



Legislation Details (With Text)

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Title: AN ORDINANCE relating to surveillance technology implementation; amending Ordinance 125376 and Chapter 14.18 of the Seattle Municipal Code.

Sponsors: Bruce Harrell

Indexes:

Attachments: 1. Att 1 – Ordinance 125376, 2. Proposed Amendments 1-3, 3. Summary and Fiscal Note, 4. Seattle Information Technology Department Memo (added; 9/18/18), 5. Central Staff Memo (added; 9/18/18), 6. Memo Att 1: Proposed Amendment 1 (added; 9/18/18), 7. Proposed Amendment 2 (added; 9/19/18), 8. Table of Amendments 1 and 2 (updated; added 9/19/18), 9. Table of Amendments 1 and 2 (added 9/19/18), 10. Central Staff Memo (3/16/18), 11. Presentation (3/20/18), 12. Signed Ordinance 125679, 13. Affidavit of Publication

| Date | Ver. | Action By | Action | Result |
|-----------|------|--|---------------------------------|--------|
| 10/5/2018 | 3 | City Clerk | attested by City Clerk | |
| 10/5/2018 | 3 | Mayor | returned | |
| 10/5/2018 | 3 | Mayor | Signed | |
| 9/26/2018 | 3 | City Clerk | submitted for Mayor's signature | |
| 9/24/2018 | 2 | City Council | passed as amended | Pass |
| 9/18/2018 | 1 | Governance, Equity, and Technology Committee | pass as amended | Pass |
| 3/20/2018 | 1 | Governance, Equity, and Technology Committee | discussed | |
| 3/19/2018 | 1 | City Council | referred | |
| 3/15/2018 | 1 | Council President's Office | sent for review | |
| 3/13/2018 | 1 | City Clerk | sent for review | |

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to surveillance technology implementation; amending Ordinance 125376 and Chapter 14.18 of the Seattle Municipal Code.
WHEREAS, the City has undergone significant changes in its administration and department personnel since Ordinance 125376 was implemented originally; and

WHEREAS, Council approval of surveillance impact reports for existing City surveillance technology will involve the development of protocols that will more than likely act as a guide for future approvals;

WHEREAS, upon the Council's receipt of the Executive's master list of existing surveillance technologies, it became apparent that grouping similar technologies together for Council consideration would be more efficient and conducive to meaningful community engagement than transmitting one request for Council approval per department per month as outlined in the original legislation; and

WHEREAS, other events have occurred since passage of Ordinance 125376 that call for clarifications to the surveillance ordinance; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 14.18.010 of the Seattle Municipal Code, enacted by Ordinance 125376, is amended as follows:

14.18.010 Definitions

The following definitions apply to this Chapter 14.18:

* * *

“Surveillance technology” means any electronic device, software program, or hosted software solution that is designed or primarily intended to be used for the purpose of surveillance.

“Working Group” means the Community Surveillance Working Group established pursuant to Section 14.18.080, which is responsible for advising the Executive and City Council on matters concerning surveillance technology pursuant to this Chapter 14.18.

Section 2. Section 14.18.020 of the Seattle Municipal Code, enacted by Ordinance 125376, is amended as follows:

14.18.020 Council approval for acquisition of surveillance technologies

A. Unless exempted or excepted from the requirements of this Chapter 14.18 pursuant to Section 14.18.030, any City department intending to acquire surveillance technology shall, prior to acquisition, obtain

Council ordinance approval of the acquisition and a surveillance impact report for the technology. A City department that directs a non-City entity to acquire or operate surveillance technology on the City's behalf is bound by the requirements of this Chapter 14.18 to the same extent as if the department were acquiring the surveillance technology.

B. 1. The Executive shall establish a process for determining whether technology is surveillance technology as defined in this Chapter 14.18. The process shall take into consideration the following factors, including but not limited to (1) potential impacts and uses that may adversely affect disadvantaged groups or communities and (2) the likelihood that individually identifiable information will be shared with non-City entities.

2. Each determination that is made pursuant to the process in subsection 14.18.020.B.1 shall be documented in writing. If the process determines that technology is not surveillance technology subject to the requirements of this Chapter 14.18, a department may rely on that determination unless the Council designates that the technology is surveillance technology. Any such Council designation shall be filed with the City Clerk.

3. The CTO shall, by no later than 30 days following the last day of each quarter, submit to Council, by filing with the City Clerk and providing an electronic copy to the chair of the committee responsible for ~~((public safety))~~ technology matters, the co-chairs of the Working Group, the City Auditor, the Inspector General for Public Safety, and the Director of Central Staff, a surveillance technology determination list that includes all technology from that quarter that was reviewed under the process established in subsection 14.18.020.B.1, along with supporting information to explain the justification for the disposition of items on the list. The CTO shall ~~((at the same time provide an electronic copy of the lists for the previous three quarters to the Chair of the committee responsible for public safety matters and the Director of Central Staff))~~ also post the list to the City's website.

4. The Council may at any time designate that a technology is or is not surveillance

technology subject to the requirements of this Chapter 14.18.

5. If the Council changes the designation of a technology on a list required by subsection 14.18.020.B.3, the Council action shall be filed with the City Clerk and the Council shall direct the CTO to file an updated list with the City Clerk.

C. Prior to requesting Council approval pursuant to subsection 14.18.020.A, the department must complete one or more community meetings with opportunity for public comment and written response. The Council may direct the department to conduct additional community engagement before approval, or after approval as a condition of approval. The community meeting or meetings should be accessible, be noticed in multiple languages, be held in communities impacted by the proposed acquisition, and collect information about potential disparate impacts on disadvantaged groups.

D. If the CTO, in reviewing information technology resources under the process for mitigating privacy risk under subsection 3.23.030.P, determines that technology for which a department is requesting authorization for acquisition requires Council approval under this Chapter 14.18, the CTO shall inform the City department in writing of its obligation to comply with the provisions of this Chapter 14.18 and may provide technical assistance to the department for such compliance purposes.

E. The CTO shall post the latest version of all proposed and all approved SIRs to the City's website with an indication of its current approval status and, if available, the planned Council date for action.

F. Following Council approval of the acquisition and the terms of the SIR, the department may acquire and use the approved surveillance technology only in accordance with the procedures and protocols set forth in the SIR. Any material update to an SIR, such as to change the purpose or manner in which a surveillance technology may be used, shall be by ordinance; non-material updates may be made to the SIR by a department without Council action so long as the change is clearly marked as such in the SIR. For surveillance technology previously approved in accordance with this Chapter 14.18, any material change in surveillance capabilities, such as through technology upgrades, requires an updated SIR. Routine patches, firmware or

software updates, and hardware lifecycle replacements that do not materially upgrade surveillance capabilities do not require an updated SIR.

G. Prior to submittal of a SIR to Council, the CTO may provide a written statement that addresses privacy rights, civil liberty or other concerns that are raised in the impact assessment created by the Working Group pursuant to Section 14.18.080.

Section 3. Section 14.18.050 of the Seattle Municipal Code, enacted by Ordinance 125376, is amended as follows:

14.18.050 Equity impact assessment

A. Every year, ~~((by no later than))~~ beginning by no later than September 15, 2019, and continuing by no later than September 15 each year thereafter, the Chief Technology Officer shall produce and submit to the City Council a Surveillance Technology Community Equity Impact Assessment and Policy Guidance Report (“equity impact assessment”), to be filed with the City Clerk with an electronic copy to the Council, the Chair of the committee responsible for ~~((public safety))~~ technology matters, the co-chairs of the Working Group, the City Auditor, the Inspector General for Public Safety, and the Director of Central Staff, and posted to the City’s website. The equity impact assessment shall address, at a minimum, the following:

1. Whether this Chapter 14.18 is effectively meeting the goals of the Race and Social Justice Initiative, including whether any communities and groups in the City are disproportionately impacted by the use of surveillance technologies;
2. What adjustments to laws and policies should be made to remedy any disproportionate impacts so as to achieve a more equitable outcome in the future; and
3. Any new approaches and considerations the City Council should bring to future reviews of requests for Council approval submitted pursuant to Section 14.18.030.

B. The CTO shall consult with the co-chairs of the Working Group in the writing of the equity impact assessment, and shall include all Working Group feedback and recommendations in the equity impact

assessment; if the CTO disagrees with a recommendation, the CTO shall provide an explanation of the disagreement in the report.

((B)) C. The Inspector General for Public Safety may prepare an equity impact assessment for a specific technology proposed to be acquired by SPD. The Council may direct the CTO to prepare an equity impact assessment for a specific surveillance technology proposed to be acquired by any other City department.

D. When reviewing technologies that do not have SIRs, the department shall look to existing documents and policies to address the requirements of Section 14.18.050 and, whenever possible, provide the information requested for each retroactive technology.

Section 4. A new Section 14.18.080 is added to the Seattle Municipal Code as follows:

14.18.080 Community Surveillance Working Group

A. There is established the Community Surveillance Working Group (“Working Group”) to advise the Council and Executive on matters of surveillance technology from a community perspective.

1. The Working Group shall consist of seven members appointed by the Mayor and Council, including four members by the Mayor and three members by the Council, and shall be finalized by December 1, 2018. This group shall be reevaluated 18 months after its first meeting to review its effectiveness in composition and process.

2. The Working Group shall elect co-chairs at its initial meeting. The Working Group shall meet at least once per quarter. All meetings of the Working Group shall be open to the public and all final documents and reports to the Council shall be posted by the CTO to the City’s website.

3. At least five members of the Working Group shall represent equity-focused organizations serving or protecting the rights of communities and groups historically subject to disproportionate surveillance, including Seattle’s diverse communities of color, immigrant communities, religious minorities, and groups concerned with privacy and protest.

4. The seven positions on the Working Group shall be numbered one through seven. The

initial terms of odd-numbered positions shall be two years and the initial terms of even-numbered positions shall be three years. All subsequent terms shall be for three years. Working Group members may serve up to two consecutive terms. Any vacancy in an unexpired term shall be filled in the same manner as the original appointment. A member whose term is ending may continue on an interim basis as a member with voting rights until such time as a successor for that position has been appointed.

5. The Working Group shall organize itself and adopt such rules and administrative procedures for its own governance, consistent with City Charter and ordinances, as are necessary for its functions and responsibilities.

B. The Working Group shall perform the following duties:

1. Provide to the Executive and the City Council a privacy and civil liberties impact assessment for each SIR that must be included with any departmental request for surveillance technology acquisition or in-use approval. The impact assessment shall include a description of the potential impact of the surveillance technology on civil rights and liberties and potential disparate impacts on communities of color and other marginalized communities. The CTO shall share with the Working Group a copy of the SIR that shall also be posted during the period of public engagement. At the conclusion of the public engagement period, the CTO shall share the final proposed SIR with the Working Group at least six weeks prior to submittal of the SIR to Council for approval. The Working Group shall provide its impact assessment in writing to the Executive and the City Council for inclusion in the SIR within six weeks of receiving the final proposed SIR. If the Working Group does not provide the impact assessment before such time, the Working Group must ask for a two-week extension of time to City Council in writing. If the Working Group fails to submit an impact assessment within eight weeks of receiving the SIR, the department and City Council may proceed with ordinance consideration without the impact assessment.

2. The Working Group shall provide recommendations to the CTO for inclusion in the CTO's annual equity impact assessment in accordance with subsection 14.18.050.B.

3. The Working Group shall provide assistance as resources permit to the Executive and Council in ensuring members of vulnerable communities have the opportunity to provide input and feedback on Surveillance Technologies through the SIR approval process.

C. The Working Group shall be staffed by the Executive Department with Central Staff input.

Section 5. Section 3 of Ordinance 125376, which ordinance is included as Attachment 1 to this ordinance, is amended as follows:

Section 3. Notwithstanding the provisions of Chapter 14.18 of the Seattle Municipal Code, each City department may use surveillance technology that has not received prior Council approval under Chapter 14.18 when the technology is, as of the effective date of this ordinance, (1) in the department's possession or (2) in the execution or closeout phase of acquisition or has had a purchase order issued, pursuant to the Chief Technology Officer's authority under subsection 3.23.030.C of the Seattle Municipal Code; provided, that the department complies with the procedures set forth in this section for Council approval. The SIRs on all identified retroactive technologies on the Master Technology List must be submitted to Council by March 1, 2020. If the department is not able to transmit to the City Council all SIRs on retroactive technologies by March 1, 2020, the department may submit to the Council a request for a six-month extension of the deadline. The request must explain the reasons that the department cannot complete all SIR reports before the March 1, 2020 deadline, as well as identify a timeline for submitting to the Council all outstanding SIRs. The request shall be sent to the City Clerk and added to a Clerk File, which must be passed by a majority vote of the Council to authorize an extension of the deadline. The Executive shall by September 1, 2019 submit to the Council a status report on the development of the SIRs for retroactive technologies. The report shall describe the public engagement and workgroup process that is completed or planned for each SIR as well as a timeline for when the department expects to finish work on all SIRs for retroactive technologies.

Each City department shall compile a list of all surveillance technology that it controls and is utilizing as of the effective date of this ordinance that ~~((are))~~ is not covered by an exemption or exception to the

requirements of ~~((this))~~ Chapter 14.18 of the Seattle Municipal Code, and submit it to the CTO, or submit an affirmative statement that there are no such technologies. The list shall identify for each technology whether the technology has received prior Council approval under Chapter 14.18, and if so, the ordinance number. The CTO shall compile a master list that contains the information submitted by each department and ~~((a final list))~~ that identifies separately for each department the order and timeframe in which the technology is recommended to be brought to the Council for ordinance approval. The master list shall be filed within 90 days of the effective date of this ordinance with the City Clerk, with an electronic copy to the Chair of the committee responsible for ~~((public safety))~~ technology, the Director of Central Staff, the Chief Technology Officer, and the Inspector General for Public Safety. The CTO may make corrections to the master list, which must be timely filed with the City Clerk. Each City department shall submit requests for surveillance technology ordinance approval for technologies on the master list consistent with Chapter 14.18 of the Seattle Municipal Code ~~((at a rate of at least one per month, or more when feasible,))~~ in ~~((list))~~ the order and timeframe contained in the master list, beginning no later than January 31, 2019, and at a rate of at least 12 in a 12-month period. ~~((, beginning no later than the end of the first quarter of 2018.))~~ The Council may revise or re-order the master list by resolution.

Section 6. Section 5 of Ordinance 125376 is amended as follows:

Section 5. The first annual equity impact assessment under subsection 14.18.050.A of the Seattle Municipal Code shall be filed no later than September 15, 2019 and first annual surveillance usage review under Section 14.18.060 of the Seattle Municipal Code should be filed in January of 2020 and cover activities through the end of 2018. Surveillance usage reviews in subsequent years shall be filed in September and cover the data and activities of the previous year.

Section 7. 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 _____, 2018, and signed by me in open session in authentication of its passage this _____ day of _____, 2018.

President _____ of the City Council
Approved by me this _____ day of _____, 2018.

Jenny A. Durkan, Mayor
Filed by me this _____ day of _____, 2018.

Monica Martinez Simmons, City Clerk
(Seal)
Attachments:
Attachment 1 - Ordinance 125376