beach, and any agency, department, division or unit of the City.

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

Surveillance technology shall mean any electronic surveillance device, hardware, or software that is capable of collecting, capturing, recording, retaining, processing, intercepting, analyzing, monitoring, or sharing audio, visual, digital, location, thermal, biometric, or similar information or communications specifically associated with, or capable of being associated with, any specific individual or group; or any system, device, or vehicle that is equipped with an electronic surveillance device, hardware, or software.

Surveillance technology shall mean and includes, but is not limited to: (a) ~~international mobile subscriber identity (IMSI) catchers and other cell site simulators;~~ (b) automatic license plate readers; ~~(e) (b) electronic toll readers;~~ ~~(d) (c) closed-circuit television cameras in public areas;~~ (d) ~~unmanned aerial vehicles;~~ (e) biometric surveillance technology, including facial, voice, iris, and gait-recognition software and databases; (f) ~~mobile DNA capture technology;~~ (g) gunshot detection and location hardware and services; ~~(h) (g) x-ray vans;~~ ~~(i) (h) video and audio monitoring and/or recording technology, such as surveillance cameras in public places and wearable body cameras;~~ (i) (i) surveillance enabled or capable lightbulbs or light fixtures; (k) ~~tools, including software and hardware, used to gain unauthorized access to a computer, computer service, or computer network;~~ (l) (j) social media monitoring software.; (m) ~~through-the-wall radar or similar imaging technology, (n) passive scanners of radio networks, (o) long-range Bluetooth and other wireless-scanning devices, (p) radio-frequency I.D. (RFID) scanners, and (q) software designed to integrate or analyze data from Surveillance Technology, including surveillance target tracking and predictive policing software.~~ The enumeration of surveillance technology examples in this subsection shall not be interpreted as an endorsement or approval of their use by the City.

Surveillance technology ~~shall mean and~~ does not include the following devices or hardware, unless they have been equipped with, or are modified to become or include, a surveillance technology as defined in Section 2-411: (a) routine office hardware, such as televisions, computers, and printers, that is in widespread public use and will not be used for any surveillance or surveillance-related functions; (b) Parking Ticket Devices (PTDs); (c) manually-operated, non-wearable, handheld digital cameras, audio recorders, and video recorders that are not designed to be used surreptitiously and whose functionality is limited to manually capturing and manually downloading video and/or audio recordings; (d) surveillance devices that cannot record or transmit audio or video or be remotely accessed, such as image stabilizing binoculars or night vision goggles; and (e) manually-operated technological devices used primarily for internal City communications and are not designed to surreptitiously collect surveillance data, such as radios and email systems.; and (f) ~~wearable body cameras.~~

Section 2-412. City Commission Approval Required.

(a) Approval at Public Meeting. The City must request and obtain Commission approval at a public meeting before engaging in any of the following:

(1) Seeking funds for new surveillance technology, ~~including but not limited to applying for a grant, or soliciting or including~~ accepting state or federal funds or in-kind or other donations;

(2) Acquiring or borrowing new surveillance technology, whether or not that acquisition is made through the exchange of monies or other consideration;

~~(3) Using new or existing surveillance technology for a purpose or in a manner not previously approved by the Commission in accordance with this Ordinance; or~~

~~(4) Soliciting proposals for or entering into an agreement with any other person or entity to acquire, share or otherwise use surveillance technology or surveillance data.~~

~~Unless otherwise explicitly stated, any approval shall be for a period of one year. The City Commission may reauthorize approval based on the City's Annual Surveillance Report.~~

(b) Request for Approval.

- (1) Required Report & Policy. Any request for City Commission approval pursuant to Section 2-412 must include a Surveillance Impact Report and Surveillance Use Policy concerning the technology at issue.
- (2) Approval Conditioned on Request. Unless the City Commission approval specifically indicates otherwise, its approval is conditioned upon the representations in the request, including the Surveillance Impact Report and on compliance with Surveillance Use Policy.
- (3) Public Access. Each request, including the Surveillance Impact Report and Surveillance Use Policy, is a public record and shall be accessible to ~~the~~ any person without redact. The City Manager shall ensure each request is available online from the City's webpage.

(c) Surveillance Impact Report. A Surveillance Impact Report shall include the following:

- (1) Description. Information describing the surveillance technology and how it works, including product descriptions from manufacturers.
- (2) Purpose. Each purpose of the surveillance technology.
- (3) Data Collection. The surveillance data that the surveillance technology is capable of collecting, capturing, recording, intercepting, or retaining.
- (4) Cost. The fiscal impact of the surveillance technology, including but not limited to: (a) Initial acquisition costs; (b) ongoing operational costs such as personnel, legal compliance, use auditing, data retention and security costs; (c) any cost savings that would be achieved through the use of the technology; and (d) any current or potential sources of funding.
- (5) Civil Rights and Civil Liberties Impact. An assessment identifying with specificity: (a) any potential impacts the surveillance technology, if deployed, might have on civil rights and civil liberties; and (b) what specific, affirmative measures will be implemented to safeguard the public from these civil rights and civil liberties impacts.

(d) Surveillance Use Policy. A Surveillance Use Policy shall include the following:

- (1) Purpose. Each permitted purpose of the surveillance technology.
- (2) Authorized Use. The surveillance technology's specific, permitted use(s) and purpose(s). This shall include (a) whether the surveillance technology may be operated continuously or installed permanently; (b) the places, times, manner, circumstances in which it may be used, including any limitations on the crimes that may be investigated with it; (c) who is permitted to use it; (d) what authorization is required to use it; and (e) any prohibitions on its use (e.g., use without a warrant).

(3) Data Collection.

- a. The surveillance data that is permitted to be collected, captured, recorded, intercepted, or retained.
- b. The measures that shall be taken to minimize the inadvertent collection of data surveillance data.
- c. The measures that shall be taken to identify and delete inadvertently collected surveillance data.
- d. Database Reliance. The databases on which the technology may rely to make identifications of people, vehicles, or items.
- e. Data Access. Who has access to the surveillance data and the procedures to allow an individual to obtain access to the data.

~~f. Data Protection: What safeguards will be used to protect surveillance data from unauthorized access, including encryption and access control mechanisms.~~

~~g.f. Data Retention: The rules and procedures that will govern the retention of surveillance data, including those governing.~~

~~h.g. Public Access. How the public may access the surveillance data and what steps will be taken to protect individual privacy.~~

~~h.h. Authorized Disclosure and Sharing: The limitations on sharing surveillance technology or disclosing surveillance data with other governmental agencies, departments, bureaus, divisions, or units, including whether other government agencies must comply with the City's Policy.~~

~~h.i. Demands for Access to Surveillance Data: What legal standard must be met by government entities or third parties seeking or demanding access to surveillance data.~~

~~k. Training: What training, including training materials, will be required for any individual authorized to use the surveillance technology or to access surveillance data.~~

~~l. Maintenance: How the security and integrity of the surveillance technology will be maintained and how the City entity or lead agent will present any substantive changes in the surveillance technology's functionality to the City Commission for approval.~~

~~m.j. Auditing and Oversight: What mechanisms will be implemented to ensure the Surveillance Use Policy is followed, including what internal personnel will be assigned to ensure compliance with the policy, what independent persons or~~

entities will be given oversight authority, and what legally enforceable sanctions will be put in place for violations of the policy.

n.k. Complaints: What procedures will be put in place by which members of the public can register complaints or concerns, or submit questions about the deployment or use of a specific surveillance technology, and what internal personnel will be assigned to receive, register, track, and respond to such communications.

Section 2-413. Old Technologies to Be Approved.

(a) No later than one hundred twenty (120) days following the effective date of this Ordinance, the City seeking to continue the use of any surveillance technology that was in use prior to the effective date of this Ordinance must commence a City Commission approval process in accordance with Section 2-412. If the City Commission has not approved the continuing use of the surveillance technology, including the Surveillance Impact Report and Surveillance Use Policy submitted pursuant to Sections 2-412(c) and (d), within one hundred eighty (180) days of their submission to the City Commission, the City shall cease its use of the surveillance technology until such time as City Commission approval is obtained in accordance with this Ordinance.

~~(b) If more than one municipal entity will have access to the surveillance technology or surveillance data, a lead municipal entity shall be identified. The lead municipal entity shall be responsible for maintaining the surveillance technology and ensuring compliance with all related laws, regulations and protocols. If the lead municipal entity intends to delegate any related responsibilities to other governmental agencies, departments, bureaus, divisions, units, or personnel, these responsibilities and associated entities and/or personnel shall be clearly identified.~~

~~(c)(b) Approval Criteria. The City Commission shall only approve a request to fund, acquire, or use a surveillance technology if it determines the benefits of the surveillance technology outweigh its costs, that the proposal will safeguard civil liberties and civil rights, and that the uses and deployments of the surveillance technology will not be based upon discriminatory or viewpoint-based facts or have a disparate impact on any community or group. To assist the public in participating in such an analysis, all approved Surveillance Impact Reports and Surveillance Use Policies shall be made available to the public, at a designated page on the relevant City's public website, for as long as the related surveillance technology remains in use.~~

Section 2-414. Annual Surveillance Report.

(a) Annual Filing. The City upon obtaining approval for the use of surveillance technology must submit to the City Commission an Annual Surveillance Report within twelve (12) months of City Commission approval, and annually thereafter on or before March 15.

(b) Contents. The Annual Surveillance Report shall, at a minimum, include the following information for the previous calendar year:

(1) A summary of how the surveillance technology was used;

(2) Whether and how often collected surveillance data was shared with any external persons or entities, the name(s) of any recipient person or entity, the type(s) of data disclosed, under what legal standard(s) the information was disclosed, and the justification for the disclosure(s); and

~~(3) Where applicable, a breakdown of where the surveillance technology was deployed geographically, by individual census tract as defined in the relevant year by the United States Census Bureau.~~

~~(e) A summary of complaints or concerns that were received about the surveillance technology.~~

~~(d) (4) The results of any internal audits, any information about violations of the Surveillance Use Policy, and any actions taken in response.~~

~~(e) (5) An analysis of any discriminatory, disparate, and other adverse impacts the use of the technology may have had on the public's civil rights and civil liberties, including but not limited to those guaranteed by the First, Fourth, and Fourteenth Amendment to the United States Constitution.~~

~~(f) Statistics and information about public records Ordinance requests, including response rates.~~

~~(g) (6) 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.~~

~~(h)(c) Public Access. Each Annual Surveillance Report is a public record and shall be accessible to the any person without redaction. The Mayor-City Manager shall ensure each report is available online from the City's webpage.~~

~~(f)(d) Reauthorization. Based upon information provided in the Annual Surveillance Report, the Commission shall determine whether the benefits of the surveillance technology outweigh its costs and whether the public's civil liberties and civil rights have been adequately protected and safeguarded.~~

Section 2-415. Penalty for Violations.

(a) Any violation of this Ordinance, including but not limited to funding, acquiring, or utilizing surveillance technology that has not been approved pursuant to this Ordinance or utilizing surveillance technology in a manner or for a purpose that has not been approved pursuant to this Ordinance, constitutes an injury and any person may institute proceedings for injunctive relief, declaratory relief, writ of mandamus, or evidence suppression in any court of competent jurisdiction to enforce this Ordinance.

(b) A court shall award costs and reasonable attorneys' fees to the plaintiff who is the prevailing party in an action brought to enforce this Ordinance.

~~(c) Contracts. It shall be unlawful for the city to enter into any contract or other agreement that conflicts with the provisions of this Ordinance, and any conflicting provisions in such~~

~~contracts or agreements, including but not limited to non-disclosure agreements, shall be deemed void and legally unenforceable. This section shall not apply to collective bargaining agreements and related memorandums of agreement or understanding that pre-date this Ordinance.~~

~~(d) Receipt of Surveillance Data. It shall be unlawful for the city or any municipal entity to enter into any contract or other agreement that facilitates the receipt of surveillance data from, or provision of surveillance data to any non-governmental entity in exchange for any monetary or any other form of consideration from any source, including the assessment of any additional fees, interest, or surcharges on unpaid fines or debts. Any contracts or agreements signed prior to the enactment of this Ordinance that violate this section shall be terminated as soon as is legally permissible.~~

Section 2-416 - 2-425. Reserved.

SECTION 3. REPEALER.

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 4. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 5. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the City of Miami Beach, Florida. The sections of this Ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 6. EFFECTIVE DATE.

This Ordinance shall take effect 10 days after adoption.

PASSED and ADOPTED this _____ day of _____, 2016.

ATTEST:

Mayor Philip Levine

Rafael E. Granado, City Clerk

~~Strikethrough~~ denotes deletions
Underline denotes new language

(Sponsored by Commissioner Michael Grieco)