

Council Policy on Santa Cruz City Use of Surveillance Technology

SANTA CRUZ POLICE DEPARTMENT DRAFT REVISIONS

Original Text

~~AN ORDINANCE~~ OF THE CITY COUNCIL OF THE CITY OF SANTA CRUZ ~~ADDING ARTICLE XX OF THE SANTA CRUZ MUNICIPAL CODE~~ REGARDING CITY USE OF SURVEILLANCE TECHNOLOGY

WHEREAS, the City Council finds that any decision to use surveillance technology must be balanced with the need to: investigate and prevent crimes; protect crime victims and society from those who commit crimes; protect civil rights and civil liberties, including privacy and free expression; ~~and the costs to the city;~~

WHEREAS, the City Council finds that proper transparency, oversight and accountability for the acquisition and use of surveillance technology is fundamental to protecting the rights and civil liberties, including privacy and free expression, of all people.

Proposed Revision

A POLICY OF THE CITY COUNCIL OF THE CITY OF SANTA CRUZ REGARDING CITY USE OF SURVEILLANCE TECHNOLOGY

WHEREAS, the City Council finds that any decision to use surveillance technology must be balanced with the need to: investigate and prevent crimes; protect crime victims and society from those who commit crimes; protect civil rights and civil liberties, including privacy and free expression;

WHEREAS, the City Council finds that proper transparency, oversight and accountability for the acquisition and use of surveillance technology is fundamental to protecting the rights and civil liberties, including privacy and free expression, of all people.

Notes:

...*"costs to the city"* is too vague, suggest to delete.

Original Text

WHEREAS, the City Council finds it essential to have an informed public debate ~~as early as possible~~ about whether to acquire ~~and use~~ surveillance technology.

WHEREAS, the City Council finds it necessary that safeguards be in place to protect civil liberties and civil rights before any surveillance technology is deployed.

WHEREAS, the City Council finds that if surveillance technology is approved, there must be ~~continued~~ oversight and annual evaluation to ensure that safeguards are being followed, ~~and that the surveillance technology's benefits outweigh its costs.~~

Proposed Revision

WHEREAS, the City Council finds it essential to have an informed public debate about whether to acquire surveillance technology for use.

WHEREAS, the City Council finds it necessary that safeguards be in place to protect civil liberties and civil rights before any surveillance technology is deployed.

WHEREAS, the City Council finds that if surveillance technology is approved, there must be regular oversight and annual evaluation to ensure that safeguards are being followed.

Notes:

...“as early as possible” too vague, may compel department to reveal information on on-going investigations.

...“outweigh its costs” but what measure? Also too vague.

Original Text

WHEREAS, the City Council finds that ethical dilemmas exist around the intrusiveness of facial recognition technology and predictive policing technologies, ~~that there has been a lack of parameters set for the use of recognition algorithms have consistently demonstrated gender and race bias.~~

Proposed Revision

WHEREAS, the City Council finds that Live facial recognition technology and predictive policing technologies currently lack the protections needed to safe guard the rights and liberties of all people.

Notes:

...“lack of parameters set...” too general.

The Department agrees that the rights and liberties of all people must be upheld, and wants to remain open to emerging technologies as they are developed.

Original Text

Purpose and Findings.

This Article shall be known as the Surveillance Technology policy.

The purpose and intent of this Article is to impose safeguards to protect civil liberties and civil rights before any surveillance technology is deployed and to prohibit the City's acquisition and/or use of any Face Recognition Technology or predictive policing technology.

The City Council finds that any decision to use surveillance technology must be balanced with the need to: investigate and prevent crimes; protect crime victims and society from those who commit crimes; protect civil rights and civil liberties, including privacy and free expression; ~~and the costs to the City.~~

The City Council finds that proper transparency, oversight and accountability for the acquisition and use of surveillance technology is fundamental to protecting the rights and civil liberties, including privacy and free expression, of all people.

Proposed Revision

Purpose and Findings.

This Article shall be known as the Surveillance Technology policy.

The purpose and intent of this Article is to impose safeguards to protect civil liberties and civil rights before any surveillance technology is deployed and to prohibit the City's acquisition and/or use of any live Face Recognition Technology or predictive policing technology until City Council is convinced the technology safe guards the civil rights and liberties of all people.

The City Council finds that any decision to use surveillance technology must be balanced with the need to: investigate and prevent crimes; protect crime victims and society from those who commit crimes; protect civil rights and civil liberties, including privacy and free expression.

The City Council finds that proper transparency, oversight and accountability for the acquisition and use of surveillance technology is fundamental to protecting the rights and civil liberties, including privacy and free expression, of all people.

Notes:

*“Real Time” has been added to the City of Oakland’s ordinance language, Santa Cruz proposes “Live”.
Allow Council the ability to review new technology as they emerge.*

Original Text

The City Council finds it essential to have an informed public debate ~~as early as possible~~ about whether to acquire and use surveillance technology.

The City Council finds that if surveillance technology is approved, there must be continued oversight and annual evaluation to ensure that safeguards are being followed. ~~and that the surveillance technology's benefits outweigh its costs.~~

The City Council finds that ~~ethical dilemmas exist around the intrusiveness of~~ face recognition technology and predictive policing technologies, ~~that there has been a lack of parameters set for the use of this technology by police departments, and that a multitude of studies show that predictive and recognition algorithms have consistently demonstrated gender and race bias.~~

Proposed Revision

The City Council finds it essential to have an informed public debate about whether to acquire and use surveillance technology.

The City Council finds that if surveillance technology is approved, there must be regular oversight and annual evaluation to ensure that safeguards are being followed.

The City Council finds that live facial recognition technology and predictive policing technologies, currently lack the protections needed to safe guard the rights and liberties of all people.

Notes:

The Department agrees that the rights and liberties of all people must be upheld, and wants to remain open to emerging technologies as they are developed.

Original Text

Definitions.

For purposes of this Article, the following words, terms and phrases shall have these definitions:

“City Department” means any City department and its officers and employees.

“Exigent Circumstances” means a City department’s good faith belief that ~~an emergency involving imminent~~ danger of death or serious physical injury to any person, or imminent danger of ~~significant~~ property damage, requires the use of the surveillance technology or the information it provides.

"Face Recognition Technology" means an automated or semi-automated process that assists in identifying or verifying an individual based on an individual's face.

Proposed Revision

Definitions.

For purposes of this Article, the following words, terms and phrases shall have these definitions:

“City Department” means any City department and its officers and employees.

“Exigent Circumstances” means a City department’s good faith belief of danger of death or serious physical injury to any person, or imminent danger of felonious property damage, including the prevention of potential violent crime, requiring the use of the surveillance technology or the information it provides.

“Live Face Recognition Technology" means an automated or semi-automated process that assists in identifying or verifying an individual based on an individual's face in real time.

Notes:

“Exigent Circumstances” should not be too limiting.

“Real Time” has been added to the City of Oakland’s ordinance language, Santa Cruz proposes “Live”.

Original Text

“Personal Communication Device” means a cellular telephone that has not been modified beyond stock manufacturer capabilities, a personal digital assistant, a wireless capable tablet or 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 conducting City business.

“Predictive Policing Technology” means software or vendor-provided algorithmic formulas that purport to mathematically calculate and issue forecasts regarding the location or perpetrators of future crimes and to profile based on automated processes individual or geographic propensities to criminality.

“Surveillance Technology” means any ~~software, electronic device, system utilizing an electronic device, or similar used, designed, or primarily intended to collect, retain, process, or share audio, electronic, visual, location, thermal, olfactory or similar information specifically associated with, or capable of being associated with, any individual or group by a City department. Examples of surveillance technology includes but is not limited to the following: cell site simulators (Stingrays); automatic license plate readers; gunshot detectors (ShotSpotter); facial recognition software; gait analysis software; video cameras that record audio or video and can transmit or be remotely accessed. It also includes software designed to monitor social media services or forecast criminal activity or criminality and biometric identification hardware or software.~~

Proposed Revision

“Personal Communication Device” means a cellular telephone that has not been modified beyond stock manufacturer capabilities, a personal digital assistant, a wireless capable tablet or 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 conducting City business.

“Predictive Policing Technology” means software or vendor-provided algorithmic formulas that purport to mathematically calculate and issue forecasts regarding the location or perpetrators of future crimes and to profile based on automated processes individual or geographic propensities to criminality.

“Surveillance Technology” means any technology used to invade the privacy of others, therefore requiring valid judicial authority.

Notes:

Remain open to emerging technologies as they are developed.

Original Text

“Surveillance technology” does not include the following devices, hardware or software:

- (1) Office hardware, such as televisions, computers, credit card machines, copy machines, telephones and printers, that are in widespread use by City departments and used for routine City business and transactions;
- (2) City databases and enterprise systems that contain information kept in the ordinary course of City business, including, but not limited to, human resource, permit, license and fiscal databases and business records;
- (3) Information technology security systems, including firewalls and other cybersecurity systems;
- (4) Manually-operated technological devices used primarily for internal City and department communications and are not designed to surreptitiously collect surveillance data, such as radios, personal communication devices that have not been modified beyond stock manufacturer capabilities and email systems;
- (5) Manually-operated, non-wearable, handheld 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;
- (6) Surveillance devices that cannot record or transmit audio or video or be remotely accessed, such as image stabilizing binoculars or night vision equipment;
- (7) Medical equipment and systems used to record, diagnose, treat, or prevent disease or injury and are used and/or kept in the ordinary course of providing City services;
- (8) Parking Ticket Devices;
- (9) Police department interview room, holding cell and police department internal security audio/video recording systems;
- (10) Police department case management systems.
- (11) Police department early warning systems.

No changes proposed.

Original Text

“Surveillance Use Policy” means a policy adopted by the City Council at a regularly scheduled City Council meeting for use of the surveillance technology that at a minimum specifies the following:

(a) Purpose: The specific purpose(s) that the surveillance technology item is intended to advance.

(b) Authorized Use: The 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, ~~including “open source” data.~~

(d) Data Access: The category of individual 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 general safeguards that protect information from unauthorized access, including encryption and access control mechanisms. Nothing in this subsection shall be construed to require the disclosure of information that could reveal vulnerabilities to, or otherwise increase the potential for an attack on, an information technology system of the City.

(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.

Proposed Revision

“Surveillance Use Policy” means a policy adopted by the City Council at a regularly scheduled City

Council meeting for use of the surveillance technology that at a minimum specifies the following:

(a) Purpose: The specific purpose(s) that the surveillance technology item is intended to advance.

(b) Authorized Use: The 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.

(d) Data Access: The category of individual 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 general safeguards that protect information from unauthorized access, including encryption and access control mechanisms. Nothing in this subsection shall be construed to require the disclosure of information that could reveal vulnerabilities to, or otherwise increase the potential for an attack on, an information technology system of the City.

(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. [\(per the City Retention Policy\)](#)

Notes:

Limiting access to Open Source data is too restrictive.

Original Text

(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 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 record keeping 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.~~

Proposed Revision

(g) Public Access: Shall be obtained through a public records request per City policy.

(h) Third Party Data Sharing: If and how other City 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 through an inspection process.

Notes:

Public access is already available through a public records request.

Assigned compliance personnel, technical monitoring measures and legal sanctions are too onerous for a small city department.

Original Text

“Surveillance Civil Rights Impact Report” means a written report including 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) for the surveillance technology;
- ~~(3) If applicable, the location(s) it may be deployed~~
- (4) An assessment identifying any potential impact on civil liberties and civil rights and discussing any plans to safeguard the rights of the public and mitigate negative impacts on civil rights and liberties and personal privacy.
- ~~(5) The fiscal costs for the surveillance technology, including initial purchase, personnel and other ongoing costs, and any current or potential sources of funding;~~
- (6) 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; and
- ~~(7) A summary of the experience, if any, other governmental entities have had with the proposed technology, including information about the effectiveness, any known adverse information about the technology such as unanticipated costs, failures, civil rights or civil liberties abuses~~

Notes:

Two reports should be combined into one annual report.

Proposed Revision

“Annual Surveillance and Surveillance Civil Rights Impact Report” means a written report including at a minimum the following:

- (1) Information describing the surveillance technology and how it works, including product descriptions from manufacturers;
- (2) Information on the purpose(s) for the surveillance technology;
- (3) An assessment identifying any potential impact on civil liberties and civil rights and discussing any plans to safeguard the rights of the public and mitigate negative impacts on civil rights and liberties and personal privacy.
- (4) 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.

Original Text

~~“Annual Surveillance Report” means an annual written report concerning a specific surveillance technology.~~

~~(a) The Annual Surveillance Report will include all of the following:~~

~~(1) A general description of how the surveillance technology was used;~~

(2) A general description of whether and how often data acquired through the use of the surveillance technology item 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).~~ 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;

(3) A summary of community complaints or concerns about the surveillance technology item;

(4) 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;

(5) Information, including crime statistics, that help the City Council assess whether the surveillance technology has been effective at achieving its identified purposes;

(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;

(7) Any requested modifications to the Surveillance Use Policy and a detailed basis for the request;

Proposed Revision

...continuing from previous

(5) A general description of whether and how often data acquired through the use of the surveillance technology item was shared with outside entities, the name of any recipient entity, the type(s) of data disclosed, 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;

(6) A summary of community complaints or concerns about the surveillance technology item;

(7) 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;

(8) Information, including crime statistics, that help the City Council assess whether the surveillance technology has been effective at achieving its identified purposes;

(9) Total annual costs for the surveillance technology, and what source of funding will fund the technology in the coming year;

(10) Any requested modifications to the Surveillance Use Policy and a detailed basis for the request;

Notes:

The request for crime statistics conflates two issues: crime reduction and Investigative techniques. These technologies may solve cases but not reduce overall crime.

Original Text

(b)The Annual Surveillance report will not contain the specific records that a surveillance technology item collects, stores, exchanges, or analyzes and/or information protected, restricted and/or sealed pursuant to State and/or federal laws, including information not required to be released by the Public Records Act.

City Council Approval

(a) A City department shall obtain City Council approval following a public hearing conducted at a regular and noticed City Council meeting prior to any of the following:

- (1) Seeking funds for surveillance technology, including but not limited to applying for a grant or soliciting or accepting State or federal funds or in-kind or other donations for the purpose of acquiring surveillance technology;
- (2) ~~Acquiring new surveillance technology, including but not limited to procuring such technology without the exchange of monies or consideration;~~
- (3) Using new surveillance technology, or using existing surveillance technology for a purpose, in a significantly different manner ~~or location~~ than that previously approved by the City Council; or
- (4) Entering into a formal written agreement with a non-City entity to acquire, share or otherwise use surveillance technology or the information it provides, including data sharing agreements.

Proposed Revision

(b) The Annual Surveillance report will not contain the specific records that a surveillance technology item collects, stores, exchanges, or analyzes and/or information protected, restricted and/or sealed pursuant to State and/or federal laws, including information not required to be released by the Public Records Act.

City Council Approval

(a) A City department shall obtain City Council approval following a public hearing conducted at a regular and noticed City Council meeting prior to any of the following:

- (1) Seeking funds for surveillance technology, including but not limited to applying for a grant or soliciting or accepting State or federal funds or in-kind or other donations for the purpose of acquiring surveillance technology;
- (2) Acquiring new types of surveillance technology that are over \$10K and should reasonably be viewed as having the potential for significant intrusion into privacy of others, therefore requiring judicial authority;
- (3) Using new surveillance technology, or using existing surveillance technology for a purpose, in a significantly different manner than that previously approved by the City Council; or
- (4) Entering into a formal written agreement with a non-City entity to acquire, share or otherwise use surveillance technology or the information it provides, including data sharing agreements.

Notes:

Original acquisition language is to restrictive.

Original Text

(b) A City department shall obtain City Council approval following a public hearing conducted at a regular City Council meeting of a Surveillance Use Policy prior to engaging in any of the activities described in subsection (a)(2) -(4).

(c) The City department seeking approval under subsection (a) shall submit to the City Council a Surveillance Impact Report and a proposed Surveillance Use Policy via an informational staff report on a regular City Council meeting consent calendar at least thirty (30) days prior to the public hearing required under subsection (a). The informational staff report shall be posted on the City website with the City Council agenda.

(d) The City Council may approve any action described in subsection (a) after making a determination that any decision to ~~use~~ a surveillance technology item has been balanced with the need to: investigate and prevent crimes; protect crime victims and society from those who commit crimes; protect civil rights and civil liberties, including privacy and free expression; ~~and the costs to the City.~~ The City Council may appoint an existing or new municipal commission or board committee to provide initial review of use policies and impact reports, but shall not delegate final Council approval by vote to any such review body.

e) Notwithstanding any other provision of this section, nothing herein shall be construed to prevent, restrict or interfere with any person providing evidence derived from surveillance technology to a law enforcement agency for the purpose of conducting a direct criminal investigation or the law enforcement agency from receiving such evidence.

Proposed Revision

(b) A City department shall obtain City Council approval following a public hearing conducted at a regular City Council meeting of a Surveillance Use Policy prior to engaging in any of the activities described in subsection (a)(2) -(4).

(c) The City department seeking approval under subsection (a) shall submit to the City Council a Surveillance Impact Report and a proposed Surveillance Use Policy via an informational staff report on a regular City Council meeting consent calendar at least thirty (30) days prior to the public hearing required under subsection (a). The informational staff report shall be posted on the City website with the City Council agenda.

(d) The City Council may approve any action described in subsection (a) after making a determination that any decision to acquire a surveillance technology item has been balanced with the need to: investigate and prevent crimes; protect crime victims and society from those who commit crimes; protect civil rights and civil liberties, including privacy and free expression. The City Council may appoint an existing or new municipal commission or board committee to provide initial review of use policies and impact reports, but shall not delegate final Council approval by vote to any such review body.

e) Notwithstanding any other provision of this section, nothing herein shall be construed to prevent, restrict or interfere with any person providing evidence derived from surveillance technology to a law enforcement agency for the purpose of conducting a direct criminal investigation or the law enforcement agency from receiving such evidence.

Notes:

Specify acquisition rather than use.

Original Text

Prohibition on City's Acquisition and/or Use of Face Recognition Technology

A. Notwithstanding any other provision of this Article, it shall be ~~unlawful~~ for the City or any City staff to obtain, retain, ~~request,~~ access, or use:

1. Face Recognition Technology; or
- ~~2. Information obtained from Face Recognition Technology.~~

B. City staff's inadvertent or unintentional receipt, access of, or use of any information obtained from Face Recognition Technology shall not be a violation of this Section provided that:

1. City staff did not request or solicit the receipt, access of, or use of such information; and
2. City staff logs such receipt, access, or use in its Annual Surveillance Report. Such report shall not include any personally identifiable information or other information the release of which is prohibited by law.

Proposed Revision

Prohibition on City's Acquisition and/or Use of Face Recognition Technology

A. Notwithstanding any other provision of this Article, it shall be unauthorized for the City or any City staff to obtain, retain, access, or use until such time as Council is satisfied that the technology meets scientifically validated and peer reviewed when possible to ensure that method of deployment protects the rights of all individuals. Further, any technology that is likely to perpetuate bias shall be reviewed by the Public Safety Committee:

1. Live Face Recognition Technology

B. City staff's inadvertent or unintentional receipt, access of, or use of any information obtained from Live Face Recognition Technology shall not be a violation of this Section provided that:

1. City staff did not request or solicit the receipt, access of, or use of such information; and
2. City staff logs such receipt, access, or use in its Annual Surveillance Report. Such report shall not include any personally identifiable information or other information the release of which is prohibited by law.

Notes:

*Addition of "Live" Face Recognition Technology
Allowing for review of new and emerging technologies.*

Original Text

Prohibition on City's Acquisition and/or Use of Predictive Policing Technology

A. Notwithstanding any other provision of this Article, it shall be ~~unlawful~~ for the City or any City staff to obtain, retain, ~~request~~, access, or use Predictive Policing Technology;

B. City staff's inadvertent or unintentional receipt, access of, or use of any information obtained from Predictive Policing Technology shall not be a violation of this Section provided that:

1. City staff did not request or solicit the receipt, access of, or use of such information; and
2. City staff logs such receipt, access, or use in its Annual Surveillance Report. Such report shall not include any personally identifiable information or other information the release of which is prohibited by law.

Proposed Revision

Prohibition on City's Acquisition and/or Use of Predictive Policing Technology

A. Notwithstanding any other provision of this Article, it shall be unauthorized for the City or any City staff to obtain, retain, access, or use Predictive Policing Technology until City Council is convinced that the technology meets scientifically validated and peer reviewed research, protects and safe guards the rights and liberties of all people. Further, any technology that is likely to perpetuate bias shall be reviewed by the Public Safety Committee;

B. City staff's inadvertent or unintentional receipt, access of or use of any information obtained from Predictive Policing Technology shall not be a violation of this Section provided that:

1. City staff did not request or solicit the receipt, access of, or use of such information; and
2. City staff logs such receipt, access, or use in its Annual Surveillance Report. Such report shall not include any personally identifiable information or other information the release of which is prohibited by law.

Notes:

Allowing for future review of emerging technologies.

Original Text

Compliance for Existing Surveillance Technology

A City department or departments possessing or using surveillance technology prior to the effective date of this Article shall submit or jointly submit a proposed Surveillance Use Policy and Civil Rights Impact Report no later than one- hundred eighty (180) days following the effective date of this Article for review and approval by the City Council. If such review and approval has not occurred within four regular meetings from when the item was initially scheduled for City Council consideration, the City department shall cease its use of the surveillance technology until such review and approval occurs.

Proposed Revision

Compliance for Existing Surveillance Technology

A City department or departments possessing or using surveillance technology prior to the effective date of this Article shall submit or jointly submit a proposed Annual Surveillance and Civil Rights Impact Report no later than one- hundred eighty (180) days following the effective date of this Article for review and approval by the City Council, with the exception of technologies used within 90 days after the conclusion of an investigation, or where the department is not at the time of report in control of the evidence. If such review and approval has not occurred within four regular meetings from when the item was initially scheduled for City Council consideration, the City department shall cease its use of the surveillance technology until such review and approval occurs.

Notes:

Provides for integrity of investigations and prosecutions.

Original Text

Use of Unapproved Technology during Exigent Circumstances

A City department may temporarily acquire or temporarily use surveillance technology in exigent circumstances without following the provisions of this Article before that acquisition or use. If the City department acquires or uses a surveillance technology pursuant to this Section, the City department shall:

- (a) Use the surveillance technology to ~~solely~~ respond to the exigent circumstances;
- (b) Cease using the surveillance technology when the exigent circumstances end;
- (c) Only keep and maintain data that is directly related to the exigent circumstances ~~and dispose of any data that is not relevant to an ongoing investigation;~~
- (d) Following the end of the exigent circumstances and in no case in less than ~~30~~ days after use, report the acquisition ~~or use~~ to the City Council at a regular City Council meeting for discussion and/or possible recommendation for approval to acquire or use the surveillance technology; and
- (e) Any technology temporarily acquired in exigent circumstances shall be returned within seven days following its acquisition, or when the exigent circumstances end, whichever is sooner, unless the technology is submitted to the City Council for approval pursuant to this Article and is approved.

Proposed Revision

Use of Unapproved Technology during Exigent Circumstances

A City department may temporarily acquire or temporarily use surveillance technology in exigent circumstances without following the provisions of this Article before that acquisition or use. If the City department acquires or uses a surveillance technology pursuant to this Section, the City department shall:

- (a) Use the surveillance technology to respond to the exigent circumstances;
- (b) Cease using the surveillance technology when the exigent circumstances end;
- (c) Only keep and maintain data that is directly related to the exigent circumstances.
- (d) Following the end of the exigent circumstances and in no case in less than 90 days after the conclusion of an investigation, and when the Department is in control of the evidence, and when release of the information will not inhibit any other active investigations or endanger associated parties, report the acquisition or use to the City Council at a regular City Council meeting for discussion and/or possible recommendation for approval to acquire or use the surveillance technology; and
- (e) Any technology temporarily acquired in exigent circumstances shall be returned within seven days following its acquisition, or when the exigent circumstances end, whichever is sooner, unless the technology is submitted to the City Council for approval pursuant to this Article and is approved.

Notes:

Necessary to protect the integrity of investigations and prosecutions.

Original Text

Oversight Following Council Approval

(a) By the end of each fiscal year, a City department that uses surveillance technology must present a written Annual Surveillance ~~Report~~ at a regular City Council meeting for City Council review for each approved surveillance technology item. If the City department is unable to meet the deadline, the department head shall notify the City Council in writing of staff's request to extend this period, and the reasons for that request. The City Council may grant reasonable extensions to comply with this Section.

(b) Based upon information in the Annual Surveillance Report, the City Council will, at a regular City Council meeting, balance the need to: investigate and prevent crimes; protect crime victims and society from those who commit crimes; protect civil rights and civil liberties, including privacy and free expression; ~~and the costs to the City and will determine whether to continue to allow the use of the surveillance technology item, cease use, or propose modifications to the corresponding Surveillance Use Policy.~~

Proposed Revision

Oversight Following Council Approval

(a) By the end of each fiscal year, a City department that uses surveillance technology must present a written Annual Surveillance and Civil Rights Impact Report at a regular City Council meeting for City Council review for each approved surveillance technology item. If the City department is unable to meet the deadline, the department head shall notify the City Council in writing of staff's request to extend this period, and the reasons for that request. The City Council may grant reasonable extensions to comply with this Section.

(b) Based upon information in the Annual Surveillance and Civil Rights Impact Report, the City Council will, at a regular City Council meeting, balance the need to: investigate and prevent crimes; protect crime victims and society from those who commit crimes; protect civil rights and civil liberties, including privacy and free expression.

Notes:

Suggest that two reports (Annual Surveillance Report and Civil Rights Surveillance Impact Report) be combined annually.

Original Text

Enforcement

~~(a) Any violation of this Article constitutes an injury and any person may institute proceedings for injunctive relief, declaratory relief or writ of mandate in any court of competent jurisdiction to enforce this Article. An action instituted under this paragraph may be brought against the City of Santa Cruz, if necessary to effectuate compliance with this Article or a Surveillance Use Policy therein (including to expunge information unlawfully collected, retained, or shared thereunder).~~

~~(1) Prior to the initiation of any legal proceeding under subsection (a), the City of Santa Cruz shall be given written notice of the violation(s) and an opportunity to correct such alleged violation(s) within 90 days of receipt of the notice.~~

~~(2) If the alleged violation is substantiated and subsequently cured, a notice shall be posted in a conspicuous space on the on the city's website that generally describes the corrective measure(s) taken to address the violation(s).~~

~~(b) A court shall award costs to the prevailing party in any action for injunctive relief brought to enforce this Article and any reasonable attorney's fees as may be awarded pursuant to State law up to a cap of \$15,000.~~

(c) Nothing in this Article is intended to, or shall be interpreted to, conflict with the Constitution of the United States, the Constitution of the State of California or with any State or federal law.

Proposed Revision

Enforcement

(a) Any intentional violation of this Article shall result in sanction or other appropriate disciplinary action of the person authorizing the deployment of the technology and the department head who authorizes the use of the technology knowing the prohibition on using such technology.

(b) Nothing in this Article is intended to, or shall be interpreted to, conflict with the Constitution of the United States, the Constitution of the State of California or with any State or federal law.

Notes:

While consequences of acting outside of this policy are serious, the Department believes that disciplinary action should be handled within the confines of city disciplinary procedures.

Original Text

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 policy, 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.

Severability.

The provisions of this Article are declared to be separate and severable. The invalidity of any clause, phrase, sentence, paragraph, subdivision, section or portion of this Article, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this Article, or the validity of its application to other persons or circumstances.

SECTION 2. The City Clerk shall certify to the adoption of this policy and shall cause the same or a summary thereof to be published as required by law.

SECTION 3. This policy shall take effect and be in full force and effect thirty (30) days from and after the date of its final passage and adoption.

Proposed Revision

Secrecy of Surveillance Technology

It shall be unauthorized for the City to enter into any surveillance-related contract or other agreement that conflicts with the provisions of this policy, 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.

Severability.

The provisions of this Article are declared to be separate and severable. The invalidity of any clause, phrase, sentence, paragraph, subdivision, section or portion of this Article, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this Article, or the validity of its application to other persons or circumstances.

SECTION 2. The City Clerk shall certify to the adoption of this policy and shall cause the same or a summary thereof to be published as required by law.

SECTION 3. This policy shall take effect and be in full force and effect thirty (30) days from and after the date of its final passage and adoption.

No change.

Other Considerations

- ❖ Proposal that these regulations be considered as city policy, rather than policy.
- ❖ Risk Terrain Modelling (RTM) is categorized as part of Predictive Policing, but should not fall under this policy.