Alternative language for a Surveillance Technology Use ordinance is provided. This draft provides for transparency in acquisition, use and reporting of specified and defined surveillance technology, while mitigating resource impacts upon staff and Council. Following an initial report on City-owned existing surveillance technology, a report would be made to Council on an annual basis. The report would summarize which technologies were used and how the technologies were used, and a summary of any complaints received regarding the use of the technology, and general information regarding any unauthorized access to the data collected by the technology. Should an exigency exist, staff could utilize new technology, but would be required to report such use to Council, and again report such use in the next following annual report. The ordinance provides that Council approval would be required for acquisition of any new surveillance technology, regardless of cost.
ORDINANCE NO. #,###-N.S.

CITY OF BERKELEY SURVEILLANCE TECHNOLOGY USE ORDINANCE

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. Findings

The City Council finds as follows:

A. Through the enactment of this ordinance, the City seeks to establish a thoughtful process regarding the procurement and use of surveillance technology that carefully balances the City’s interest in protecting public safety with its interest in protecting the privacy and civil rights of its community members.

B. Transparency is essential when the City is considering procurement and use of surveillance technology.

C. Although such technology may be beneficial to public order and safety, inappropriate use of some technologies may have the potential to put both privacy and civil liberties at risk.

D. Decisions relating to surveillance technology should occur with strong consideration of the impact such technologies may have on civil rights and civil liberties, as with all rights guaranteed by the California and United States Constitutions.

E. Surveillance technology may involve immediate, as well as ongoing, financial costs. Before the City acquires any surveillance technology, it must evaluate all costs associated with the procurement, installation, use and maintenance of the technology.

F. Policy decisions regarding whether and how surveillance technologies should be funded, acquired, or used should be governed by the City Council as the elected representatives of the City.

G. In addition to applicable local, state, and federal law, legally enforceable safeguards, including robust transparency, oversight, and accountability measures are important in the protection of civil rights and civil liberties.

H. Data reporting measures will enable the City Council and public to confirm that mandated civil rights and civil liberties safeguards have been strictly observed.

Section 2. That Berkeley Municipal Code Chapter ##.## is hereby added as follows:

### Definitions

A. “Surveillance Technology” means an electronic device, system utilizing an electronic device, or similar technological tool used, designed, or primarily intended to remotely and surreptitiously collect, audio, visual, location, thermal, olfactory, biometric, or similar information specifically associated with, or capable of being associated with, an individual or group. Examples of covered Surveillance Technology include, but are not limited to: cell site simulators (e.g. “Stingrays”); automatic license plate readers;
gunshot detectors (e.g. “ShotSpotter”); facial recognition software; social media analytics software; and gait analysis software.

1. “Surveillance Technology” does not include the following devices, hardware, or technology, unless they have been equipped with, or are modified to become or include, a Surveillance Technology as defined in “Definitions” Section 2A above:

   (a) Routine office hardware, such as televisions, computers, and printers, that is in widespread public use and will not be used for any surveillance functions;
   (b) Handheld Parking Citation Devices;
   (c) Manually-operated, portable digital cameras, audio recorders, and video recorders that are not designed to be used remotely and whose functionality is limited to capturing, viewing, editing and downloading video and/or audio recordings;
   (d) Surveillance devices that cannot record or transmit audio or video or be remotely accessed, such as image stabilizing binoculars, night vision goggles, or thermal imaging cameras;
   (e) Technological devices that are not designed to surreptitiously collect surveillance data, and that are used in the conduct of: fire operations; search and rescue operations; missing person searches, and wanted suspect searches;
   (f) Manually-operated technological devices that are not designed to surreptitiously collect surveillance data, such as two-way radios and city-issued cellular phones.
   (g) Municipal agency databases;
   (h) Electrocardiogram machines;
   (i) Body-worn cameras;
   (j) Cybersecurity capabilities, technologies and systems used by the City of Berkeley Department of Information Technology to predict, prevent and protect the City of Berkeley and its community members from potential cybersecurity events (e.g. reconnaissance or monitoring our systems; intrusion, interference or attack on our systems); and cybersecurity capabilities, technologies and systems used by the City of Berkeley in cybersecurity monitoring and cyber-forensic based investigations and prosecutions of illegal activity; or
   (k) Stationary building security cameras affixed to City property and facilities.

### City Council Approval Requirement
The City Manager shall obtain City Council approval by placing an item on the Action Calendar at a duly noticed meeting of City Council meeting prior to any of the following:

A. Acquiring for use Surveillance Technology, with or without exchange of monies or consideration;
B. Final administrative regulations for the use of surveillance technologies that are subject to City Council approval.

### Reporting
The City Manager shall report the following to the City Council on an annual basis:

A. Which Surveillance Technology was used (generally, not per instance).
B. How the Surveillance Technology was used (generally, not per instance).
C. The nature of investigation or event for which the Surveillance Technology was used.
D. A summary of formal complaints received regarding the use of the Surveillance Technology.
E. General information regarding any unauthorized access to the data collected by the surveillance technology.

###.###.### Temporary Acquisition and Use of Surveillance Equipment
Notwithstanding the provisions of this ordinance, the City Manager may temporarily acquire or temporarily use Surveillance Technology in exigent circumstances without following the provisions of this ordinance before that acquisition or use. However, in such cases, the City Manager shall: (1) provide notice of that acquisition and use to the City Council in writing within 30 days following the conclusion of those circumstances; and (2) include that Surveillance Technology in the City entity’s next annual report to the City Council following the conclusion of those circumstances.

###.###.### Compliance for Existing Surveillance Technology
The City Manager shall submit a report to the City Council containing information on the Surveillance Technology in use prior to the effective date of this ordinance. The report shall be submitted to the City Council within 90 days of the effective date of the ordinance.

###.###.### Surveillance Technology Contracts
Any City contract with a vendor for ongoing Surveillance Technology in the City of Berkeley must be approved by the City Council regardless of the dollar amount of the contract.

Section 3. Severability
The provisions in this Ordinance are severable. If any part of provision of this Ordinance, or the application of this Ordinance to any person or circumstance, is held invalid, the remainder of this Ordinance, including the application of such part or provisions to other persons or circumstances, shall not be affected by such holding and shall continue to have force and effect.

Section 4. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.