

Summary

Board Bill Number 31

Introduced by: Alderwoman Annie Rice

May 21, 2021

The proposed bill would establish regulations for the use of surveillance technology, as defined in the bill, by the City of St. Louis.

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**BOARD BILL NUMBER 31 INTRODUCED BY: ALDERWOMAN ANNIE RICE/
ALDERMAN JESSE TODD/ ALDERWOMAN CHRISTINE INGRASSIA/
ALDERWOMAN ANNE SCHEWEITZER/ ALDERMAN BRET NARAYAN/
ALDERWOMAN MEGAN GREEN/ ALDERMAN BILL STEPHENS/ ALDERWOMAN
TINA PIHL/ ALDERMAN DAN GUENTHER**

1 An ordinance setting forth regulations for the use of surveillance technology by the City of St.
2 Louis; requiring surveillance technology usage and specific technologies be approved by the Board
3 of Aldermen after required public hearing, before any such surveillance technology may be used
4 and plans may be put into practice; and containing a severability clause and emergency clause.

5 **WHEREAS**, the use of surveillance technology is becoming increasingly common, and

6 **WHEREAS**, these technologies include various types and sizes of cameras, internet
7 surveillance programming, listening devices, phone monitoring systems and other technologies;
8 and

9 **WHEREAS**, a number of studies have shown that surveillance technologies are
10 developing faster than the laws to govern them, resulting in an imbalance between governance and
11 the use of these technologies and causing numerous cities across the country to enact new and/or
12 revised statutes to ensure the civil rights and liberties of their citizens where the lawful use of
13 surveillance technology is approved by their local legislature.

14 **BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:**

15 **SECTION ONE.** Definitions

16 1. “*City Entity*” means any agency, department, bureau, unit, or commission of the City of St.
17 Louis or any person or entity acting on behalf of any agency, department, bureau, unit, or
18 commission of the City of St. Louis.

1 2. “*Discrimination*” means the disparate treatment or consideration of, or making a distinction in
2 favor or against a person based on the characteristics, real or perceived, for which discriminatory
3 treatment is prohibited under the laws and regulations of the United States, the State of Missouri,
4 and the Charter and ordinances of the City of St. Louis, which shall include the following
5 characteristics; race, religion, national origin, age, sex, sexual orientation, gender identity,
6 pregnancy, familial status, disability, veteran status and genetic status.

7 3. “*Disparate Impact*” means an adverse effect that that is disproportionately experienced by
8 individuals having traits, characteristics, or status as to which discrimination is prohibited under
9 the Constitution or any laws of the United States, under the constitution or any law of the state of
10 Missouri, or under the Charter or any ordinance of the City of St. Louis.

11 4. “*New surveillance technology*” shall mean any type of surveillance technology, the acquisition
12 of which was not previously approved by the Board of Aldermen. A surveillance technology is not
13 considered a new surveillance technology where its capabilities and functionality do not differ in
14 any significant way from a previously approved version of an equivalent surveillance technology.

15 5. “*Surveillance Data*” means any information or data collected, captured, recorded, retained,
16 processed, intercepted, analyzed, or shared by surveillance technology.

17 6. “*Surveillance Technology*” shall mean any electronic surveillance device, hardware, or
18 software that is capable of collecting, capturing, recording, retaining, processing, intercepting,
19 analyzing, monitoring, or sharing audio, visual, digital, location, thermal, biometric, behavioral,
20 or similar information or communications specifically associated with, or capable of being
21 associated with, any specific individual or group; or any system, device, or vehicle that is equipped
22 with an electronic surveillance device, hardware, or software that may be used for the purpose of

1 monitoring activities, behavior, or changing conditions in order to influence, manage, monitor, or
2 protect the safety and welfare of individuals or groups, or to aid in the prevention of criminal
3 activity or the investigation of suspected criminal activity. Surveillance technology includes, but
4 is not limited to: (a) international mobile subscriber identity (IMSI) catchers and other cell site
5 simulators; (b) automatic license plate readers; (c) closed-circuit television cameras; (d) biometric
6 surveillance technology, including facial, voice, iris, and gait-recognition software and databases;
7 (e) mobile DNA capture technology; (f) gunshot detection and location hardware and services; (g)
8 x-ray vans; (h) video and audio monitoring and/or recording technology, such as surveillance
9 cameras, wide-angle cameras, and wearable body cameras; (i) surveillance enabled or capable
10 lightbulbs or light fixtures; (j) social media monitoring software; (k) through-the-wall radar or
11 similar imaging technology, (l) passive scanners of radio networks, (m) long-range Bluetooth and
12 other wireless-scanning devices, (n) radio-frequency I.D. (RFID) scanners, and (o) software
13 designed to integrate or analyze data from surveillance technology, including surveillance target
14 tracking and predictive policing software. The enumeration of surveillance technology examples
15 in this subsection shall not be interpreted as an endorsement or approval of their use by any city
16 entity. “Surveillance technology” does not include the following unless they have been equipped
17 with, or are modified to become or include, a surveillance technology as defined herein: a. Routine
18 office hardware (such as televisions, computers, and printers) that are in widespread public use
19 and will not be used for any surveillance or surveillance related functions; b. Parking Ticket
20 Devices (PTD); c. Surveillance devices that cannot record or transmit audio or video or be remotely
21 accessed, such as image stabilizing binoculars, night vision goggles, or similar imaging devices;
22 d. City entity databases that do not and will not contain any data or other information collected,

1 captured, recorded, retained, processed, intercepted, or analyzed by surveillance technology; and
2 e. Manually-operated technological devices that are used primarily for internal city entity
3 communications and are not designed to surreptitiously collect surveillance data, such as radios
4 and email systems.

5 7. “*Viewpoint-based*” shall mean targeted at any community or group or their individual members
6 because of their exercise of rights protected under the First Amendment of the United States
7 Constitution.

8 **SECTION TWO.** Board of Aldermen Approval Mandatory

9 A. A city entity must obtain Board of Aldermen approval, subsequent to a mandatory,
10 properly-noticed, germane, public Board of Aldermen hearing at which the public is afforded a
11 fair and adequate opportunity to provide online, written, and oral testimony, prior to engaging in
12 any of the following:

- 13 1. Seeking funds for a new surveillance technology, including but not limited to applying for
14 a grant, or soliciting or accepting state or federal funds or in-kind or other donations;
- 15 2. Acquiring, borrowing, or sharing surveillance technology, whether or not that acquisition
16 is made through the exchange of monies or other consideration;
- 17 3. Using new or existing surveillance technology for a purpose or in a manner not previously
18 approved, or exceeding a quantitative limit previously approved by the Board of Aldermen
19 in accordance with this ordinance, including the acquisition or sharing of surveillance data
20 therefrom; or
- 21 4. Soliciting proposals for or entering into an agreement with any other person or entity to
22 acquire, share, or otherwise use surveillance technology or surveillance data.

1 **SECTION THREE. Surveillance Use Plan**

2 A. As a part of the process of seeking Board of Aldermen approval, pursuant to Section 2, to
3 fund, acquire, or use surveillance technology or to enter into an agreement concerning such
4 funding, acquisition, or use, a city entity shall submit to the Board of Aldermen and make publicly
5 available a Surveillance Use Plan concerning the technology at issue. No approval of the
6 acquisition or use of surveillance technology by a city entity, pursuant to Section shall be permitted
7 without the Board of Aldermen’s express approval of the related Surveillance Use Plan submitted
8 by the city entity pursuant to this Section. The Board of Alderman may request review and
9 recommendations from the Civil Rights Enforcement Agency, Civilian Oversight Board, or a
10 functionally equivalent City organization prior to its approval or rejection of the Surveillance Use
11 Plan.

12 B. Prior to approving or rejecting a Surveillance Use Plan submitted pursuant to this Section,
13 the Board of Aldermen may request revisions be made by the submitting city entity.

14 C. Surveillance Use Plan: A Surveillance Use Plan submitted pursuant to this Section shall be
15 a publicly-released, legally enforceable written report that includes, at a minimum, all of the
16 following:

- 17 1. General Description: Information describing the surveillance technology and how it works,
18 including product descriptions from manufacturers.
- 19 2. Purpose: What specific purpose(s) the surveillance technology is intended to advance.
- 20 3. Authorized Use(s): For what specific capabilities and uses of the surveillance technology
21 is authorization being sought, including amounts acquired and deployed, expected
22 geographic areas and durations, organizational partnerships and Memorandums of

1 Understanding (MOUs) and:

- 2 a. What legal and procedural rules will govern each authorized use, including where
3 an application of Surveillance Technology requires a warrant;
- 4 b. What potential uses of the surveillance technology will be expressly prohibited,
5 such as the warrantless surveillance of public events and gatherings; and
- 6 c. How and under what circumstances will surveillance data that was collected,
7 captured, recorded, or intercepted by the surveillance technology be analyzed and
8 reviewed.
- 9 4. Deployment: If the surveillance technology will not be uniformly deployed or targeted
10 throughout the city, what factors will be used to determine the specific geographic targeting
11 and what measures will be taken to ensure such targeting is racially and economically
12 neutral.
- 13 5. Cost: The fiscal impact of the surveillance technology, including costs of technology
14 acquisition, operation, maintenance, personnel, and data storage, as well as all sources of
15 funding and donations.
- 16 6. Civil Rights/Liberties Impacts: An assessment identifying:
- 17 a. Any potential adverse impacts the surveillance technology, if deployed, might have
18 on civil liberties and civil rights; and
- 19 b. What specific, affirmative measures will be implemented to safeguard the public
20 from the potential adverse impacts identified pursuant to this Subsection, including
21 without limitation what measures will be used to avoid biases in surveillance

1 targeting and data collection.

2 7. Data Collection:

- 3 a. What types of surveillance data will be collected, captured, recorded, intercepted,
4 or retained by the surveillance technology;
- 5 b. What surveillance data may be inadvertently collected during the authorized uses
6 of the surveillance technology, and what measures will be taken to minimize the
7 inadvertent collection of data; and
- 8 c. How inadvertently collected surveillance data will be expeditiously identified and
9 deleted.

10 8. Data Protection: What safeguards will be used to protect surveillance data from
11 unauthorized access, including encryption and access control mechanisms and what
12 protocols will be put in place to authorize access and monitor who has access.

13 9. Data Retention: Insofar as the privacy of the public can be severely compromised by the
14 long-term storage of mass surveillance data, what rules and procedures will govern the
15 retention of surveillance data, including those governing:

- 16 a. For what limited time period, if any, surveillance data will be retained. Such
17 information shall include a statement explaining why the designated retention
18 period is no greater than that which is absolutely necessary to achieve the specific
19 purpose(s) enumerated in the Surveillance Use Plan;
- 20 b. What specific conditions must be met to retain surveillance data beyond the
21 retention period stated in this Subsection; and

- 1 c. By what process surveillance data will be regularly deleted after the retention
2 period stated in this Subsection elapses and what auditing procedures will be
3 implemented to ensure data is not improperly retained.

4 10. Surveillance Data Sharing: If a city entity is seeking authorization to share access to
5 surveillance technology or surveillance data with any other persons, city entities or
6 governmental entities, it shall detail:

- 7 a. How it will require that the collection, retention, and storage of surveillance data
8 be conducted in compliance with the principles set forth in 28 C.F.R. Part 23,
9 including but not limited to 28 C.F.R. Part 23.20(a), which states that a government
10 entity operating a surveillance program “shall collect and maintain criminal
11 intelligence information concerning an individual only if there is reasonable
12 suspicion that the individual is involved in criminal conduct or activity and the
13 information is relevant to that criminal conduct or activity”;
- 14 b. Which persons, city entities, or other governmental entities will be approved for (i)
15 surveillance technology sharing, and for (ii) surveillance data sharing;
- 16 c. How such sharing is necessary for the stated purpose and use of the surveillance
17 technology;
- 18 d. How it will ensure any person, city entity, or other governmental entity approved
19 for access to the surveillance technology or surveillance data complies with the
20 applicable Surveillance Use Plan and does not further disclose the surveillance data
21 to unauthorized persons and entities; and

1 e. What processes will be used to seek approval of future surveillance technology or
2 surveillance data sharing agreements from the city entity and Board of Aldermen.

3 11. Demands for Access to Surveillance Data: What legal standard must be met by government
4 entities or third parties seeking or demanding access to surveillance data, including what
5 categories of collected data, if any, that would be subject to disclosure under the Missouri
6 Sunshine Law.

7 12. Training: What training procedures will be implemented to ensure compliance with this
8 ordinance, the Revised Code of the City of St. Louis, and applicable federal and state laws
9 and regulations.

10 13. Auditing and Oversight: What mechanisms will be implemented to ensure the Surveillance
11 Use Plan is followed, including what independent persons or entities will be given
12 oversight authority, and what legally enforceable sanctions will be put in place for
13 violations of the Plan.

14 14. Complaints: What procedures will be put in place by which members of the public can
15 register complaints or concerns, or submit questions about the deployment or use of a
16 specific surveillance technology, and how the city entity will ensure each question and
17 complaint is responded to in a timely manner.

18 15. The public Board of Aldermen hearing required pursuant to Section 2 may not be held until
19 the required Surveillance Use Plan has been available to the public, at a designated page
20 on the City website, for a period of at least twenty-one (21) calendar days.

21 16. Open Records: All complete and unredacted Surveillance Technology Use Plans shall be

1 considered “open records” under the Missouri Sunshine Law.

2 17. Exceptions: Unless limitations are set forth in the Surveillance Technology Use Plan, the
3 acquisition of additional units of Surveillance Technology, or the replacement of existing
4 technology with like-kind units shall not be considered a modification to a Plan requiring
5 approval subject to the approval procedures of this ordinance.

6 **SECTION FOUR. Review of Preexisting Uses Mandatory**

7 No later than one hundred fifty (150) days following the effective date of this ordinance, any city
8 entity seeking to continue the use of any surveillance technology that was in use prior to the
9 effective date of this ordinance, or the sharing of surveillance data therefrom, must commence a
10 Board of Aldermen approval process in accordance with Section 2. If the Board of Aldermen has
11 not approved the continuing use of the surveillance technology, including the Surveillance Use
12 Plan submitted pursuant to Section 3, within one hundred eighty (180) days of its submission to
13 the Board of Aldermen, the city entity shall cease its use of the surveillance technology and the
14 sharing of surveillance data therefrom until such time as Board of Aldermen approval is obtained
15 in accordance with this ordinance.

16 **SECTION FIVE. Lead Entity Identification**

17 If more than one city entity will have access to the surveillance technology or surveillance data, a
18 lead city entity shall be identified. The lead city entity shall be responsible for maintaining the
19 surveillance technology and ensuring compliance with all related laws, regulations and protocols.

20 **SECTION SIX. Standard for Approval**

21 The Board of Aldermen shall only approve a request to fund, acquire, or use a surveillance
22 technology if it determines the benefits of the surveillance technology outweigh its costs, that the

1 proposal will safeguard civil liberties and civil rights, and that the uses and deployments of the
2 surveillance technology will not be based upon discriminatory or viewpoint-based factors or have
3 a disparate impact on any community or group. To assist the public in participating in such an
4 analysis, all approved Surveillance Use Plans shall be made available to the public, at a designated
5 page on the relevant city entity’s public website, for as long as the related surveillance technology
6 remains in use. An approval for the funding, acquisition and/or use of a surveillance technology
7 by the Board of Aldermen, where the risk of potential adverse impacts on civil rights or civil
8 liberties has been identified in the Surveillance Use Plan, shall not be interpreted as an
9 acquiescence to such impacts, but rather as an acknowledgement that a risk of such impacts exists
10 and must be proactively avoided.

11 **SECTION SEVEN.** Annual Surveillance Reports

12 A. For each Surveillance Technology approved pursuant to this ordinance, the lead city entity
13 must submit an annual report detailing its use during the preceding calendar year to the Clerk of
14 the Board of Aldermen and Chair of the Public Safety Committee on or before February 28th of
15 each year. All annual surveillance reports shall be considered an “open record” under the Missouri
16 Sunshine Law and shall be posted on the city entity’s website within five (5) days of submission
17 for at least one calendar year.

18 B. All annual surveillance reports shall contain the following information:

- 19 1. A summary of how the surveillance technology was used, including frequency of use,
20 numbers deployed, and duration of use;
- 21 2. Whether and how often collected surveillance data was shared with and received from any
22 external persons or entities, the name(s) of any recipient person or entity, the type(s) of

1 data disclosed, under what legal standard(s) the information was disclosed, and the
2 justification for the disclosure(s);

3 3. Where applicable, a breakdown of where the surveillance technology was deployed
4 geographically, by individual census tract as defined in the relevant year by the United
5 States Census Bureau;

6 4. A breakdown of how many Surveillance Technology deployments were used in the pursuit
7 of a crime, with what frequency, whether the crime was a felony, and whether the
8 Surveillance Technology was useful in deterring or preventing – Reactive and deterrent?

9 5. A summary of complaints or concerns that were received about the surveillance
10 technology;

11 6. The results of any internal audits, any information about violations of the Surveillance Use
12 Plan, and any actions taken in response;

13 7. An analysis of any discriminatory, disparate, and other adverse impacts the use of the
14 technology may have had on the public’s civil rights and civil liberties, including but not
15 limited to those guaranteed by the First, Fourth, and Fourteenth Amendment to the United
16 States Constitution; and

17 8. Total annual costs for the surveillance technology, including personnel and other ongoing
18 costs, and what source of funding will fund the technology in the coming year.

19 9. For purposes of this section, “external persons and entities” shall not include specifically
20 identifying persons acting in their individual capacities.

1 **SECTION EIGHT. Remedies; Penalties; Whistleblower Protections; Exclusionary Rule;**
2 **Deletion/Destruction Requirement**

3 A. Any violation of this ordinance, including but not limited to funding, acquiring, or utilizing
4 surveillance technology that has not been approved pursuant to this ordinance or utilizing
5 surveillance technology in a manner or for a purpose that has not been approved pursuant to this
6 ordinance, constitutes an injury and any person may institute proceedings for injunctive relief,
7 declaratory relief, writ of mandate, or evidence suppression in any court of competent jurisdiction
8 to enforce this ordinance.

9 B. A court shall award costs and reasonable attorneys' fees to the plaintiff who is the prevailing
10 party in an action brought to enforce this ordinance.

11 C. City employees or agents, except in response to a declared municipal, state, or federal state
12 of emergency, shall not use any surveillance technology except in a manner consistent with
13 policies approved pursuant to the terms of this ordinance.

14 D. Any person who knowingly violates this Act shall be deemed guilty of a misdemeanor and
15 may be punished by a fine not exceeding \$2,500 per violation. For purposes of this subsection, a
16 “violation” shall constitute each and every individual acquisition, deployment, and use of a
17 surveillance technology or the data therefrom in violation of this Act.

18 E. Whistleblower protections: No city entity or anyone acting on behalf of a city entity may take
19 or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee
20 or applicant for employment, including but not limited to discriminating with respect to
21 compensation, terms, conditions, access to information, restrictions on due process rights,
22 privileges of employment, or civil or criminal liability, because the employee or applicant was

1 perceived to, about to, or assisted in any lawful disclosure of information concerning the funding,
2 acquisition, or use of a surveillance technology or surveillance data to any relevant city agency,
3 city law enforcement, prosecutorial, or investigatory office, or Alderman, based upon a good faith
4 belief that the disclosure evidenced a violation of this ordinance.

5 F. Exclusionary Rule; Deletion/Destruction Requirement: Any data or other information created
6 or collected in contravention of this ordinance, and any data or information derived therefrom,
7 shall be immediately deleted and destroyed, and may not:

- 8 1. Be offered as evidence by any City government entity, agency, department, prosecutorial
9 office, or any other subdivision thereof, in any criminal or civil action or proceeding against
10 any member of the public, except as evidence of the violation of this ordinance; or
- 11 2. Be voluntarily provided to another person or entity for use as evidence or for any other
12 purpose.

13 Notwithstanding the above, if, upon the discovery of data or other information that was created or
14 collected in contravention of this ordinance, it appears such data or information may be material
15 to the defense in a criminal prosecution, a copy of the relevant, potentially material data or other
16 information shall be turned over to the defendant before it is deleted and destroyed.

17 **SECTION NINE.** Conflicting Contractual Agreements Prohibited

18 It shall be unlawful for the city or any city entity to enter into any contract or other agreement that
19 conflicts with the provisions of this ordinance, and any conflicting provisions in such contracts or
20 agreements, including but not limited to non-disclosure agreements, shall be deemed void and
21 legally unenforceable. Conflicting provisions in contracts or agreements signed prior to the

1 enactment of this ordinance shall be deemed void and legally unenforceable to the extent permitted
2 by law.

3 **SECTION TEN. Certain Public-Private Contracts Prohibited**

4 It shall be unlawful for the city or any city entity to enter into any contract or other agreement that
5 facilitates the receipt of privately generated and owned surveillance data from, or provision of
6 government generated and owned surveillance data to any non-governmental entity in exchange
7 for any monetary or any other form of consideration from any source, including the assessment of
8 any additional fees, interest, or surcharges on unpaid fines or debts. Any contracts or agreements
9 signed prior to the enactment of this ordinance that violate this section shall be terminated as soon
10 as is legally permissible.

11 **SECTION ELEVEN. Severability**

12 The provisions of this are severable. If any part of this ordinance, or the application of this
13 ordinance to any person or circumstance, is held invalid, the remainder of this ordinance, including
14 the application of such part or provisions to other persons or circumstances, shall not be affected
15 by such holding and shall continue to have force and effect.

16 **SECTION TWELVE. Emergency clause**

17 This being an ordinance for the preservation of public peace, health and safety, it is hereby declared
18 to be an emergency measure within the meanings of Sections 19 and 20 of Article IV of the Charter
19 of the City of St. Louis and therefore shall become effective immediately upon its passage and
20 approval by the Mayor.