CITY OF LAWRENCE
APPROVED ORDINANCE
DOC. 133/2018

Be it ordained by the City Council of the City of Lawrence that the following is approved by the Lawrence City Council:

By **ADDING** a new **Chapter 9.25 of the Municipal Code (Surveillance Technology),** to be inserted in the proper numerical order:

9.25.010 Purpose
The purpose of this section is to promote transparency and uphold the civil rights and civil liberties of Lawrence residents while using surveillance technologies. This chapter requires 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. It requires data reporting measures must be adopted that empower the Lawrence City Council and public to verify that mandated civil rights and civil liberties safeguards have been strictly adhered to.

9.25.020 Definitions
For the purposes of this section:

A. "Discriminatory" shall mean (1) disparate treatment of any individual(s) because of any real or perceived traits, characteristics, or status as to which discrimination is prohibited under the Constitution or any law of the United States, the constitution or any law of the Commonwealth of Massachusetts, or because of their association with such individual(s), or (2) disparate impact on any such individual(s) having traits, characteristics, or status.

B. "Disparate impact" shall mean an adverse effect that is disproportionately experienced by individual(s) having any traits, characteristics, or status as to which discrimination is prohibited under the Constitution or any law of the United States, the Constitution or any law of the Commonwealth of Massachusetts, than by similarly situated individual(s) not having such traits, characteristics, or status.

C. "Municipal entity" shall mean any municipal government, agency, department, bureau, division, or unit of the City of Lawrence.

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

E. "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.

    1. "Surveillance technology" includes, but is not limited to: (a) international mobile subscriber (IMSI) catchers and other cell site simulators; (b) automatic license plate readers; (c) electronic toll readers; (d) closed-circuit television cameras; (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) x-ray vans; (i) video

and audio monitoring and/or recording technology, such as surveillance cameras, wide-angle cameras, and wearable body cameras; (j) 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) 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 any municipal entity.

2. "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 in Section 12(E): (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; (e) municipal agency databases that do not and will not contain any data or other information collected, captured, recorded, retained, processed, intercepted, or analyzed by surveillance technology; and (f) manually-operated technological devices that are used primarily for internal municipal entity communications and are not designed to surreptitiously collect surveillance data, such as radios and email systems.

F. "Viewpoint-based" shall mean targeted at any community or group or its members because of their exercise of rights protected under the First Amendment of the United States Constitution.

9.25.030 City Council Approval Mandatory for Surveillance Technology Funding, Acquisition, or Use

A. A municipal entity must obtain approval from the Lawrence City Council, subsequent to a mandatory, properly-noticed, pertinent, public hearing at which the public is afforded a fair and adequate opportunity to provide testimony prior to engaging in any of the following:

1. Seeking funds for new or existing surveillance technology, including, but not limited to, budgetary appropriations, authorization for borrowing or bonding, applying for a grant, or soliciting or 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 City Council in accordance with this section, including the sharing of surveillance data therefrom; 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.

9.25.040 Surveillance Impact Report and Surveillance Use Policy Submission

A. As a part of the process of seeking approval from the Lawrence City Council, to fund, acquire, or use surveillance technology or to enter into an agreement concerning such funding, acquisition, or use, a municipal entity shall submit to the Lawrence City Council and make publicly available a Surveillance Impact Report and Surveillance Use Policy concerning the technology at issue.

1. No use of surveillance technology by a municipal entity shall be permitted without the Lawrence City Council's express approval of the related Surveillance Impact Report and Surveillance Use Policy submitted by the municipal entity.
2. Prior to approving or rejecting a Surveillance Impact Report or Surveillance Use Policy the Lawrence City Council may request revisions be made by the submitting municipal entity.

B. Surveillance Impact Report: A Surveillance Impact Report submitted shall be a publicly released, legally enforceable written report that includes, at a minimum, the following:

1. Information describing the surveillance technology and how it works, including product descriptions from manufacturers;
2. Information on the proposed purpose(s) of the surveillance technology;
3. If the surveillance technology will not be uniformly deployed or targeted throughout the city, what factors will be used to determine when, where and how the technology is deployed or targeted;
4. The fiscal impact, if any, of the surveillance technology; and
5. An assessment identifying with specificity:
    a. Any potential adverse impacts the surveillance technology, if deployed, might have on civil liberties and civil rights; and
    b. What specific, affirmative measures will be implemented to safeguard the public from the potential adverse impacts identified.
6. Whether the municipal entity intends to share access to the surveillance equipment or the collected data with any other government entity.
7. A description of the training to be provided to operators or users of the surveillance equipment, and any images or other data obtained therefrom.

C. Surveillance Use Policy: A Surveillance Use Policy shall be publicly-released, legally-enforceable, written protocols governing the municipal entity's use of the surveillance technology that, at a minimum, includes and addresses the following:

1. Purpose: What specific purpose(s) the surveillance technology is intended to advance.
2. Authorized Use: For what specific capabilities and uses of the surveillance technology is authorization being sought, and
    a. What legal and procedural rules will govern each authorized use;
    b. What potential uses of the surveillance technology will be expressly prohibited, such as the warrantless surveillance of public events and gatherings; and
    c. How and under what circumstances will surveillance data that was collected, captured, recorded, or intercepted by the surveillance technology be analyzed and reviewed.
    d. A general description of the system that will be used to store the data.
3. Data Collection:
    a. What types of surveillance data will be deliberately or intentionally collected, captured, recorded, intercepted, or retained by the surveillance technology;
    b. What surveillance data may be inadvertently or unintentionally collected during the authorized uses of the surveillance technology, and what measures will be taken to minimize the inadvertent or unintended collection of data; and
    c. What steps will be taken to separate deliberately and intentionally collected data from inadvertently and unintentionally collected data;
    d. How and when, or with what frequency, will inadvertently or unintentionally collected surveillance data be expeditiously identified and permanently deleted.
    e. What steps will be taken to limit the distribution, publication, or dissemination of any inadvertently or unintentionally collected data.

4. Data Protection: Who will be authorized to access surveillance data, and under what circumstances or protections from further publication or dissemination.

5. What safeguards will be used to protect surveillance data from unauthorized access, including encryption and access control mechanisms.

6. Data Retention: Insofar as the privacy of the public can be severely compromised by the long- term storage of mass surveillance data, what rules and procedures will govern the retention of surveillance data, including those governing:
    a. For what limited time period, if any, surveillance data will be retained. Such information shall include a statement explaining why the designated retention period is no greater than that which is absolutely necessary to achieve the specific purpose(s) enumerated in the Surveillance Use Policy;
    b. What specific conditions must be met to retain surveillance data beyond the retention period;
    c. By what process, and by whom, will surveillance data be regularly deleted after the retention period elapses and what auditing procedures will be implemented to ensure data is not improperly retained;

7. Surveillance Data Sharing: If a municipal entity is seeking authorization to share access to surveillance technology or surveillance data with any other governmental agencies, departments, bureaus, divisions, or units, it shall detail:
    a. How it will require that the collection, retention, and storage of surveillance data be conducted in compliance with the principles set forth in 28 C.F.R. Part 23, including by not limited to 28 C.F.R. Part 23.20(a), which states that a government entity operating a surveillance program "shall collect and maintain criminal intelligence information concerning an individual only if there is reasonable suspicion that the individual is involved in criminal conduct or activity and the information is relevant to that criminal conduct or activity."
    b. Which governmental agencies, departments, bureaus, divisions, or units will be approved for (i) surveillance technology sharing, and for (ii) surveillance data sharing;
    c. How such sharing is necessary for the stated purpose and use of the surveillance technology;
    d. How it will ensure any entity sharing access to the surveillance technology or surveillance data complies with the applicable Surveillance Use Policy and does not further disclose the surveillance data to unauthorized persons and entities; and
    e. What processes will be used to seek approval of future surveillance technology or surveillance data sharing agreements from the municipal entity and the Lawrence City Council.

8. 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.

9. Auditing and Oversight:

10. What mechanisms will be implemented to ensure the Surveillance Use Policy is followed, including 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.
    a. A viewer's log or other comparable method to track viewing 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.
    b. A description of the unit or individuals responsible for ensuring compliance with this section and when and how compliance audits will be conducted.

11. 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 how the municipal entity will ensure each question and complaint is responded to in a timely manner.

9.25.050 Review of Preexisting Uses Mandatory

Any municipal entity seeking to continue the use of any surveillance technology that was in use prior to the effective date of this Section, or the sharing of surveillance data therefrom, must commence a Lawrence City Council approval process in accordance with 9.25.010. If the Lawrence City Council has not approved the continuing use of the surveillance technology, including the Surveillance Impact Report and Surveillance Use Policy submitted pursuant to 9.25.020, within one hundred eighty (180) days of their submission to the City Council, the municipal entity shall cease its use of the surveillance technology and the sharing of surveillance data therefrom until such time as City Council approval is obtained.

9.25.060 Lead Entity Identification

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.

9.25.070 Standard for Approval

The Lawrence City Council 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 factors or have a disparate impact on any community or group. To assist the public in participating in such an analysis, all approved Surveillance Impacts Reports and Surveillance Use Policies shall be made available to the public, at a designated page on the relevant municipal entity's public website, for as long as the related surveillance technology remains in use. An approval for the funding, acquisition and/or use of a surveillance technology by the Lawrence City Council, where the risk of potential adverse impacts on civil rights or civil liberties has been identified in the Surveillance Impact Report, shall not be interpreted as an acquiescence to such impacts, but rather as an acknowledgement that a risk of such impacts exists and must be proactively avoided.

9.25.080 Use of Surveillance Equipment Related to Law Enforcement Investigations

A. Notwithstanding the provisions of this chapter, the Lawrence Police Department may use surveillance equipment on a temporary basis for the purpose of a criminal investigation supported by reasonable suspicion with supervisory authority, pursuant to a lawfully issued warrant, under exigent circumstances as defined in case law, or when the Chief of Police finds, subject to approval of the Mayor, that compelling circumstances in the public interest warrant use of certain technology on a temporary basis. Temporary use of surveillance equipment under this exemption shall not exceed 30 days, or as otherwise provided by law. This exemption from the provisions of this chapter does not apply to surveillance cameras mounted on drones or other unmanned aircrafts.

9.25.90 Annual Surveillance Report

A. municipal entity that obtains approval for the use of a surveillance technology must submit to the Lawrence City Council, and make available on its public website, an Annual Surveillance Report for each specific surveillance technology used by the municipal entity within twelve (12) months of approval, and annually thereafter on or before March 31st. 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);
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. For each census tract, the municipal entity shall report how many individual days the surveillance technology was deployed and what percentage of those daily-reported deployments were subject to (A) a warrant, and (B) a non-warrant form of court authorization;
4. Where applicable, and with the greatest precision that is reasonably practicable, the amount of time the surveillance technology was used to monitor Internet activity, the number of people affected, and what percentage of the reported monitoring was subject to (A) a warrant, and (B) a non-warrant form of court authorization;
5. A summary of the temporary use of surveillance technology, pursuant to 9.25.080, including the compelling circumstances in the public interest that warranted use of surveillance technology on a temporary basis;
6. A summary of complaints or concerns that were received about the surveillance technology;
7. The results of any internal audits, any information about violations of the Surveillance Use Policy, and any actions taken in response;
8. 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; and
9. The total annual costs for the surveillance technology, including personnel and other ongoing costs, and what source of funding will fund the technology in the coming year.

B. Based upon information provided in the Annual Surveillance Report, the Lawrence City Council shall determine whether each surveillance technology identified as used by the report-submitting entity, has met the standard for approval. If it has not, the Lawrence City Council may direct the use of the surveillance technology be discontinued or may require modifications to the Surveillance Use Policy that will resolve the observed failures. If the use of the surveillance technology is directed to be discontinued or modified, the municipal entity shall comply with the directions. If the municipal entity fails to comply, future funding of surveillance technology for the municipal entity shall be withdrawn.

9.25.100 Remedies; Penalties; Whistleblower Protections.

A. Any violation of this section, including but not limited to funding, acquiring, or utilizing surveillance technology that has not been approved pursuant to this section or utilizing surveillance technology in a manner or for a purpose that has not been approved pursuant to this section, 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 chapter.

B. Municipal employees or agents, except in response to a declared municipal, state, or federal state of emergency, shall not use any surveillance technology except in a manner consistent with policies approved pursuant to the terms of this section, and may in no circumstances utilize surveillance technology in a manner which is discriminatory, viewpoint-based, or violates the Charter of the City of Lawrence, the Constitution of the Commonwealth of Massachusetts or the United States Constitution. Any municipal employee, who violates the provisions of this section, or any implementing rule or regulation, may be subject to disciplinary proceedings and punishment. For municipal employees who are represented under the terms of a collective bargaining agreement, this section prevails except where it conflicts with the collective bargaining agreement, any memorandum of agreement or understanding signed pursuant to the collective

bargaining agreement, or any recognized and established practice relative to the members of the bargaining unit.

C. Whistleblower protections.

1. No municipal entity or anyone acting on behalf of a municipal entity 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, conditions, access to information, restrictions on due process rights, privileges of employment, or civil or criminal liability, because 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 to any relevant municipal agency, municipal law enforcement, prosecutorial, or investigatory office, or Lawrence City Council Member, based upon a good faith belief that the disclosure evidenced a violation of this Act.

9.25.110 Conflicting Contractual Agreements Prohibited

It shall be unlawful for the city or any municipal entity to enter into any contract or other agreement that conflicts with the provisions of this section, and any conflicting provisions in such contracts or agreements, including but not limited to non-disclosure agreements, shall be deemed void and legally unenforceable. Conflicting provisions in contracts or agreements signed prior to the enactment of this section shall be deemed void and legally unenforceable to the extent permitted by law. This section shall not apply to collective bargaining agreements and related memorandums of agreement or understanding that pre-date this section.

9.25.120 Certain Public-Private Contracts Prohibited

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 section that violate this chapter shall be void or voided as soon as is legally permissible to the extent that they violate this chapter..

9.25.130 Severability

The provisions in this section are severable. If any part of provision of this section, or the application of this section to any person or circumstance, is held invalid, the remainder of this section, including the application of such part or provisions to other persons or circumstances, shall not be affected by such holding and shall continue to have force and effect.

To the extent that there exist any ordinances to the contrary, they are hereby repealed in that respect only

Attest: William J. Maloney, City Clerk

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Document #	Approval Reference	Ord/Reference	Date Approved	Effective Date
133//18	**2018-ORD-41**	**Ch. 9.25**	**8-21-19**	**9-21-18**

Mayor's Veto Entered: 9-5-18 [date received by City Clerk];
City Council Over-ride vote of Mayor's veto recorded: 9-18-18;