



No. 4291.....

City of Pittsfield

In the Year Two Thousand Twenty Four

AN ORDINANCE

AMENDING THE CODE OF THE CITY OF PITTSFIELD BY ADDING A NEW CHAPTER 18 ½, SURVEILLANCE TECHNOLOGY OVERSIGHT

Be it ordained by the City Council of the City of Pittsfield, as follows:

CHAPTER 18 ½ SURVEILLANCE TECHNOLOGY OVERSIGHT

Section I

Sec. 18 ½ -1. PURPOSE.

The purpose of this Ordinance is to provide for the regulation of Surveillance Technology acquisition or use by the City of Pittsfield or the use of the Surveillance Data it provides, to safeguard the right of individuals to privacy balanced with the need to promote and provide safety and security.

Sec. 18 ½ -2 DEFINITIONS.

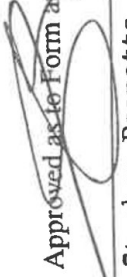
(a) "Disparate Impact" means an adverse effect that is disproportionately experienced by individual(s) having any traits, characteristics, or status as to which discrimination is prohibited under the Constitution or any law of the United States, the constitution or any law of the Commonwealth of Massachusetts, or the Pittsfield Home Rule Charter or any law of the City of Pittsfield than by similarly situated individual(s) not having such traits, characteristics, or status.

(b) "Exigent Circumstances" means the Police Chief's or the Police Chief's designee's good faith belief that an emergency involving danger of death or physical injury requires use of the Surveillance Technology or the Surveillance Data it provides. The use of Surveillance Technology in Exigent Circumstances shall not infringe upon an individual's right to peacefully protest and exercise other lawful and protected Constitutional Rights.

(c) "Marginalized Communities" means communities that are defined by a common race, ethnicity, religion, national origin, disability, income level, sexual orientation, or political perspective.

(d) "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-

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accessing devices, whether procured or subsidized by a City entity or personally owned, that is used in the regular course of conducting City business.

(e) "Surveillance Data" means any electronic data collected, captured, recorded, retained, processed, intercepted, or analyzed by Surveillance Technology acquired by the City or operated at the direction of the City.

(f) "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, biometric, olfactory or similar information specifically associated with, or capable of being associated with, any individual or group.

(i). "Surveillance Technology" includes, but is not limited to:

1. International Mobile Subscriber Identity ("IMSI") catchers and other cell site simulators;
2. Automatic license plate readers;
3. Electronic toll readers;
4. Closed-circuit television cameras except as otherwise provided herein;
5. Biometric Surveillance Technology, including facial, voice, iris, and gait-recognition software and databases;
6. Mobile DNA capture technology;
7. Gunshot detection and location hardware and services;
8. X-ray vans;
9. Video and audio monitoring and/or recording technology, such as surveillance cameras, vehicle cameras, and wearable body cameras;
10. Tools, including software and hardware, used to gain unauthorized

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access to a computer, computer service, or computer network;

11. Social media monitoring software;
12. Radio-frequency identification (RFID) scanner; and
13. Software designed to integrate or analyze data from Surveillance Technology, including surveillance target tracking and predictive policing software.

(ii) For the purposes of this Ordinance, "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 the City and are 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 resources, permits, licenses, and business records;
3. City databases and enterprise systems that do not contain any data or other information collected, captured, recorded, retained, processed, intercepted, or analyzed by Surveillance Technology, including payroll, accounting, or other fiscal databases;
4. Information technology security systems, including firewalls and other cybersecurity systems;
5. Physical access control systems, employee identification management systems, inventory control systems, and other physical control systems;
6. Infrastructure and mechanical control systems, including those that control or manage street lights, traffic lights, electrical, natural gas, or water or sewer functions;

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7. LiDAR technology and systems used for Geographic Information Systems imagery purposes;
8. Global Positioning System technology used to collect field data or track City-owned vehicles that are stored on City property when not in use;
9. Computers, software, hardware, or other devices used in monitoring the work and work-related activities involving City employees, contractors and volunteers or used in conducting internal investigations involving City employees, contractors and volunteers;
10. Cameras installed on the exterior or the interior of City property solely for security purposes, such as to monitor entryways and outdoor areas of City-owned or controlled buildings and property for the purpose of maintaining the safety of City employees and visitors to City buildings, protecting City property, or to protect the physical integrity of City infrastructure;
11. Cameras, computers, software, hardware, or devices used for videoconferencing or to facilitate broadcast or recording if public meetings;
12. Police department interview room, holding cell, and police department internal security audio/video recording systems;
13. Police department computer-aided dispatch (CAD), records/case management, Live Scan, booking, Department of Motor Vehicles, 9-1-1, and related dispatch and operation or emergency services systems;
14. Police department early warning systems;
15. Parking Ticket Devices ("PTDs") and related databases;
16. Manually-operated, handheld cameras, audio recorders, and video recorders whose functionality is limited to manually capturing and manually downloading video and/or audio recordings;

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17. Surveillance devices that cannot record or transmit audio or video or be remotely accessed, such as image stabilizing binoculars or night vision goggles;
18. Manually-operated technological devices that are used primarily for internal City communications, such as radios, personal communications devices, and email systems; and
19. Parking access and revenue control systems, including proximity card readers and transponder readers at City-owned or controlled parking garages.

(g) "Surveillance Use Policy" means a publicly-released written policy for governing the City's use of Surveillance Technology, approved by the City Attorney as to form, and submitted by the Mayor to and approved by the City Council. The Surveillance Use Policy shall at a minimum, include the following:

- (i) Purpose: The specific purpose(s) that the Surveillance Technology item is intended to advance;
- (ii) Authorized Use: The uses that are authorized, the rules and processes required prior to such use, the location(s) it may be deployed, and uses of the Surveillance Technology that will be expressly prohibited;
- (iii) Data Collection: What types of Surveillance Data will be collected, captured, recorded, intercepted, or retained by the Surveillance Technology;
- (iv) Data Access: The category of individuals who can access or use the collected information, and the rules and processes required prior to access or use of the information;
- (v) Data Protection: The general safeguards that protect information from unauthorized access, including encryption and access control mechanisms;
- (vi) Data Retention: The limited time period, if any, that information collected by the Surveillance Technology will be routinely retained, the reason such retention

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Be it ordained by the City Council of the City of Pittsfield, as follows:

period is appropriate to further the purpose(s) enumerated in the Surveillance Use Policy, 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;

(vii) **Public Access:** How collected information can be accessed or used by members of the public, consistent with the provisions of the Public Records Law and its implementing regulations;

(viii) **Third-Party Data-Sharing:** If and how other Pittsfield or non-Pittsfield entities, agencies, departments, bureaus, divisions, or units can access or use the data collected by the Surveillance Technology, including any required justification or legal standard necessary to share that data, and how City of Pittsfield will ensure that any entity sharing or receiving such data complies with the Surveillance Use Policy;

(ix) **Maintenance:** Whether use or maintenance of the Surveillance Technology will require data gathered by the Surveillance Technology to be handled or stored by a third-party vendor on an ongoing basis and, if so, the parameters of the third-party vendor's use, handling, or storage;

(x) **Training:** The training required for any individual authorized to use the Surveillance Technology or to access information collected by the Surveillance Technology;

(xi) **Complaints:** What procedures will be put in place by which members of the public can register complaints or concerns, or submit questions about the deployment or use of a specific surveillance technology, and how the municipal entity will ensure each question and complaint is responded to in a timely manner; and

(xii) **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

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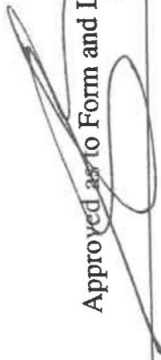
information collected by the technology, technical measures to monitor for misuse, any independent person or entity with oversight authority, and the legally enforceable sanctions for violations of the policy.

h. "City of Pittsfield" means any department, agency, bureau, and/or subordinate division of the City of Pittsfield, except those under the jurisdiction of the School Committee, Regional School Committee, or Library Trustees.

Sec. 18 1/2-3 CITY COUNCIL REVIEW AND APPROVAL MANDATORY FOR SURVEILLANCE DECISIONS.

(a) The Mayor shall obtain City Council approval of a Surveillance Use Policy for use of Surveillance Technology by the City of Pittsfield prior to engaging in any of the following:

- (i) Acquiring or borrowing new Surveillance Technology whether or not that acquisition is made through the exchange of monies or for other or no consideration;
 - (ii) Using new or existing Surveillance Technology for a purpose, in a manner, or in a location not previously approved by the City Council in accordance with this Ordinance; or
 - (iii) Entering into an agreement, including a written or oral agreement, with a non-City of Pittsfield entity to acquire, share, or otherwise use Surveillance Technology or its Surveillance Data.
- (b) Any Surveillance Use Policy submitted to the City Council for approval shall be published on the City Bulletin Board no fewer than fourteen (14) days prior to the date of the Council meeting where it shall be discussed.
- (c) Prior to approval, the City Council may request revisions to the Surveillance Use Policy submitted by the Mayor.

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Be it ordained by the City Council of the City of Pittsfield, as follows:

Sec. 18 ½ -4 Exceptions.

(a) The following situations constitute the use, acquisition, or borrowing of Surveillance Technology or Surveillance Data; however, the provisions of this Ordinance shall not apply said situations:

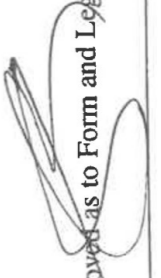
(i) Use of Surveillance Technology or Surveillance Data by the Police Department with regard to Exigent Circumstances and compelling law enforcement needs that make it impractical to obtain a court order; provided that the Police Chief confirms that such use is appropriate, and, further that the receipt, access or use is logged in the Annual Surveillance Report addressed under Sec. 18 ½ -8, and signed off by the Police Chief.

(ii) The receipt of evidence derived from Surveillance Technology or Surveillance Data pursuant to a warrant issued in relation to the investigation of a crime.

(iii) A City department head may, with the approval of the Mayor, apply a technical patch or upgrade that is necessary to mitigate threats to the City's environment. The department shall not use the new surveillance capabilities of the technology until the requirements of Sec. 18 ½ -3 are met, unless the Mayor determines that the use is unavoidable; in that case, the Mayor shall request City Council approval as soon as possible. The request shall include a report to the City Council of how the altered surveillance capabilities were used since the time of the upgrade.

Sec. 18 ½ -5 SURVEILLANCE TECHNOLOGY IMPACT REPORT AND SURVEILLANCE USE POLICY SUBMISSION.

(a) When seeking approval under "Sec. 18 ½ -3of this Ordinance, the Mayor shall submit to the City Council a Surveillance Technology Impact Report and a proposed Surveillance Use Policy pertaining to the specific Surveillance Technology for which approval is sought at least fourteen (14) days prior to the date of the Council meeting where it shall be discussed under Sec.18 ½ -3. The proposed Surveillance Technology


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Be it ordained by the City Council of the City of Pittsfield, as follows:

(b) Impact Report and proposed Surveillance Use Policy shall be posted on the City Bulletin Board at least fourteen (14) days prior to the date of the Council meeting where it shall be discussed.

(b) The Surveillance Technology Impact Report shall be written and include at a minimum the following:

(i). If applicable, the crime statistics for any location(s) the Technology will be deployed;

(i). An assessment identifying any potential impact on civil liberties and civil rights and a description of a plan to safeguard the rights of the public, including identifying with specificity (1) Any potential adverse impacts the Surveillance Technology, if deployed, might have on civil liberties and civil rights of any individuals, communities, or groups, including, but not limited to, Marginalized Communities in the City; and (2) what specific, affirmative measures will be implemented to safeguard the public from those potential adverse impacts;

(iii) The fiscal costs for the Surveillance Technology, including initial purchase and other ongoing costs and excluding personnel costs, and any current or potential sources of funding; and

(iv) 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 Surveillance Technology such as unanticipated costs, failures, civil rights, or civil liberties abuses.

Sec. 18 ½ -6 STANDARD OF APPROVAL.

The City Council shall only approve a request Sec. 18 ½ -3 of this Ordinance if it determines the benefits to the community of the proposed Surveillance Technology outweigh its costs, that the Surveillance Use Policy will safeguard civil liberties and civil rights, that no alternative with lesser economic cost or impact on civil rights or liberties would be as effective, and that the uses and deployments of the Surveillance Technology

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will not be based upon discriminatory or viewpoint-based factors or have a Disparate Impact on any community or group.

Sec. 18 ½ -7 COMPLIANCE FOR EXISTING SURVEILLANCE TECHNOLOGY.

(a) The Mayor shall submit to the City Council for its review and approval pursuant to Sec. 18 ½ -3 and 5a proposed Surveillance Use Policy applicable to each Surveillance Technology in use by the City of Pittsfield at the time this Ordinance becomes effective no later than 180 days following the effective date of this Ordinance.

(b) If the Mayor is unable to meet this 180-day timeline, the Mayor may notify the City Council in writing requesting to extend this period and the reasons for that request. The City Council may grant an extension to the Mayor to submit a proposed Surveillance Use Policy of up to ninety (90) days beyond the 180-day timeline.

(c) If the City Council has not approved the continuing use of Surveillance Technology through approval of a Surveillance Use Policy pursuant to Sec. 18 ½ -3 and 5, within one hundred eighty (180) days of its submission to the City Council, the Surveillance Use Policy shall be deemed approved.

Sec. 18 ½ -8 OVERSIGHT FOLLOWING COUNCIL APPROVAL.

(a) For each Surveillance Technology approved for use under this Ordinance, upon request by the City Council, the Mayor, or designee, shall submit to the City Council and publish on the City Bulletin Board a City Department Surveillance Report by the date stated in the City Council's request, and no more frequently than once every twelve (12) months. If the Mayor, or designee, is unable to meet the deadline, the Mayor shall request, in writing, the City Council extend this period, and shall provide the reasons for the request. The City Council may grant reasonable extensions for good cause.

(b) Within sixty (60) days of receiving the City Department Surveillance Report, the City Council shall discuss the Report at a regular Council Meeting.

(c) Based upon information in the City Department Surveillance Report and the Surveillance Technology Community Equity Impact Assessment and Policy Guidance, as detailed in Section I.1, the City Council shall reassess whether the

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Surveillance Technology as used continues to meet the standard of approval set forth in Sec. 18 ½ -6 of this Ordinance. If it does not, the City Council shall consider (1) directing that the use of the Surveillance Technology cease; (2) requiring modifications to the Surveillance Use Policy that are designed to address the Council's concerns; and/or (3) directing a report-back from the Mayor regarding steps taken to address the Council's concerns.

(d) The City Department Surveillance Report shall be written, shall concern specific Surveillance Technology, and shall include the following:

- (i). A description of how the Surveillance Technology has been used;
- (ii) A description of whether and how often data acquired through the use of the Surveillance Technology was shared with outside entities, the name of any recipient entity, the type(s) of data disclosed, under what legal standard(s) the information was disclosed, and the justification for the disclosure;
- (iii) A summary of community complaints or concerns about the Surveillance Technology, if any;
- (iv) The results of any internal audits required by the Surveillance Use Policy, any information about violations of the Surveillance Use Policy, and a general description of any actions taken in response;
- (v) Information that helps the City Council assess whether the Surveillance Technology has been effective at achieving its identified purposes;
- (vi) Statistics and information about any related public records requests;
- (vii) 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;
- (viii) Any requested modifications to the Surveillance Use Policy and a detailed basis for the request;


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Be it ordained by the City Council of the City of Pittsfield, as follows:

(ix) Where applicable, a breakdown of what physical objects the Surveillance Technology was installed upon, using general descriptive terms; for Surveillance Technology software, a breakdown of what data sources the Surveillance Technology was applied to; and

(e) If the Mayor believes that data or other information is insufficient to report on any of the other requirements for the Report, the Mayor shall indicate the same in the Report.

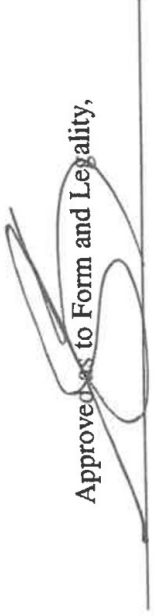
Sec. 18 ½ -9 SURVEILLANCE TECHNOLOGY COMMUNITY EQUITY IMPACT ASSESSMENT AND POLICY GUIDANCE

(a). Every year, but no later than November 15, the appropriate City Council Committee shall produce and submit to the Mayor and City Council a Surveillance Technology Community Equity Impact Assessment and Policy Guidance, which shall, at a minimum, address the following:

- (i) What communities and groups in the City, if any, are Disparately Impacted by the use of Surveillance Technologies, what disparities were perceived and/or experienced, and what were the resulting adverse impacts on the community's or group's civil rights and/or civil liberties;
- (ii) With respect to each perceived or experienced disparity identified in response to Sec. 18 ½ -9 (a)(i), what remedial adjustments to laws and policies, including but not limited to prior approvals granted pursuant to this Ordinance, should be made so as to achieve a more just and equitable outcome in the future;
- (iii) With respect to each remedial adjustment identified in response to Sec. 18 ½ 9 (a)(ii), what additional funding, implementation strategies, and/or accountability mechanisms would be needed to effectuate the adjustment; and
- (iv) In light of the collective responses to Sec. 18 ½ -9 (a)(i)-(iii), what new approaches and considerations should the City Council bring to future reviews of applications submitted pursuant to this Ordinance.

Sec. 18 ½ -10 ENFORCEMENT.

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Be it ordained by the City Council of the City of Pittsfield, as follows:

- (a). Enforcement Officials. This Chapter shall be enforced by the Mayor or the Mayor's designee.
- (b). Violation. Any violation of this Ordinance may be enforced through any means in law or in equity; provided, however, that the following conditions must first be met:
 - (i) Prior to the initiation of any legal proceeding under this Ordinance, the City of Pittsfield shall be given written notice of the violation(s) and an opportunity to correct such alleged violation(s) within 30 days of receipt of the notice.
 - (ii) If the alleged violation is substantiated and subsequently cured, a notice shall be posted in a conspicuous space on the City's website that generally describes the corrective measure(s) taken to address the violation(s).
 - (iii) Any person injured by a violation of this Chapter may institute proceedings for injunctive relief, declaratory relief, or a court order in a court of competent jurisdiction to enforce the provisions of this Chapter. Any action initiated under this Subsection (B) shall be brought against the City of Pittsfield, but not against City employees. No monetary damages shall be allowed in any legal proceeding for any alleged injuries arising out of any alleged violation(s) of this Chapter.
- (c) Whistleblower Protections. Subject to the limitations and requirements set forth in M.G.L. Ch. 149, Sec. 185 (known as the "Massachusetts Whistleblower Statute" and cited herein as "Section 185") as it may be amended from time to time, any City employee as defined in Section 185 who reports an alleged violation of this Ordinance, shall be afforded protections against retaliation if applicable pursuant to Section 185, as set forth in and subject to the limitations and requirements of Section 185.
- (d) Nothing in this Chapter shall be construed to limit or affect any individual's rights under state or federal laws.

Section II

EFFECTIVE DATE.

This Ordinance shall take effect 180 days after its adoption.

Approved as to Form and Legality,


Stephen Pagnotta

City Solicitor

In City Council

Read and passed to be ordained

November 26, 2024

10 Years - 0 Days

/s/ Peter T. White, Council President

/s/ Michele M. Benjamin, City Clerk

Approved by the Mayor

December 2, 2024

/s/Peter M. Marchetti

A true copy, attest:


City Clerk