

Exhibit A to Ordinance 2018-47

607.01 Purpose

- (a) The purpose of this chapter is to:
 - (1) Establish legally enforceable safeguards, including transparency, oversight, and accountability measures, to protect civil rights and civil liberties before Surveillance Technology is deployed by the Village;
 - (2) Ensure that a public hearing is held before any such technology is sought, acquired, or used by the Village; and
 - (3) Establish data reporting measures regarding the use and implementation of Surveillance Technology by the Village.

607.02 Definitions

Within this chapter words with specific defined meanings are as follows:

- (a) "Discriminatory" shall mean (1) disparate treatment of any individual(s) because of any real or perceived 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 State of Ohio, or the Village Charter or any law of the Village of Yellow Springs, or (2) disparate impact on any such individual(s) having traits, characteristics, or status as described above in subsection (1).
- (b) "Disparate impact" shall mean 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 State of Ohio or the Village Charter or any law of the Village of Yellow Springs than by similarly situated individual(s) not having such traits, characteristics, or status.
- (c) "Surveillance Data" shall mean any electronic data collected, captured, recorded, retained, processed, intercepted, analyzed, or shared by Surveillance Technology under Village control.
- (d) "Surveillance Technology" shall mean any electronic surveillance device, hardware, or software under Village control that is capable of collecting, capturing, recording, retaining, processing, intercepting, analyzing, monitoring, or sharing audio, visual, digital, location, thermal, biometric, or similar information or communications specifically associated with, or capable of being associated with, any specific individual or group; or any system, device, or vehicle that is equipped with an electronic surveillance device, hardware, or software.
 - (1) "Surveillance Technology" includes, but is not limited to: (a) international mobile subscriber identity (IMSI) catchers and other cell site simulators; (b) automatic license plate readers; (c) electronic toll readers; (d) closed-circuit television cameras; (e) biometric surveillance technology, including facial, voice, iris, and gait-recognition software and databases; (f) mobile DNA capture technology; (g) gunshot detection and location hardware and services; (h) x-ray vans; (i) video and audio monitoring and/or recording technology, such as surveillance cameras, wide-angle cameras, and wearable body cameras; (j) surveillance enabled or capable light bulbs or light fixtures; (k) tools, including software and hardware, used to gain unauthorized access to a computer, computer service, or computer network; (l) social media monitoring software;

(m) through-the-wall radar or similar imaging technology; (n) passive scanners of radio networks; (o) long-range Bluetooth and other wireless-scanning devices; (p) radio-frequency I.D. (RFID) scanners; and (q) software designed to integrate or analyze data from Surveillance Technology, including surveillance target tracking and predictive policing software. The enumeration of Surveillance Technology examples in this subsection shall not be interpreted as an endorsement or approval of their use by any Village entity.

(2) "Surveillance Technology" does not include the following devices or hardware, unless they have been equipped with, or are modified to become or include, a Surveillance Technology: (a) routine office hardware, such as televisions, computers, and printers, which will not be used for any surveillance function; (b) Parking Ticket Devices (PTDs); (c) manually-operated non-wearable, handheld digital cameras, audio recorders, and video recorders that are not designed to be used secretly and whose functionality is limited to manually capturing and manually 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 or night vision goggles; (e) Village agency databases that do not and will not contain any data or other information collected, captured, recorded, retained, processed, intercepted, or analyzed by Surveillance Technology; (f) cameras maintained to protect Village-owned buildings, parking facilities, and the public and employees while using them; and (g) manually-operated technological devices that are used primarily for internal Village entity communications and are not designed to secretly collect Surveillance Data, such as radios and email systems.

(e) "Viewpoint-based" shall mean targeted at any community or group or its members because of their exercise of rights protected under the First Amendment of the United States Constitution.

(f) "Village entity" shall mean any government, agency, department, bureau, division, or unit of the Village of Yellow Springs, Ohio.

607.03 Application for Surveillance Technology Funding, Acquisition, or Use

(A) A Village entity must obtain Village Council approval, after a Village Council hearing at which the public is afforded an opportunity to provide input before the Village engages in any of the following actions:

- (1) Seeking funds for new Surveillance Technology, including but not limited to applying for a grant, or soliciting or accepting state or federal funds or other donations;
- (2) Acquiring new Surveillance Technology or borrowing unapproved Surveillance Technology, whether that acquisition is made through the exchange of monies or other consideration;
- (3) Using new or existing Surveillance Technology for a purpose or in a manner not previously approved by the Village Council in accordance with this Act, including the sharing of Surveillance Data therefrom; or
- (4) Entering into an agreement with any other person or entity to acquire, share or otherwise use Surveillance Technology or Surveillance Data.

(B) As a part of the process of seeking Village Council approval, pursuant to 607.03(A), to fund, acquire, or use Surveillance Technology or to enter into an agreement concerning such funding, acquisition, or use, a Village entity shall submit to the Village Council and make publicly available a surveillance use policy ("Surveillance Use Policy") concerning the technology at issue.

- (1) No use of Surveillance Technology by a Village entity pursuant to 607.03(A) shall be permitted without the Village Council's express approval of the related Surveillance Use Policy submitted by the Village entity.
 - (2) Prior to approving or rejecting a Surveillance Use Policy, the Village Council may request revisions be made by the submitting Village entity.
- (C) A Surveillance Use Policy shall be a publicly-released written policy governing the Village entity's use of the Surveillance Technology that, at a minimum, includes and addresses the following:
- (1) Purpose: Describes the Surveillance Technology, the fiscal impact of the technology, and the specific purpose(s) the Surveillance Technology is intended to advance.
 - (2) Authorized Use: Details what specific capabilities and general uses of the Surveillance Technology authorization is being sought;
 - (3) Adverse Impact Safeguards: Details any adverse impacts the use of the Surveillance Technology may have on civil rights and liberties, and
 - (a) What safeguards to prevent such impacts that will be implemented; and
 - (b) What potential uses of the Surveillance Technology will be expressly prohibited.
 - (4) Data Collection and Review:
 - (a) What types of Surveillance Data will be collected, captured, recorded, intercepted, or retained by the Surveillance Technology;
 - (b) How and under what circumstances the data collected, captured, recorded, or intercepted by the Surveillance Technology will be analyzed and reviewed; and
 - (c) How inadvertently collected Surveillance Data will be expeditiously identified and deleted.
 - (5) Data Retention: Insofar as the privacy of the public can be severely compromised by the long-term storage of mass Surveillance Data, the Surveillance Use Policy shall identify what rules shall govern the retention and deletion of captured Surveillance Data. Such rules may be adopted from an existing section of the Village's Record Retention policy or may be proposed as an amendment to the Record Retention policy. Along with stating the governing rules, the rationale for selecting the chosen rules, including why the chosen rules are the most appropriate for the specifically implicated Surveillance Data, shall be provided in the Surveillance Use Policy.
 - (6) Surveillance Data Sharing: If a Village entity is seeking authorization to share access to Surveillance Technology or Surveillance Data with any other governmental agencies, departments, bureaus, divisions, or units, it shall detail:
 - (a) With which governmental agencies, departments, bureaus, divisions, or units it is seeking approval to (i) share Surveillance Technology, and (ii) share Surveillance Data;

- (b) How such sharing is necessary for the stated purpose and use of the Surveillance Technology.
- (7) Oversight: What mechanisms will be implemented to ensure the Surveillance Use Policy is followed.
- (8) Citizen Concerns. At the time of submission of an application for Surveillance Technology funding, acquisition or use, such application shall include the process by which citizens may ask questions or register complaints about a specific Surveillance Technology and how the Village will respond to questions and complaints.
- (9) Once approved by Council, a Surveillance Use Policy may only be amended with Council approval pursuant to this Chapter.

607.04 Standard for Approval

Before approving a request to fund, acquire, or use a Surveillance Technology, Village Council shall determine that the benefits of the Surveillance Technology outweigh its costs, that the proposal properly safeguards civil liberties, privacy rights, and civil rights, and that the proposed uses and deployments of the Surveillance Technology will not be based upon discriminatory or Viewpoint-based factors or have a disparate impact on any community or group. To assist the public in participating in such an analysis, all approved Surveillance Use Policies shall be made available to the public, at a designated page on the relevant Village entity's public website, for as long as the related Surveillance Technology remains in use. An approval for the funding, acquisition and/or use of a Surveillance Technology by the Village Council, where a risk of potential adverse impacts on civil rights or civil liberties has been identified in the Surveillance Use Policy pursuant to 607.03(C)(3), shall not be interpreted as an acquiescence to such impacts, but rather as an acknowledgement that a risk of such impacts exists and must be proactively avoided.

607.05 Review of Preexisting Uses Mandatory

- (a) No later than one hundred twenty (120) days following the effective date of the passage of the ordinance, any Village entity seeking to continue the use of any Surveillance Technology that was in use prior to the effective date of this, or the sharing of Surveillance Data therefrom, must commence a Village Council approval process in accordance with this Chapter unless the use is specifically exempted in subsection (b) below. If the Village Council has not approved the continuing use of the Surveillance Technology, including the Surveillance Use Policy, within one hundred eighty (180) days of their submission to the Village Council, the Village entity shall cease its use of the Surveillance Technology and the sharing of Surveillance Data therefrom until such time as Village Council approval is obtained in accordance with this Act.
- (b) Exceptions
 - (1) Police cruiser cameras, including audio obtained therefrom, shall be deemed an approved Surveillance Technology requiring no additional approval from Village Council; however, any changes to the existing policy shall be presented to Village Council pursuant to this ordinance;
 - (2) Emergency audio recording shall be deemed an approved Surveillance Technology requiring no additional approval from Village Council;
 - (3) Utility meters insofar as they are used for billing purposes.

607.06 Emergency Use of Surveillance Technology

Where (A) a state of emergency has been declared by an authorized local or county official, the Ohio Governor, or President of the United States, and such an emergency presents an imminent risk to life or property or (B) the chief of police, Village Manager and the President of Council determines that the use of unapproved Surveillance Technology is necessary because of the imminent risk to life or property, the unapproved technology may be used without Council approval for a period of not more than 96 hours following the declaration of such an emergency, provided that doing so is consistent with all other governing laws and regulations. In such instance, a report will be provided to full Council with ten (10) days of the succession of the use.

607.07 Annual Reporting

(A) A Village entity that obtains approval for the use of a Surveillance Technology must submit to the Village Council, and make available on its public website, an annual surveillance report (Annual Surveillance Report) for each specific Surveillance Technology used by the Village entity within twelve (12) months of Village Council approval, and annually thereafter on or before March 15 each year. The Annual Surveillance Report shall, at a minimum, include the following information for the previous calendar year:

- (1) A summary of why the Surveillance Technology was used, how the data/information was collected, and what other public agency the information was shared with unless the disclosure of such information would compromise a specific ongoing investigation or is otherwise deemed confidential by operation of law;
- (2) Whether and how often collected Surveillance Data was shared with any external persons or entities, the name(s) of any recipient person or entity, the type(s) of data disclosed, under what legal standard(s) the information was disclosed, and the justification for the disclosure(s);
- (3) A summary of complaints or concerns that were received about the Surveillance Technology;
- (4) The results of any internal audits, any information about violations of the Surveillance Use Policy, and any actions taken in response;
- (5) An analysis of any Discriminatory or other adverse impact(s) the use of the Surveillance Technology may have had on the public's civil rights and civil liberties, including but not limited to those guaranteed by the First, Fourth, and Fourteenth Amendments to the United States Constitution and the Ohio Constitution; and
- (6) Total annual costs for the Surveillance Technology, including personnel and other ongoing costs, and what source of funding will fund the technology in the coming year.

(B) Within 60 days of submitting and publicly releasing an Annual Surveillance Report, the Village Council shall place the subject of the report on the Council agenda for discussion at a public meeting and allow for public comment. The public will also be encouraged to submit written comments or questions which will be addressed at the public input session.

(C) Based upon information provided in the Annual Surveillance Report, the Village Council shall determine whether each Surveillance Technology identified in response to 607.06 has met the standard for approval set forth in 607.04. If it has not, the Village Council shall direct the use of the

Surveillance Technology be discontinued or shall require modifications to the Surveillance Use Policy that will resolve the observed failures.

- (D) Not later than June 15 of each year the Village Council or its designee shall post on its public web site all Annual Surveillance Reports, along with a summary which states, for the prior year, the number of requests for approval submitted to Village Council under this chapter for funding, acquisition, or use of technology, the number of times the Village Council approved such requests, the number of times such requests were approved after requested modifications, and the number of times such requests were rejected.

607.08 Prohibitions

- (a) It shall be a violation of this Chapter for the Village or any Village entity to enter into any contract or other agreement that conflicts with the provisions of this chapter, and any conflicting provisions in such contracts or agreements, including but not limited to non-disclosure agreements, shall be deemed void and legally unenforceable as permitted by law. Any contracts or agreements signed before the enactment of this Chapter that violate this Ordinance must be terminated as soon as legally possible.

607.09 Severability

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter or any part thereof.

607.10 Penalties

Any Village employee who knowingly violates this Chapter shall be subject to appropriate discipline pursuant to the procedures set forth in the Village Employee Personnel Manual and a report shall be made to Village Council.