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SUBSTITUTE AMENDMENT 1 TO CB 118930

This amendment would require Council approval for surveillance technology acquisition or surveillance technology acquired or operated on the City's behalf. In addition, it does the following:

- * it adds criteria for determining whether technology is surveillance technology;
- * it requires departmental community engagement prior to Council approval of surveillance technology;
- * it modifies exemptions including exempting City employees in the performance of their City duties, the Seattle Municipal Court, and Seattle Public Library;
- * it requires identification markings on physical surveillance objects when feasible;
- * it requests annual reviews by auditing entities;
- * it authorizes and requires the Chief Technology Officer to direct the cessation of acquisition or use for surveillance technologies in violation of this Chapter 14.18;
- * it modifies the private right of action including adding a 90-day City opportunity to correct;
- * the time period for providing a list of existing surveillance technologies is 90 days;
- * a workgroup will recommend a community advisory function;
- * and other changes as noted in track changes below.

20

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL 118930

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

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

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

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

11 WHEREAS, public reviewa publicly transparent and oversightaccountable process for the
12 procurement and operation of surveillance technologiestechology is fundamental to
13 minimizing the risks posed by such technologies; and

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

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

21 WHEREAS, ~~the City has an obligation to take measures to improve public safety when the value~~
22 ~~of doing so outweighs the impacts on individual privacy;~~

1 ~~WHEREAS, all City departments would benefit from clear and transparent processes for City
2 Council approval of the procurement and operation of certain surveillance technologies;~~
3 ~~and~~

4 ~~WHEREAS, the purpose and benefits of surveillance technologies should be clearly articulated
5 in a transparent process in order to protect privacy and anonymity, free speech and
6 association, equal protection, and civil rights; and~~

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

12 WHEREAS, ~~ongoing transparency around the usage, utility, purpose of revising and cost-~~
13 ~~effectiveness of approved surveillance technologies will enable the updating Chapter~~
14 ~~14.18 is to require City departments to obtain Council approval and the public to verify~~
15 ~~that the approved to establish protocols provide cost effective benefits and protect prior to~~
16 ~~the acquisition of surveillance technology that raises concerns about privacy or other~~ civil
17 ~~liberties and to be transparent in how surveillance technology and its data are used by the~~
18 ~~City; NOW, THEREFORE,~~

19 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

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

22 **((CHAPTER 14.18 ACQUISITION AND USE OF SURVEILLANCE EQUIPMENT**

23 **14.18.10 Definitions**

1 The following definitions apply to this Chapter 14.18

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

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

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

20 **14.18.20 Council Approval for City Department Acquisition and Operations of
21 Surveillance Equipment**

22 Any City department intending to acquire surveillance equipment shall obtain City Council
23 approval via ordinance prior to acquisition. Prior to deployment or installation of the surveillance

1 equipment, City departments shall obtain Council approval via ordinance of operational
2 protocols, unless applicable operational protocols were previously approved by ordinance. In
3 requesting approval for acquisition of surveillance equipment, City departments shall include
4 proposed operational protocols containing the following information for the City Council's
5 consideration, along with any other information specifically requested by the City Council:

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

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

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

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

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

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

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

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

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

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

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

11 L.—A description of the training to be provided to operators or users of the
12 surveillance equipment.

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

18 **14.18.30 Data Management Protocols for Surveillance Equipment**

19 Prior to operating surveillance equipment acquired after the effective date of this ordinance, City
20 departments shall submit written protocols for managing data collected by surveillance
21 equipment to the City Council. The City Council may require that any or all data management
22 protocols required under this Section 14.18.30 be approved by ordinance. These data
23 management protocols shall address the following:

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

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

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

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

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

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

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

17 14.18.40 Acquisition and Use of Surveillance Equipment Related to Law Enforcement

18 Investigations

19 Notwithstanding the provisions of this Chapter, City departments may acquire or use
20 surveillance equipment that is used on a temporary basis for the purpose of a criminal
21 investigation supported by reasonable suspicion, or pursuant to a lawfully issued search warrant,
22 or under exigent circumstances as defined in case law. This exemption from the provisions of

1 ~~this ordinance does not apply to surveillance cameras mounted on drones or other unmanned~~
2 ~~aircraft.))~~

3 Section 2. A new Chapter 14.18, which includes new Sections 14.18.010, 14.18.020,
4 14.18.030, 14.18.040, 14.18.050, 14.18.060, ~~14.18.070, 14.18.080,~~ and 14.18.~~090070~~, is added
5 to the Seattle Municipal Code as follows:

6 **CHAPTER 14.18 ACQUISITION AND USE OF SURVEILLANCE TECHNOLOGIES**

7 **14.18.010 Definitions**

8 The following definitions apply to this Chapter 14.18:

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

13 “City” means The City of Seattle Police Department oversight entity.

14 “CTO” means Chief Technology Officer as defined in Section 3.23.020.

15 “Inspector General for Public Safety” means the primary entity charged with civilian
16 oversight over the Seattle Police Department Office of Professional Accountability Auditor or its
17 successor.

18 “SPD” means the Seattle Police Department.

19 “Surveillance” or “surveil” means to observe or analyze the movements, behavior, or
20 actions of identifiable individuals or groups of individuals on public or private property, in a
21 manner that is reasonably likely to raise concerns about civil liberties, freedom of speech or
22 association, racial equity or social justice. Identifiable individuals also include individuals whose
23 identity can be revealed by license plate data when combined with any other record. It is not

1 surveillance if an individual knowingly and voluntarily consented to provide the information, or
2 had a clear and conspicuous opportunity to opt out of providing the information.

3 -“Surveillance capability” means the ability to collect, capture, transmit, or record data
4 that could be used to surveil ~~individuals or groups of individuals~~, regardless of whether the data
5 is obscured, de-identified, or anonymized before or after collection and regardless of whether
6 technology might be used to obscure or prevent the capturing of certain views or types of
7 information.

8 “Surveillance data” ~~shall mean~~means any electronic data collected, captured, recorded,
9 retained, processed, intercepted, or analyzed, ~~or shared~~ by surveillance technology~~- acquired by~~
10 the City or operated at the direction of the City.

11 “Surveillance Impact Report” or “SIR” means the report with content enumerated in
12 Sectionsubsection 14.18.040.B. ~~of this Chapter.~~

13 “Surveillance technology” means any~~‡~~ electronic device~~‡~~, software program~~‡~~, or hosted
14 software solution; ~~or services provided by a third party;~~ that is ~~or are~~ designed or primarily
15 intended ~~by the vendor~~ to be used for the purpose of surveillance. ~~Surveillance technology does~~
16 ~~not include:~~ (a) ~~technology used to collect data from individuals who knowingly and voluntarily~~
17 ~~consent to provide, or who do not avail themselves of an opportunity to opt out of providing,~~
18 ~~such data for use by a City department;~~ (b) ~~social media sites or news monitoring and news alert~~
19 ~~services;~~ (c) ~~a body worn camera;~~ (d) ~~a camera installed in or on a police vehicle;~~ (e) ~~a camera~~
20 ~~installed in or on any vehicle or along a public right of way used to record traffic patterns or~~
21 ~~traffic violations or to otherwise operate the transportation system safely and efficiently,~~
22 ~~including in any public right of way;~~ (f) ~~a camera installed on City property for security~~
23 ~~purposes;~~ (g) ~~a camera installed solely to protect the physical integrity of City infrastructure,~~

1 ~~such as Seattle Public Utilities reservoirs; and (h) routine patches, firmware and software~~
2 ~~updates, and hardware lifecycle replacements.~~

3 ~~“Use” means to operate, including operation by any other entity on the City’s behalf.~~

4 **14.18.020 Council approval for acquisition of surveillance technologies**

5 A. ~~Any~~Unless exempted from the requirements of this Chapter 14.18 pursuant to Section
6 ~~14.18.030, any~~ City department intending to acquire surveillance technology ~~or surveillance data~~
7 shall, prior to acquisition, obtain Council ordinance approval of the acquisition and a
8 surveillance impact report for the technology. A City department that directs a non-City entity to
9 acquire or operate surveillance technology on the City’s behalf is bound by ~~ordinanee~~the
10 requirements of this Chapter 14.18 to the same extent as if the department were acquiring the
11 surveillance technology.

12 B. The determination for a department that an acquisition is surveillance technology as
13 defined in this Chapter 14.18 shall be documented in writing, submitted to the CTO, and take
14 into consideration the following factors, including but not limited to (1) potential impacts and
15 uses that may adversely affect disadvantaged groups or communities and (2) the likelihood that
16 individually identifiable information will be shared with non-City entities. The CTO shall by the
17 last day of each quarter submit to Council a list of all technology for which a determination was
18 made that the technology is not surveillance technology as defined in this Chapter 14.18, along
19 with supporting information to explain the justification for the disposition of items on the list. A
20 department may rely on documented determination submitted to the CTO that its technology
21 acquisition is not surveillance technology governed by this Chapter 14.18, unless the Council
22 designates otherwise.

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

3 D. Prior to requesting Council approval for an accompanying Surveillance Impact
4 Report, prior to acquisition, the department must complete one or more community meetings
5 with opportunity for public comment and written response. The Council may direct the
6 department to conduct additional community engagement before approval, or after approval as a
7 condition of approval. The community meeting or meetings should be accessible, be noticed in
8 multiple languages, be held in communities impacted by the proposed acquisition, and collect
9 information about potential disparate impacts on disadvantaged groups.

10 B. E. If the Chief Technology Officer CTO, in reviewing information technology
11 resources under the process for mitigating privacy risk under subsection 3.23.030.P, determines
12 that technology ~~or data~~ for which a department is requesting authorization for acquisition ~~meets~~
13 ~~the definition of surveillance technology or surveillance data as defined in SMC 14.18.010, the~~
14 ~~department shall also be required to follow therequires~~ Council approval ~~process set forth~~
15 ~~inunder~~ this Chapter ~~14.18. Upon making such determination, the Chief Technology Officer, the~~
16 CTO shall inform the City department in writing of its obligation to comply with the provisions
17 of this Chapter 14.18 and may provide technical assistance to the department for such
18 compliance purposes.

19 C. Prior to approving or rejecting a Surveillance Impact Report, the Council may request
20 revisions to be made by the submitting City department.

21 DE. The CTO shall post the latest version of all proposed and approved SIRs to the City's
22 website with an indication of its current approval status and, if available, the planned Council
23 date for action. The CTO shall also maintain a list of surveillance technology exempted by the

1 Council and post information to the City's website that allows the public to readily identify every
2 technology that has been exempted, the nature of the technology, and the ordinance numbers of
3 the legislation granting the exemptions.

4 G. Following Council approval of the acquisition,including the Surveillance Impact
5 Report and the terms of the SIR, the department may acquire and use the approved surveillance
6 technology or surveillance data only in accordance with the procedures and protocols set forth in
7 the Surveillance Impact Report, and will not enter into any agreement to acquire the same
8 technology or data that would violate the Surveillance Impact Report.

9 **14.18.030 Scope of acquisition approval**

10 Notwithstanding the provisions of this Chapter 14.18, the approvals required by Section
11 14.18.020 also apply to: (1) acquisition of technology upgrades that materially alter the
12 surveillance capabilities previously disclosed in the approval processes required by this Chapter
13 14.18; or (2) using SIR. Any material update to an SIR, such as to change the purpose or manner
14 in which a surveillance technology may be used, shall be by ordinance; non-material updates
15 may be made to the SIR by a department without Council action so long as the change is clearly
16 marked as such in the SIR. For surveillance technology or surveillance data for a purpose or in a
17 manner not previously approved in accordance with this Chapter 14.18, any material change in
18 surveillance capabilities, such as through technology upgrades, requires an updated SIR. Routine
19 patches, firmware or software updates, and hardware lifecycle replacements that do not
20 materially upgrade surveillance capabilities do not require an updated SIR.

21 **14.18.030 Exemptions and exceptions**

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

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

3 or

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

6 B. The following constitute surveillance technology but the requirements of this Chapter
7 14.18 do not apply to them:

8 1. Body-worn cameras;
9 2. Cameras installed in or on a police vehicle;
10 3. Cameras installed pursuant to state law authorization in or on any vehicle or along a
11 public right-of-way solely to record traffic violations;

12 4. Cameras installed on City property solely for security purposes;
13 5. Cameras installed solely to protect the physical integrity of City infrastructure, such as
14 Seattle Public Utilities reservoirs; and

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

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

18 1. In the event of an emergency situation that poses an imminent and serious risk of
19 death or substantial bodily harm, a City department may acquire surveillance technology without
20 prior Council approval, for the sole purpose of preventing or mitigating such risk, if the
21 department reasonably believes the acquisition of such surveillance technology will result in
22 reduction of the risk. The department's use of the surveillance technology must end when such
23 risk no longer exists or the use of the surveillance technology can no longer reasonably reduce

1 the risk. The use must be documented in the department's annual surveillance usage report, and
2 any future acquisition or use of such surveillance technology must be approved by the City
3 Council as set forth in this Chapter 14.18.

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

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

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

16 **14.18.040 Surveillance impact report requirements**

17 A. Any City department requesting Council approval for surveillance technology ~~or~~
18 ~~surveillance data~~-acquisition under Section 14.18.030020.A must include a ~~Surveillance Impact~~
19 ~~Report~~ (~~"an SIR"~~) with the request. ~~Reporting under this section must be sufficient to provide~~
20 ~~information to allow the City Council to make informed decisions and foster public~~
21 ~~understanding, but should not compromise public safety by providing information that would~~
22 ~~render the proposed technology or data vulnerable.~~

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

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

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

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

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

21 b. Any additional rules that will govern use of the surveillance technology
22 ~~or surveillance data~~ and what processes will be required prior to each use of the surveillance
23 technology ~~or surveillance data~~, including but not limited to what legal standard, if any, must be

met before the technology ~~or data areis~~ used, such as for the purposes of a criminal investigation supported by reasonable suspicion.

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

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

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

f. Whether a department intends to share access to the surveillance ~~technologiess~~technology or the surveillance data from that surveillance technology with any other ~~government~~entity, including any other City department or non-City entity, and if so, with which

1 ~~governmental entities~~entity and how such sharing is necessary for the purpose or purposes for
2 which Council approval is requested; and what restrictions, if any, the department will place
3 upon the receiving ~~governmental entities' non-City entity's~~ use of such surveillance technologies
4 ~~or surveillance data.~~ If applicable, the SIR shall include a copy of the department's procedures
5 for ensuring ~~third party~~the entity's compliance with this provision.

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

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

14 5. A description of how the potential impact of the surveillance on civil rights;
15 ~~including privacy, anonymity, and freedom of speech, religion, assembly, protest, and~~
16 ~~expression; as well as and liberties and~~ potential disparate impacts on communities of color and
17 other marginalized communities have been taken into account; and a mitigation plan~~describing~~
18 ~~how the department's acquisition will be regulated to limit such impacts.~~

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

1 C. ~~The City shall make the final SIR available to the public on its website.~~

2 **14.18.050 Third party use**

3 A. ~~If access to the surveillance technology and surveillance data by a third party contract~~
4 ~~exists or is anticipated to exist, the City department shall enter into a written agreement requiring~~
5 ~~that such entity will be bound by any restrictions specified in the Surveillance Impact Report~~
6 ~~pursuant to SMC 14.18.030.B.3.f. with regard to such surveillance technology.~~

7 B. ~~The City department providing such access shall have written procedures in place for~~
8 ~~determining how the department will ensure the receiving individual or entity's compliance with~~
9 ~~any restrictions identified in the Surveillance Impact Report.~~

10 **14.18.060 Acquisition and use exemptions**

11 A. ~~Notwithstanding the provisions of this Chapter 14.18, in the event of an emergency~~
12 ~~situation that poses an imminent and serious risk of death or substantial bodily harm, a City~~
13 ~~department may acquire and use or share surveillance technology or surveillance data for the sole~~
14 ~~purpose of preventing or mitigating such risk, if the department reasonably believes the~~
15 ~~acquisition and use of such surveillance technology or surveillance data will result in reduction~~
16 ~~of the risk. The department's acquisition and use of the surveillance technology or surveillance~~
17 ~~data must end when such risk no longer exists and the emergency situation has ended, and any~~
18 ~~future acquisition or use of such surveillance technology or surveillance data must be approved~~
19 ~~by the City Council as set forth in this Chapter 14.18.~~

20 B. ~~Notwithstanding the provisions of this Chapter 14.18, a City department may acquire,~~
21 ~~use or share surveillance data collected by a third party, when: (1) the data are collected by the~~
22 ~~third party for the third party's own use; and (2) the third party's acquisition and use are not~~
23 ~~pursuant to any purchase, subscription, or ongoing agreement with the department or City; and~~

1 ~~(3) the City's collection is for the purpose of (i) a criminal investigation supported by reasonable~~
2 ~~suspicion or pursuant to a lawfully issued search warrant, including any subsequent criminal~~
3 ~~prosecution; or (ii) an investigation of an alleged violation of departmental policies or~~
4 ~~administrative internal investigation.~~

5 ~~C. Notwithstanding the provisions of this Chapter 14.18, a City department may share~~
6 surveillance technology or surveillance data to the extent required by court order, subpoena, or as
7 otherwise required by law, notwithstanding the contents of any approved SIR.

8 ~~D. Notwithstanding the provisions of this Chapter 14.18, a technical patch or upgrade that~~
9 ~~is necessary to mitigate threats to the City's environment may be applied without Council~~
10 ~~approval. If the patch or upgrade materially alters the surveillance capabilities of the technology,~~
11 ~~the department will not use the new surveillance capabilities of the technology to the extent~~
12 ~~possible until Council approval is obtained, and the department shall request Council approval as~~
13 ~~soon as practicably possible. The request shall include a report to Council of how the altered~~
14 ~~surveillance capabilities were used between the time of the upgrade and the report to Council.~~

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

21 **14.18.070 Surveillance technology oversight**

22 ~~A. The Seattle Police Department oversight entity shall have primary responsibility for~~
23 ~~overseeing the impacts of City acquisition and use of surveillance technology and surveillance~~

1 ~~data under this Chapter 14.18. That entity shall conduct oversight in consultation with the Chief~~
2 ~~Technology Officer.~~

3 ~~B. The Council may direct the Chief Technology Officer to prepare a privacy and civil~~
4 ~~liberties~~**050 Equity impact assessment** ~~of any technology proposed to be acquired by a City~~
5 ~~department.~~

6 ~~CA.~~ Every year, by no later than September 15, the Chief Technology Officer shall, ~~in~~
7 ~~consultation with the Seattle Police Department oversight entity,~~ produce and submit to the City
8 Council a Surveillance Technology Community Equity Impact Assessment and Policy Guidance
9 Report. ~~The report shall be presented annually in the Gender Equity, Safe Communities, and~~
10 ~~New Americans Committee, or its successor.~~ (“equity impact assessment”), to be filed with the
11 City Clerk with an electronic copy to the Council, the Chair of the committee responsible for
12 public safety matters, and the Director of Central Staff. The report shall address, at a minimum,
13 the following:

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

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

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

21 B. The Inspector General for Public Safety may prepare an equity impact assessment for
22 a specific technology proposed to be acquired by SPD. The Council may direct the CTO to

1 prepare an equity impact assessment for a specific surveillance technology proposed to be
2 acquired by any other City department.

3 **14.18.080060 Annual surveillance ~~reports~~usage review**

4 ~~A. Each year by March 31, any City department that acquires or uses surveillance~~
5 ~~technology or surveillance data must submit to the Seattle Police Department oversight entity~~
6 ~~and Chief Technology Officer an Annual Surveillance Report which shall, at a minimum,~~
7 ~~include the following information for the previous calendar year. Reporting under this section~~
8 ~~should give sufficient information for the Council to make informed decisions and foster public~~
9 ~~understanding, but should not compromise public safety by providing information that would~~
10 ~~render the proposed technology or data vulnerable.~~

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

16 A. How surveillance technology ~~or surveillance data were used~~has been used, how
17 frequently, and whether usage patterns are changing over time;

18 2. Whether the scope of usage has increased in any material way, compared to the last
19 approved Surveillance Impact Report and compared to the last annual B. How often surveillance
20 technology or its data are being shared with other entities, including other governments in
21 particular;

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

23 D. How deployment of surveillance ~~report if there has been one;~~

1 3. Whether and how often access to surveillance technology was granted to any
2 other government entity, and identifying which entities;

3 technologies impacted or could impact civil liberties or have disproportionate effects on
4 disadvantaged populations—4. A public disclosure request log, identifying whether public
5 disclosure requests were made, by what type of entity, and how those impacts are being
6 mitigated, including, for SPD, an examination of whether they were granted;

7 5. How many deployments of the technology were pursuant to a warrant, are
8 pursuant to a non-warrant form of court authorization, or without any form of judicial
9 authorization;

10 6. Where applicable, a description of whether the warrants or not and how SPD's
11 surveillance technology was used to investigate potential or actual: (1) criminal activity; (2)
12 civil infractions; (3) activities or patterns considered to be indicators of potential future
13 involvement in criminal activity; or (4) perceived or actual gang or other analyze patterns to
14 predict suspect, individual, or group affiliations-affiliation behavior;

15 7. E. A summary of any complaints or concerns received by or known by the
16 department departments about their surveillance technology and/or surveillance data;

17 8. The results of any internal audits; any information about non-compliance with
18 uses specified in the Surveillance Impact Report; an analysis of any discriminatory, disparate,
19 and other adverse impacts the use of the surveillance technology may have had on the public's
20 civil rights or other assessments of code compliance; and civil liberties; and any actions taken in
21 response; and

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

1 **B. The report shall be submitted by filing a copy with the City Clerk, with an electronic**
2 **copy to the Seattle Police Department oversight entity, all Councilmembers, the Director of**
3 **Central Staff, and the Chief Technology Officer.**

4 **14.18.090 Enforcement**

5 **14.18.070 Enforcement**

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

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

16 Section 3. Notwithstanding the provisions of Chapter 14.18 of the Seattle Municipal
17 Code, each City department may use surveillance technology and surveillance data in its
18 possession as of the effective date of this ordinance that has not received prior Council approval
19 under Chapter 14.18 when the technology is, as of the effective date of this ordinance, (1) in the
20 department's possession or (2) that is in the execution or closeout phase of acquisition or has had
21 a purchase order issued, pursuant to the Chief Technology Officer's authority under subsection
22 3.23.030.C of the Seattle Municipal Code; provided, that the department complies with the
23 procedures set forth in this section for Council approval.

1 A. Each City department shall compile a list of all surveillance technology and
2 ~~surveillance data~~ that it controls and is utilizing as of the effective date of this ordinance that are
3 not covered by an exemption or exception to the requirements of this Chapter 14.18 of the
4 Seattle Municipal Code. The list shall be organized in order of greatest privacy impacts to least,
5 identify whether the technology has received prior Council approval under Chapter 14.18, and if
6 so, the ordinance number. The list, or an affirmative statement that there are no such
7 technologies ~~or data~~, shall be filed within 30~~90~~ days of the effective date of this ordinance with
8 the City Clerk, with an electronic copy to ~~all Councilmembers~~the Chair of the committee
9 responsible for public safety, the Director of Central Staff, ~~and~~the Chief Technology Officer,
10 and the Inspector General for Public Safety. The list may be refined after consultation with the
11 Chief Technology Officer and the Chief Technology Officer's determination that a technology
12 either does or does not perform surveillance. Corrections to the list should be timely filed with
13 the City Clerk. The City department shall, ~~for any technology on its list for which an ordinance~~
14 ~~number is not identified, request submit requests for~~ approval consistent with Chapter 14.18 of
15 the Seattle Municipal Code at a rate of at least one per month, or more when feasible, in list
16 order, beginning no later than 60~~30~~ days following the ~~effective date~~original submittal of ~~this~~
17 ~~ordinance~~. the list.

18 B. The Chief Technology Officer will conduct a status review of compliance with this
19 ~~section within one year of the effective date of the ordinance~~.

1 **Section 4.****Section 4. By no later than September 15, 2017, the Executive shall convene a**
2 **workgroup that includes representation from the Community Technology Advisory Board**
3 **(CTAB) to make recommendations on how to utilize community expertise to advise the Council**
4 **in surveillance technology policy decision-making. The recommendations shall be submitted to**
5 **the Council by December 31, 2017, by filing with the City Clerk and providing an electronic**
6 **copy to the Chair of the committee responsible for public safety matters and the Director of**
7 **Central Staff. In the interim, the Council shall utilize the expertise of CTAB regarding Council**
8 **actions on surveillance technology.**

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

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

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

President _____ of the City Council

Approved by me this _____ day of _____, 2017.

Edward B. Murray, Mayor

Filed by me this _____ day of _____, 2017.

Monica Martinez Simmons, City Clerk

(Seal)