

## Jeremy Ogul

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**From:** Margaret Baker <mbakerdrph@gmail.com>  
**Sent:** Friday, June 24, 2022 1:51 PM  
**To:** privacytaskforce@chulavistaca.gov  
**Cc:** Sophia Rodriguez  
**Subject:** Resources and Updates for June 27 Privacy Task Force meeting  
**Attachments:** Letter to CV Tech & Privacy Task Force\_2022-04-25.pdf; Revised Surveillance and Community Safety Ordinance\_2022-06-18.pdf; Revised Privacy Advisory Commission Ordinance\_2022-06-18-2.pdf

**Warning:  
External  
Email**

Dear Task Force Members,

Since your first meeting when we presented our letter (See attached), we have continued to work to improve the language of two proposed ordinances (Also attached):

- Surveillance and Community Safety Ordinance
- Privacy Advisory Commission Ordinance

These ordinances have been developed with input from numerous groups including TRUST San Diego Coalition, Secure Justice, and other members of our ad hoc community group.

As we suggested in a prior email, we highly recommend that you to take time in an upcoming meeting to invite representatives from TRUST SD and Secure Justice organizations to present and answer your questions about their on-the-ground work and experience initiating and implementing surveillance ordinances in their respective cities of San Diego and Oakland, CA.

Also, we would like to share the following articles in anticipation of our presentation at your meeting on Monday, June 27, 2022.

Here are some resources and updates on the urgent need to protect privacy and civil liberties:

- "Cities turn to privacy boards to rebuild trust" (Sarah Wray, Cities Today June 9, 2022) <https://cities-today.com/cities-turn-to-privacy-boards-to-rebuild-trust/>
- "Lawsuit settles debate: California police share drivers' location data out of state is illegal" (Cody Delaney, inewsource June 3, 2022) [https://inewsource.org/2022/06/03/lawsuit-california-police-share-drivers-location-illegal/?utm\\_medium=email&mc\\_cid=aa5e6ad43e&mc\\_eid=3c2e65051c](https://inewsource.org/2022/06/03/lawsuit-california-police-share-drivers-location-illegal/?utm_medium=email&mc_cid=aa5e6ad43e&mc_eid=3c2e65051c)
- "Privacy concerns still surround Chula Vista's contract with Motorola" (Amita Sharma, KPBS May 27, 2022) <https://www.kpbs.org/news/local/2022/05/27/privacy-concerns-still-surround-chula-vistas-contract-with-motorola-despite-changes>
- "Police Surveillance and Facial Recognition: Why data privacy is imperative for communities of color" (Nicol Turner Lee and Caitlin Chin, Brookings Institution April 12, 2022) <https://www.brookings.edu/research/police-surveillance-and-facial-recognition-why-data-privacy-is-an-imperative-for-communities-of-color/?amp>
- "Pregnancy Panopticon: Abortion Surveillance After Roe" (S.T.O.P. - The Surveillance Technology Oversight Project May 24, 2022) <https://www.stopspying.org/pregnancy-panopticon>

Thank you for your hard work and commitment!

Margaret A. Baker, DrPH  
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South Bay People Power promotes social justice through nonpartisan civic engagement.

April 25, 2022

**To:** Technology and Privacy Advisory Task Force Members

**Re:** Need for a Surveillance and Community Safety Ordinance in Chula Vista

Congratulations on your appointment to the newly formed Technology and Privacy Advisory Task Force.

We, the undersigned community, civil rights, and service organizations are writing to highlight the urgent need for a surveillance technology and privacy ordinance in the City of Chula Vista. For over a year, we have been voicing our concerns and studying best practices in cities, like the City of San Diego, that also face challenges associated with the increased use of surveillance technology. We have developed an ordinance based on our research, and ask you to build on our proposed Surveillance and Community Safety Ordinance and recommend its adoption by the Chula Vista City Council.

Surveillance technology carries inherent risks to individual privacy, civil rights, and civil liberties that must be protected by enforceable ordinances, consistent policies and practices, and independent oversight. Transparency, accountability, and oversight of police and governmental use of surveillance technology cannot simply be left implicit within broad technology policy or subsumed within a general set of privacy policies covering less intrusive technologies. Surveillance technology includes not just technology capable of accessing information, but also technology systems that are capable of aggregating information from both public and non-public sources. Such information, in the aggregate or when pieced together with other information, has the potential to reveal a wealth of detail about a person's familial, political, professional, religious, or sexual associations. We ask that you address the special risks associated with current and potential uses of surveillance technology and data in all phases of your information-gathering and deliberation process, and that you prioritize an enforceable ordinance as part of the technology privacy policy package ultimately proposed by the Task Force and adopted by the City of Chula Vista.

The City of Chula Vista takes great public pride in the steps it has taken to achieve its status both as a Welcoming City and as a Smart City. Surveillance technology offers potential benefits for certain efficiencies in government and law enforcement, but it can also negatively impact the privacy, free movement and other civil rights and liberties of community members, and undermine community trust and safety. Historically, surveillance has been used to intimidate and control certain communities and groups more than others. As a Welcoming City, Chula Vista must do more to protect the civil liberties, rights and safety of all.

Investigative reporting in local and national media has raised awareness and revealed serious concerns about lack of transparency, accountability, and oversight of Chula Vista's surveillance programs. Instead of learning from our city officials that CVPD shared our ALPR data with ICE, CBP, and other federal agencies for over three years, we have been shocked to learn about such practices through outside sources. Further, we have been frustrated by the City's handling of these revelations and the resulting scrutiny. Rather than acting swiftly to acknowledge and

**Re:** Need for a Surveillance and Community Safety Ordinance in Chula Vista, April 25, 2022

correct the mistakes, establish independent oversight, and repair damaged community relationships, Chula Vista city officials have continued to prioritize and expand police surveillance programs despite concerted public opposition. These events have revealed larger issues regarding lack of open government, trust and safety that affect all members of our community, and especially the most marginalized. The lasting harm to community trust in Chula Vista caused by the City's failure to exercise accountability and full transparency regarding its surveillance technology programs cannot be overstated.

Formation of the Task Force gives us renewed hope for genuine engagement with community groups and for demonstrated commitment to the values we share and which stand at the core of the "Welcoming City" model. We expect and demand that Chula Vista meet a high standard of accountability, transparency, community consultation, and open governance.

Members of our organizations possess relevant lived experience, professional knowledge, and other types of expertise. In writing our Surveillance and Community Safety Ordinance for Chula Vista, we drew upon a readily available body of expert knowledge as well as a number of existing ordinances in California cities. Our draft ordinance includes these main features:

- A detailed, enforceable process for all phases of the approval, acquisition, use, and oversight of all city surveillance technology
- Parameters for formation of an independent civilian body to oversee this process and make informed recommendations to the City Council
- Provisions for:
  - Informed public debate at the earliest stage of the process
  - Determination of whether benefits outweigh costs and concerns
  - Establishment of a thorough surveillance use policy
  - Ongoing independent oversight and accountability

We look forward to discussing this with you in more detail as the Task Force carefully considers our proposed Surveillance and Community Safety Ordinance. A pdf version of the Ordinance was sent to the Task Force via email.

A Smart City must constantly anticipate and mitigate the unique and evolving risks associated with surveillance technology, and a Welcoming City must always prioritize and protect its community members' rights and privacy. We stand ready to work with you in the coming months as the Task Force tackles these complex issues and proposes policies to protect and provide real safety for all community members.

Thank you for your consideration.

Sincerely yours,

Ad Hoc STOP Chula Vista PD Surveillance group  
[STOPCVSurveillance@gmail.com](mailto:STOPCVSurveillance@gmail.com)

**Re: Need for a Surveillance and Community Safety Ordinance in Chula Vista, April 25, 2022**

Supporting Organization Signatories

Advancing Students Forward

AFT 1931 Local - Immigrant Student Support Committee

Alliance of Californians for Community Empowerment - ACCE

Border Angels

Change Begins With ME

Espacio Migrante

Indivisible San Diego Persist

Oakland Privacy

Partnership for the Advancement of New Americans (PANA)

Pillars of the Community

Rise Up San Diego

San Diego Immigrant Rights Consortium

Secure Justice

Showing Up for Racial Justice - San Diego (SURJ-SD)

South Bay People Power

Take Action San Diego

Tech Lead San Diego

Tech Workers Coalition San Diego

Think Dignity

TRUST SD (Transparent and Responsible Use of Surveillance Technology San Diego) Coalition  
San Diego

USD Center for Digital Civil Society

USD Immigration Law Society

USD Values Institute

US-Mexico Border Program, American Friends Service Committee

We The People SD

# Surveillance & Community Safety Ordinance

## ORDINANCE ADDING CHAPTER 9.07 TO THE CHULA VISTA MUNICIPAL CODE ESTABLISHING RULES FOR THE CITY'S ACQUISITION AND USE OF SURVEILLANCE TECHNOLOGY

WHEREAS, the City of Chula Vista ("City") takes great public pride in its status as a Welcoming City and as a Smart City; and

WHEREAS, smart public safety decisions and the protection of all community members require that municipalities ensure public debate and community involvement in decisions about whether to acquire or use surveillance technology; moreover, that real public safety requires that residents have a voice in these decisions; and

WHEREAS, across the U.S. cities that have adhered to a "privacy bill of rights" approach are able to win public support in implementing the technology with proper safeguards in place to build trust. Alternatively, cities that implement new technology in secrecy, without oversight, without policy, and without broad and inclusive public input have found themselves facing scrutiny, lawsuits, and voter referendums to ban certain technologies.

WHEREAS, the City Council finds it is essential to have an informed public debate as early as possible about decisions related to the City's acquisition and use of surveillance technology; and

WHEREAS, the City Council finds that, while the use of 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, while acknowledging the significance of protecting the privacy of citizens, the City Council finds that surveillance technology may also be a valuable tool to bolster community safety and aid in the investigation and prosecution of crimes; and

WHEREAS, the City Council finds that surveillance technology includes not just technology capable of accessing non-public places or information (such as wiretaps) but also may include technology which aggregates publicly available information, because such information, in the aggregate or when pieced together with other information, has the potential

to reveal a wealth of detail about a person's familial, political, professional, religious, or sexual associations; and

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

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

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

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

NOW, THEREFORE, the City Council of the City of Chula Vista does ordain as follows:

## **Section I. Establishment**

A. This Ordinance shall be known as the *Surveillance and Community Safety Ordinance*.

B. *Chula Vista Municipal Code Chapter 9.07*, is hereby added as set forth below:

### Chapter 9.07. REGULATIONS ON CITY'S ACQUISITION AND USE OF SURVEILLANCE TECHNOLOGY

#### *C. Definitions*

1. "Annual Surveillance Report" means a written report concerning a specific surveillance technology that includes all the following:
  - a. A description of how the surveillance technology was used, including the type and quantity of data gathered or analyzed by the technology;
  - b. 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(s);
  - c. Where applicable, a breakdown of what physical objects the surveillance technology hardware was installed upon; using general descriptive terms so as

not to reveal the specific location of such hardware; for surveillance technology software, a breakdown of what data sources the surveillance technology was applied to;

- d. Where applicable, a breakdown of where the surveillance technology was deployed geographically, by each Police Area in the relevant year;
  - e. A summary of community complaints or concerns about the surveillance technology, and an analysis of the technology's adopted use policy and whether it is adequate in protecting civil rights and civil liberties;
  - f. The results of any internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response unless the release of such information is prohibited by law, including but not limited to confidential personnel file information;
  - g. Information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response;
  - h. Information, including crime statistics, that helps the community assess whether the surveillance technology has been effective at achieving its identified purposes;
  - i. Statistics and information about public records act requests regarding the relevant subject surveillance technology, including response rates;
  - j. 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; and
  - k. Any requested modifications to the Surveillance Use Policy and a detailed basis for the request.
2. "City" means any department, agency, bureau, and/or subordinate division of the City of Chula Vista as provided by Chapter XXXX of the Chula Vista Municipal Code.
  3. "City staff" means City personnel authorized by the City Administrator or designee to seek City Council Approval of Surveillance Technology in conformance with this Chapter.
  4. "Continuing agreement" means an agreement that automatically renews unless terminated by one party.



5. "Exigent circumstances" means a law enforcement agency's good faith belief that an emergency involving imminent danger of death or serious physical injury to any person requires the use of surveillance technology or the information it provides.
6. "Personal communication device" means a mobile telephone, a personal digital assistant, a wireless capable tablet and a similar wireless two-way communications and/or portable Internet accessing devices, whether procured or subsidized by a City entity or personally owned, that is used in the regular course of City business.
7. "Police area" refers to each of the geographic districts assigned to a police commander and as such districts are amended from time to time.
8. "Surveillance" (or "spying") means to observe or analyze the movements, behavior, data, or actions of individuals. Individuals include those whose identity can be revealed by license plate data when combined with any other record.
9. "Surveillance technology" means any software, electronic device, or system utilizing an electronic device that is used or similarly designed or primarily intended to collect, retain, analyze, process, or share audio, electronic, visual, location, thermal, olfactory, biometric, 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 the following: cell site simulators (Stingrays); automated license plate readers; gunshot detectors (ShotSpotter); facial recognition software; thermal imaging systems; body-worn cameras; social media analytics software; gait analysis software; video cameras that can record audio or video and transmit or be remotely accessed; software used to monitor social media services; software used to forecast and/or predict criminal activity or criminality; and biometric identification hardware or software.

"Surveillance technology" 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 above:

- a. Routine office hardware, such as televisions, computers, credit card machines, badge readers, copy machines, and printers, that is in widespread use and will not be used for any surveillance or law enforcement 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;

- e. Manually-operated technological devices used primarily for internal municipal entity communications and are not designed to surreptitiously collect surveillance data, such as radios and email systems;
  - f. City databases that do not contain any data or other information collected, captured, recorded, retained, processed, intercepted, or analyzed by surveillance technology, including payroll, accounting, or other fiscal databases;
  - g. Medical equipment used to diagnose, treat, or prevent disease or injury;
  - h. Police department interview room cameras;
  - i. Police department case management systems;
  - j. Police department early warning systems; and,
  - k. Personal Communication Devices that have not been modified beyond stock manufacturer capabilities in a manner described above.
10. "Surveillance Impact Report" means a publicly released written report including at a minimum the following:
- a. Description: Information describing the surveillance technology and how it works, including product descriptions from manufacturers;
  - b. Purpose: Information on the proposed purposes(s) for the surveillance technology;
  - c. Location: The location(s) it may be deployed, using general descriptive terms, and crime statistics for any location(s);
  - d. Impact: An assessment of the technology's adopted use policy and whether it is adequate in protecting civil rights and liberties and whether the surveillance technology was used or deployed, intentionally or inadvertently, in a manner that is discriminatory, viewpoint-based, or biased via algorithm;
  - e. Mitigations: Identify specific, affirmative technical and procedural measures that will be implemented to safeguard the public from each such impacts;
  - f. Data Types and Sources: A list of all types and sources of data to be collected, analyzed, or processed by the surveillance technology, including "open source" data, scores, reports, logic or algorithm used, and any additional information derived therefrom;

- g. Data Security: Information about the steps that will be taken to ensure that adequate security measures are used to safeguard the data collected or generated by the technology from unauthorized access or disclosure;
- h. Fiscal Costs and Sources: The fiscal costs for the surveillance technology, including initial purchase, personnel and other ongoing costs, and any past, current or potential sources of funding;
- i. Third-Party Dependence: Whether use or maintenance of the technology will require data gathered by the technology to be handled or stored by a third-party vendor on an ongoing basis;
- j. Alternatives: A summary of all alternative methods (whether involving the use of a new technology or not) considered before deciding to use the proposed surveillance technology, including the costs and benefits associated with each alternative and an explanation of the reasons why each alternative is inadequate; and,
- k. Track Record: A summary of the experience (if any) other entities, especially government entities, have had with the proposed technology, including, if available, quantitative information about the effectiveness of the proposed technology in achieving its stated purpose in other jurisdictions, and any known adverse information about the technology (such as unanticipated costs, failures, or civil rights and civil liberties abuses).

11. "Surveillance Use Policy" means a publicly released and legally enforceable policy for use of the surveillance technology that at a minimum specifies the following:

- a. Purpose: The specific purpose(s) that the surveillance technology is intended to advance;
- b. Authorized Use: The specific uses that are authorized, and the rules and processes required prior to such use;
- c. Data Collection: The information that can be collected by the surveillance technology. Where applicable, list any data sources the technology will rely upon, including "open source" data;
- d. Data Access: The category of individuals who can access or use the collected information, and the rules and processes required prior to access or use of the information;
- e. Data Protection: The safeguards that protect information from unauthorized access, including encryption and access control mechanisms;

- f. Data Retention: The time period, if any, for which information collected by the surveillance technology will be routinely retained, the reason such retention period is appropriate to further the purpose(s), the process by which the information is regularly deleted after that period lapses, and the specific conditions that must be met to retain information beyond that period;
- g. Public Access: How collected information can be accessed or used by members of the public, including criminal defendants;
- h. Third Party Data Sharing: If and how other City departments, bureaus, divisions, or non-City entities can access or use the information, including any required justification or legal standard necessary to do so and any obligations imposed on the recipient of the information;
- i. Training: The training required for any individual authorized to use the surveillance technology or to access information collected by the surveillance technology;
- j. Auditing and Oversight: The mechanisms to ensure that the Surveillance Use Policy is followed, including internal 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 legally enforceable sanctions for violations of the policy; and
- k. Maintenance: The mechanisms and procedures to ensure that the security and integrity of the surveillance technology and collected information will be maintained.

## **Section II. Privacy Advisory Commission (PAC) Notification and Review Requirements**

### *A. PAC Notification Required Prior to City Solicitation of Funds and Proposals for Surveillance Technology.*

1. City staff shall notify the Chair of the Privacy Advisory Commission prior to:
  - a. Seeking or soliciting funds for surveillance technology, including but not limited to applying for a grant; or,
  - b. Soliciting proposals with a non-City entity to acquire, share or otherwise use surveillance technology or the information it provides.
2. Upon notification by City staff, the Chair of the Privacy Advisory Commission shall place the item on the agenda at the next Privacy Advisory Commission meeting for

discussion and possible action. At this meeting, City staff shall inform the Privacy Advisory Commission of the need for the funds or equipment, or shall otherwise justify the action City staff will seek Council approval for pursuant to XXXX. The Privacy Advisory Commission may make a recommendation to the City Council by voting its approval to proceed, object to the proposal, recommend that the City staff modify the proposal, or take no action.

3. Should the Privacy Advisory Commission not make a recommendation pursuant to XXXX City staff may proceed and seek Council Approval of the proposed Surveillance Technology initiative pursuant to the requirements of Section XXXX.

*B. PAC Review and Approval Required for New Surveillance Technology Before City Council Approval*

1. Prior to seeking City Council approval under Section XXXX, City staff shall submit a Surveillance Impact Report and a Surveillance Use Policy for the proposed new surveillance technology initiative to the Privacy Advisory Commission for its review and approval at a regularly noticed meeting. The Surveillance Impact Report and Surveillance Use Policy must address the specific subject matter specified for such reports as defined under XXXX.

2. The Privacy Advisory Commission shall approve, modify, or reject the proposed Surveillance Use Policy. If the Privacy Advisory Commission proposes that the Surveillance Use Policy be modified, the Privacy Advisory Commission shall propose such modifications to City staff. City staff shall present such modifications to the Privacy Advisory Commission for approval before seeking City Council approval under Section XXXX.

3. Failure by the Privacy Advisory Commission to make a determination on a presented item within 90 days of submission shall enable the City entity to proceed to the City Council for approval of the item.

4. City staff seeking City Council approval shall schedule for City Council consideration and approval of the proposed Surveillance Use Policy, and include Privacy Advisory Commission recommendations at least fifteen (15) days prior to a mandatory, properly-noticed, germane public hearing. Approval may only occur at a public hearing.

*C. PAC Review Requirements for Existing Surveillance Technology Before City Council Approval*

1. Prior to seeking City Council approval for existing City surveillance technology under Section XXXX, City staff shall submit a Surveillance Impact Report and Surveillance Use Policy to the Privacy Advisory Commission for its review, and for the public's review at least fifteen (15) days prior to a properly-noticed meeting, so the public can prepare for and participate in the PAC meetings. The Surveillance Impact Report and Surveillance

Use Policy must address the specific subject matter specified for such reports as defined under XXXX.

2. Prior to submitting the Surveillance Impact Report and proposed Surveillance Use Policy as described above, City staff shall present to the Privacy Advisory Commission, and for public review, a list of surveillance technology possessed and/or used by the City.

3. The Privacy Advisory Commission shall rank the items in order of potential impact to civil liberties.

4. Within sixty (60) days of the Privacy Advisory Commission's action in XXXX. City staff shall submit at least one (1) Surveillance Impact Report and proposed Surveillance Use Policy per month to the Privacy Advisory Commission for review, beginning with the highest ranking items as determined by the Privacy Advisory Commission, and continuing thereafter each month until a policy has been submitted for each item on the list.

5. Failure by the Privacy Advisory Commission to make its recommendation on any item within 90 days of submission shall enable City staff to proceed to the City Council for approval of the item pursuant to Section XXXX.

### **Section III. City Council Approval Requirements for New and Existing Surveillance Technology**

A. City staff must obtain City Council approval prior to any of the following:

1. Accepting state or federal funds or in-kind or other donations for surveillance technology;

2. Acquiring new surveillance technology, including but not limited to procuring such technology without the exchange of monies or consideration;

3. Using existing surveillance technology, or using new surveillance technology, or the information it provides for a purpose, in a manner, or in a location not previously approved by the City Council pursuant to the requirements of this ordinance; or

4. Entering into a continuing agreement or written agreement with a non-City entity to acquire, share or otherwise use surveillance technology or the information it provides, including data-sharing agreements.

5. Notwithstanding any other provision of this section, nothing herein shall be construed to prevent, restrict or interfere with any person providing evidence or information derived from surveillance technology to a law enforcement agency for the purposes of

conducting a criminal investigation or the law enforcement agency from receiving such evidence or information.

#### *B. City Council Approval Process*

1. After the PAC Notification and Review requirements in Section XXXX have been met, City staff seeking City Council approval shall schedule for City Council consideration and approval of the proposed Surveillance Impact Report and proposed Surveillance Use Policy, and include Privacy Advisory Commission recommendations at least fifteen (15) days prior to a mandatory, properly-noticed, germane public hearing. Approval may only occur at a public hearing.

2. The City Council shall only approve any action as provided in this Chapter after first considering the recommendation of the Privacy Advisory Commission, and subsequently making a determination that the benefits to the community of the surveillance technology outweigh the costs; that the proposal will safeguard civil liberties and civil rights; and that, in the City Council's judgment, no alternative with a lesser economic cost or impact on civil rights or civil liberties would be as effective.

3. For Approval of Existing Surveillance Technology for which the Privacy Advisory Commission failed to make its recommendation within ninety (90) days of review as provided for under Section XXXX: if the City Council has not reviewed and approved such item within four City Council meetings from when the item was initially scheduled for City Council consideration, the City shall cease its use of the surveillance technology until such review and approval occurs.

#### *C. Surveillance Impact Reports and Surveillance Use Policies are Public Records*

City staff shall make the Surveillance Impact Report and Surveillance Use Policy, as updated from time to time, available to the public as long as the City uses the surveillance technology in accordance with its request pursuant to Section XXXX.

### **Section IV. Use of Unapproved Technology during Exigent Circumstances or Large-Scale Event**

City staff may not temporarily acquire or use surveillance technology and the data derived from that use in a manner not expressly allowed by a Surveillance Use Policy.

### **Section V. Oversight Following City Council Approval**

#### *A. Annual Surveillance Report*

1. On July 1st of each year, or at the next closest regularly scheduled Privacy Advisory Commission meeting, City staff must present a written Annual Surveillance Report for Privacy Advisory Commission review for each approved surveillance technology item. If

City staff is unable to meet the July 1st deadline, City staff shall notify the Privacy Advisory Commission in writing of staff's request to extend this period, and the reasons for that request. The Privacy Advisory Commission may grant a single extension of up to sixty (60) days to comply with this provision.

2. After review by the Privacy Advisory Commission, City staff shall submit the Annual Surveillance Report to the City Council.

3. The Privacy Advisory Commission shall recommend to the City Council that the benefits to the community of the surveillance technology outweigh the costs and that civil liberties and civil rights are safeguarded; that use of the surveillance technology cease; or propose modifications to the corresponding Surveillance Use Policy that will resolve the concerns.

4. Failure by the Privacy Advisory Commission to make its recommendation on the item within 90 days of submission shall enable the City entity to proceed to the City Council for approval of the Annual Surveillance Report.

*B. Summary Of All Requests And Recommendations And City Council Determination*

1. In addition to the above submission of any Annual Surveillance Report, City staff shall provide in its report to the City Council a summary of all requests for City Council approval pursuant to Section XXXX and the pertinent Privacy Advisory Commission recommendation, including whether the City Council approved or rejected the proposal and/or required changes to a proposed Surveillance Use Policy before approval.

2. Based upon information provided in City staff's Annual Surveillance Report and after considering the recommendation of the Privacy Advisory Commission, the City Council shall revisit its "cost benefit" analysis as provided in Section XXXX and either uphold or set aside the previous determination. Should the City Council set aside its previous determination, the City's use of the surveillance technology must cease. Alternatively, City Council may require modifications to the Surveillance Use Policy that will resolve any deficiencies.

## **Section VI. Enforcement**

*A. Violations of this article are subject to the following remedies:*

1. Any violation of this Ordinance, or of a Surveillance Use Policy promulgated under this Ordinance, constitutes an injury and any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in the Superior Court of the State of California to enforce this Ordinance. An action instituted under this paragraph shall be brought against the respective City department, and the City of Chula Vista, and, if necessary to effectuate compliance with this Ordinance or a Surveillance Use Policy (including to expunge information unlawfully collected, retained, or shared thereunder), any other



governmental agency with possession, custody, or control of data subject to this Ordinance, to the extent permitted by law.

2. Persons subjected to surveillance technology in violation of this ordinance shall be notified through mail within 10 days of confirmation that their information has been obtained, retained, accessed, shared or used in violation of this ordinance.

3. Any person who has been subjected to a surveillance technology in violation of this Ordinance, or about whom information has been obtained, retained, accessed, shared, or used in violation of this Ordinance or of a Surveillance Use Policy promulgated under this Ordinance, may institute proceedings in the Superior Court of the State of California against the City of Chula Vista and shall be entitled to recover actual damages (but not less than liquidated damages of \$1,000 or \$100 per day for each day of violation, whichever is greater).

4. A court shall award costs and reasonable attorneys' fees to the plaintiff who is the prevailing party in; an action brought under paragraphs (A) or (B).

5. Violations of this Ordinance by a City employee shall result in consequences that may include retraining, suspension, or termination, subject to due process requirements and in accordance with any Memorandums of Understanding with employee bargaining units.

## **Section VII. Secrecy of Surveillance Technology**

It shall be unlawful for the City to enter into any surveillance-related contract or other agreement that conflicts with the provisions of this Ordinance, and any conflicting provisions in such future contracts or agreements, including but not limited to non-disclosure agreements, shall be deemed void and legally unenforceable.

To the extent permitted by law, the City shall publicly disclose all of its surveillance-related contracts, including any and all related non-disclosure agreements, if any, regardless of any contract terms to the contrary.

## **Section VIII. Whistleblower Protections**

A. Neither the City nor anyone acting on behalf of the City may take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment, including but not limited to discriminating with respect to compensation, terms and conditions of employment, access to information, restrictions on due process rights, or civil or criminal liability, because:

1. The employee or applicant was perceived to, about to, or assisted in any lawful disclosure of information concerning the funding, acquisition, or use of a surveillance

technology or surveillance data based upon a good faith belief that the disclosure evidenced a violation of this Ordinance; or

2. The employee or applicant was perceived to, about to, or assisted or participated in any proceeding or action to carry out the purposes of this Ordinance.

B. It shall be grounds for disciplinary action for a City employee or anyone else acting on behalf of the City to retaliate against another City employee or applicant who makes a good-faith complaint that there has been a failure to comply with any Surveillance Use Policy or Administrative Instruction promulgated under this Ordinance.

C. Any employee or applicant who is injured by a violation of this section may institute a proceeding for monetary damages and injunctive relief against the City in any court of competent jurisdiction.

## **Section IX. Existing Surveillance Use Policies Must Be Adopted as Ordinances**

Within 180 days of the effective date of this ordinance, City staff shall return to City Council with an ordinance or ordinances for adoption and codification of any existing Surveillance Use Policies under the Chula Vista Municipal Code, but only after proper PAC and City Council review of all existing Surveillance Use Policies, and incorporating a 15-day public notice period in each instance to allow the public to prepare and participate in the meetings.

## **Section X. Severability**

If any portion of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or unconstitutionality shall not affect the validity or enforceability of the remaining portions of the Ordinance, or its application to any other person or circumstance. The City Council of the City of Chula Vista hereby declares that it would have adopted each section, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of the Ordinance be declared invalid, unenforceable or unconstitutional.

## **Section XI. Construction**

The City Council of the City of Chula Vista intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

## **Section XII. Effective Date**

This Ordinance shall take effect and be in force on the thirtieth day after its final passage.

## **Section XIII. Publication**

The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

Presented by

Approved as to form by

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Maria Kachadoorian  
City Manager

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Glen R. Googins  
City Attorney

# Privacy Advisory Commission Ordinance

ORDINANCE NO. \_\_\_\_\_

## ORDINANCE OF THE CITY OF CHULA VISTA ESTABLISHING THE CHULA VISTA PRIVACY ADVISORY COMMISSION PROVIDING FOR THE APPOINTMENT OF MEMBERS THEREOF, AND DEFINING THE DUTIES AND FUNCTIONS OF SAID COMMISSION

WHEREAS, the Chula Vista City Council (City Council) finds that the use of surveillance technology is important to protect public health and safety, but such use must be appropriately monitored and regulated to protect the privacy and other rights of Chula Vista residents and visitors, and

WHEREAS the City of Chula Vista has been building on a detailed Smart City Strategic Action Plan since 2017 with limited opportunity for community input, oversight or control; and

WHEREAS Chula Vista seeks to maintain its designation by Welcoming America as a certified Welcoming City, City Council strives to comply with the criteria in the Welcoming Standard, in particular, relevant criteria relating to “Safe Communities”, “Equitable Access”, and “Civic Engagement”; and

WHEREAS, the City Council recognizes the use of open data associated with surveillance technology offers benefits to the City, but those benefits must also be weighed against the costs, both fiscal and civil liberties; and

WHEREAS, the City Council recognizes that surveillance technology may be a valuable tool to support community safety, investigations, and prosecution of crimes, but must be balanced with the individual’s right to privacy, it also; and

WHEREAS, the City Council recognizes that privacy is not just a personal matter; there are societal consequences to privacy degradation over time as well as societal benefits with increased trust and transparency; and

WHEREAS, the City Council finds that surveillance technology includes not just technology capable of accessing non-public places or information, but also may include technology that aggregates publicly-available information, which, in the aggregate or when pieced together with other information, has the potential to reveal details about a person’s familial, political, professional, religious, or intimate associations; and

WHEREAS, the City Council recognizes that government surveillance may chill associational and expressive freedoms; and

WHEREAS, the City Council recognizes that data from surveillance technology can be used to intimidate and oppress certain groups more than others, including those that are defined by a common race, ethnicity, religion, national origin, income level, sexual orientation, or political perspective; and

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

WHEREAS, the City Council finds that decisions regarding if and how the City's surveillance technologies should be funded, acquired, or used should include meaningful public input; and

WHEREAS, on January 18, 2022, City Council unanimously approved creation of a "Technology and Privacy Advisory Task Force" to draft policy and recommendations to be presented to the City Council for consideration, and further requested that the City Administration prepare a "Citywide Technology Oversight Policy"; and

WHEREAS, the said Technology and Privacy Advisory Task Force recommends creation of a new permanent citizen advisory board known as the "Privacy Advisory Commission" to advise the Mayor and City Council on transparency, accountability, and public deliberation in the City's acquisition and usage of surveillance technology and data; and

WHEREAS, Article VI, Section 600 of the City Charter reserves to the City Council the authority to create boards and commissions by ordinance, and to prescribe their function, powers, duties, membership, appointment, terms, qualifications, eligibility, reimbursements for expenses, if any;

NOW THEREFORE the City Council of the City of Chula Vista does hereby ordain as follows:

## **Section I. Establishment**

### *A. Establishment and Appropriations*

Pursuant to Article VI of the Charter of the City of Chula Vista, there is hereby created a Chula Vista Privacy Advisory Commission (hereinafter referred to as the "Privacy Commission" or "Commission"). Appropriations of funds sufficient for the efficient and proper functioning of the Privacy Commission shall be included in the annual budget by the City Council.

### *B. Purpose and Intent*

It is the purpose and intent of the City Council to establish a Privacy Commission to serve as an advisory body to the Mayor and City Council on policies and issues related to

privacy and surveillance. The Commission will provide advice intended to ensure transparency, accountability, and public deliberation in the *City's* acquisition and use of surveillance technology.

#### *C. Definitions*

For purposes of this ordinance, all words appearing in italics have the same meaning as in the CVMC Chapter XXXX, known as the Chula Vista Surveillance and Community Safety Ordinance.

#### *D. Membership*

The Privacy Advisory Commission shall consist of nine members, who shall serve without compensation. At least six members shall be Chula Vista residents. Members shall be appointed by the Mayor and confirmed by the City Council.

#### *E. Qualifications of Members*

All members of the Privacy Advisory Commission shall be persons who have a demonstrated interest in privacy rights through work experience, civic participation, and/or political advocacy.

The Mayor shall appoint the nine members from the following representative areas of organization interest, expertise, and background:

1. At least one attorney or legal scholar with expertise in privacy or civil rights, or a representative of an organization with expertise in privacy or civil rights;
2. One auditor or certified public accountant;
3. One computer hardware, software, or encryption security professional;
4. One member of an organization that focuses on open government and transparency or an individual, such as a university researcher, with experience working on open government and transparency; and
5. At least four members from equity-focused organizations serving or protecting the rights of communities and groups historically subject to disproportionate surveillance, including communities of color, immigrant communities, religious minorities, and groups concerned with privacy and protest.

Member qualifications and eligibility shall be in accordance with Chula Vista Charter Section 602 and CVCM Section 2.25.030. No member may have a state law-prohibited financial interest, employment, or policy-making position in any commercial or for-profit facility, research center, or other organization that sells data products, surveillance equipment, or otherwise profits from recommendations made by the Privacy Advisory Commission.

#### *F. Terms*

Pursuant to Article VI, Section 602 of the City Charter, members shall be appointed by motion of the City Council adopted by at least three affirmative votes. The members thereof shall serve for a term of four (4) years and until their respective successors are appointed and confirmed. Members shall be limited to a maximum of two (2) consecutive terms and an interval

of two (2) years must pass before a person who has served two (2) consecutive terms may be reappointed to the body upon which the member had served.

Initial members shall be appointed in staggered terms by lot. For the initial appointments, three (3) members shall be appointed to an initial term that will expire on July 1, 2023, and two (2) members shall be appointed to an initial term that will expire on July 1 of each subsequent year. Initial appointments to a term of two years or less shall not have the initial term count for purposes of the eight-year term limit.

#### *G. Rules*

The Commission shall hold regular meetings as required by ordinance of the City Council, and such special meetings as such commissions may require. All proceedings shall be open to the public.

At the first regular meeting, and subsequently at the first regular meeting of each year following the first day of July of every year, members of the Privacy Advisory Commission shall select a chairperson and a vice chairperson.

The Commission shall adopt rules for the government of its business and procedures in compliance with the law. The Commission rules shall provide that a quorum of the Privacy Advisory Commission is five people.

Pursuant to Article VI, Section 603 of the City Charter, the Commission shall have the same power as the City Council to compel the attendance of witnesses, to examine them under oath and to compel the production of evidence before it.

## **Section II. Privacy Advisory Commission: Duties and Functions**

#### *A. Duties and Functions*

The Privacy Advisory Commission shall:

1. Provide advice and technical assistance to the *City* on best practices to protect resident and visitor privacy rights in connection with the *City's* acquisition and use of surveillance technology.
2. Conduct meetings and use other public forums to collect and receive public input on the above subject matter.
3. Review Surveillance Impact Reports and Surveillance Use Policies for all existing and new surveillance technology and make recommendations prior to the *City* seeking solicitation of funds and proposals for surveillance technology.
4. Submit annual reports and recommendations to the City Council regarding:
  - a. The *City's* use of surveillance technology; and
  - b. Whether new *City* surveillance technology privacy and data retention policies should be developed, or existing policies should be amended.
  - c. Provide analysis to the City Council of pending federal, state, and local legislation relevant to the *City's* purchase and/or use of surveillance technology.

- d. The Privacy Advisory Commission shall make reports, findings, and recommendations either to the City Manager or the City Council, as appropriate. The Commission shall present an annual written report to the City Council. The Commission may submit recommendations to the City Council following submission to the City Manager.

#### *B. Meetings and Voting*

The Commission shall meet at an established regular interval, day of the week, time, and location suitable for its purpose. Such meetings shall be designated regular meetings. Other meetings scheduled for a time or place other than the regular day, time and location shall be designated special meetings. Written notice of special meetings shall be provided to the Commission members, and all meetings of the Commission shall comport with any *City* or State open meetings laws, policies, or obligations.

The Commission shall, in consultation with the City Manager, establish bylaws, rules and procedures for the conduct of its business by a majority vote of the members present. Voting shall be required for the adoption of any motion or resolution. Any action by the Commission shall be approved by a majority of members present, provided a quorum exists.

#### *C. Staff*

Staff assistance may be provided to the Board as determined by the City Manager, pursuant to his or her authority under the Charter to administer all affairs of the *City* under his or her jurisdiction.

### **Section III. Severability**

If any portion of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or unconstitutionality shall not affect the validity or enforceability of the remaining portions of the Ordinance, or its application to any other person or circumstance. The City Council of the City of Chula Vista hereby declares that it would have adopted each section, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of the Ordinance be declared invalid, unenforceable or unconstitutional.

### **Section IV. Construction**

The City Council of the City of Chula Vista intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.



## **Section V. Effective Date**

This Ordinance shall take effect and be in force on the thirtieth day after its final passage.

## **Section VI. Publication**

The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

Presented by:

Approved as to form by

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Maria Kachadoorian  
City Manager

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Glen R. Googins  
City Attorney