

ORDINANCE NO. 2021-XXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VALLEJO REPEALING CHAPTER 2.27 OF THE VALLEJO MUNICIPAL CODE ESTABLISHING A SURVEILLANCE ADVISORY BOARD, PROVIDING FOR THE APPOINTMENT OF MEMBERS THEREOF, AND DEFINING THE DUTIES AND FUNCTIONS OF SAID BOARD ADOPTED ON SEPTEMBER 28, 2021 AND REPLACING IT IN ITS ENTIRETY.

SECTION 1. FINDINGS

WHEREAS, the City Council previously adopted an Ordinance of the City Council of the City of Vallejo Adding Chapter 2.27 of the Vallejo Municipal Code Establishing a Surveillance Advisory Board at its September 28, 2021 regular meeting; and

WHEREAS, the City Council desires to repeal the previous ordinance and replace it entirely with a new ordinance.

SECTION 2. CREATION OF BOARD

NOW, THEREFORE, IT IS HEREBY ORDAINED by the City Council of the City of Vallejo that Chapter 2.27 adopted by the City Council by ordinance on September 28, 2021 is hereby repealed and replaced in its entirety to read as follows:

2.27.010 – CREATION AND NAME

Pursuant to Charter Section 403, there is hereby created an advisory board to be called the Surveillance Advisory Board to provide advice to the City Council, City Manager and City Departments about the acquisition, deployment and use of Surveillance Technology within the City of Vallejo.

2.27.020 – DEFINITIONS

For purposes of this Chapter 2.27, the capitalized terms below are defined as follows:

- (a) “Board” or “Advisory Board” shall mean the Surveillance Advisory Board of the City of Vallejo
- (b) “City” shall mean the City of Vallejo, California.
- (c) “City Council” shall mean the City Council of the City.
- (d) “City Staff Liaison” shall mean the City staff member assigned by the City Manager to support the Board.
- (e) “Surveillance Technology” shall mean the systematic observation, for law enforcement purposes, of places, persons or things by visual, aural, electronic, photographic, or other means including, but not limited to, the following:

- 1. International Mobile Subscriber Identity (IMSI) Catchers and other cell site simulators;
- 2. Unmanned aerial vehicles (drones);

3. Automatic license plate readers;
4. Electronic toll readers;
5. Closed circuit television cameras;
6. Gunshot detection hardware and services;
7. Video and audio monitoring and/or recording technology such as surveillance cameras, wide-angle cameras and wearable body cameras;
8. DNA capture technology;
9. Biometric software including facial, voice, iris and gait recognition software and databases;
10. Software designed to monitor social media;
11. X-ray vans;
12. Software designed to forecast criminal activity or criminality;
13. Radio-frequency I.D. (RFID) scanners; and tools, including software and hardware, used to gain unauthorized access to a computer, computer service, or computer network.

2.27.030 - DUTIES AND FUNCTIONS

The duties and function of the Board shall be:

- (a) To advise the City and City Council on best practices to protect the safety, privacy, and civil rights of Vallejo residents in connection with the acquisition, borrowing, and/or use by City Departments of Surveillance Technology that collects, analyzes, processes or stores information about Vallejo residents.
- (b) To conduct meetings pursuant to this Chapter 2.27 and Chapter 2.26 of the Vallejo Municipal Code in order to collect public input concerning the use of surveillance technology by the City of Vallejo, and to seek advice and testimony from experts, subject to appropriation by the City Council to pay such experts. Nothing herein shall prevent any such expert from providing advice and participating in discussion with the Board at no cost to the City.
- (c) To submit recommendations, findings, and reports to City staff and to the City Council regarding the acquisition, deployment and policy relating to use of Surveillance Technology. Such recommendations include but are not limited to recommendations concerning reasonable alternatives to Surveillance Technology for the benefit of the health and safety of Vallejo residents; and recommendations regarding whether a City Department should acquire, borrow, or use a particular Surveillance Technology. All such recommendations, findings and reports shall be in writing and shall be directed to the City Department requesting use of the Surveillance Technology with copies to the City Council, City Manager and City Attorney.
- (d) To review and respond to requests for review by the City Council, City Manager and City Departments related to any proposals or agreements to acquire, borrow, or adopt policies related to use of Surveillance Technology. Such requests shall be submitted to the Board by City Staff at least 45 days prior to seeking approval for or finalizing the decision to acquire, borrow or adopt a policy relating to the use of Surveillance Technology. The Board shall provide advice and/or recommendations concerning the proposed Surveillance Technology no later than 45 days after submission by a City Department. If the Board fails to provide advice and or recommendations within 45 days of submission to it by a City Department, the City Department may proceed with the acquisition, borrowing or use of the Surveillance Technology without further input from the Board.

Notwithstanding the foregoing, the Board, may provide recommendations and advice at any time concerning the use of any existing Surveillance Technology owned or operated by the City.

- (e) Notwithstanding anything to the contrary herein, in the event of an emergency involving the immediate preservation of life or impending death of any person or persons that requires the use of technology not already in the possession of the City, the City may acquire or borrow said technology without a review by the Board, but shall provide a report to the Board as soon as practicable, but in no event exceeding 30 days, on the emergency use of said Surveillance Technology. In addition, the acquisition or borrowing of additional or replacement Surveillance Technology, previously approved, shall not require recommendation action by the Board except when said technology includes significantly increased or differing capabilities or features than the equipment that was previously approved.
- (f) To draft and recommend for City Council consideration, with the advice and consent of the City Attorney, model legislation on matters relevant to Surveillance Technology.
- (g) To request, receive, and analyze information about any City Department's acquisition, borrowing, or adoption of policies relating to the use of Surveillance Technology. The Board shall have the authority to request non-privileged information about Surveillance Technology from all City Departments. City Departments shall respond timely to information requests from the Board. For purposes of this chapter, "non-privileged information" shall mean any information that is not subject to the attorney/client or attorney work product privileges as defined by state or federal law, personnel information about City employees that is exempt from disclosure pursuant to state or federal law, personal information about any City employee, information concerning any ongoing litigation involving the City or any of its employees and any other information that the City Attorney determines is either privileged or exempt from disclosure pursuant to any applicable state or federal law.

2.27.040 -- MEMBERSHIP AND QUORUM

- (a) The Board shall consist of a total of seven (7) members. The membership shall consist of one resident of Vallejo appointed by each sitting member of the Vallejo City Council and one resident appointed by the Mayor. Members appointed by a sitting member of the Vallejo City Council shall be residents of the City of Vallejo and of the appointing Councilmember's district. At large Council Members may appoint a member from any City Council district. The member appointed by the Mayor may reside anywhere within the City. A proposed member may not serve on both the Board and the Chief's Advisory Board (CAB).
- (b) Each Advisory Board member shall serve as a volunteer without pay.
- (c) All members of the Advisory Board shall be persons who have an interest in privacy and civil rights as demonstrated by work experience, civic participation, and/or political advocacy. No member may be an employee of any City department or an immediate family member of any City department employee, a member of any other City advisory body or any other City commission or appellate body, or otherwise a government official. Further, no member shall be or have been an employee of any local, state or federal law enforcement agency.
- (d) No member may have a financial interest, employment, or policy-making position in any commercial or for-profit facility, research center, or other organization with a commercial interest in Surveillance Technology or that profits from decisions made by the Advisory Board.
- (e) Four members of the Board shall constitute a quorum.
- (f) No member shall serve more than eight (8) consecutive years. Former members serving eight consecutive years may be appointed again after a break in service of two (2) years.
- (g) Any action by the Board shall be approved by a majority of members present, provided a quorum exists.
- (h) Applications shall be sought through the normal process used by the City Council for publicizing openings for commission appointments. All applications shall be submitted to the City Clerk who will distribute them to the Mayor and all members of the City Council. The Mayor and the selecting Council Member shall conduct interviews of eligible applicants at a public meeting that has been noticed at least 72-hours in advance.
- (i) The term for each Member shall run concurrently with the term of the appointing Council Member or Mayor notwithstanding the date of appointment. Initial members shall serve on the Board only until the expiration of the term of the appointing elected official and thereafter may again be appointed at the discretion of the appointing elected official

2.27.050 – BOARD STAFF

- (a) The City Manager shall appoint a City Staff Liaison to support the Board, prepare the Board's agendas, prepare staff reports and supporting materials, to serve as the secretary of the Board, to keep the Board's minutes and to be the Board's custodian of records. In preparing agendas for the Board, the City Staff Liaison shall consult with the Chair and Vice-Chair of the Board as well as the City

Attorney.

(b) The City Attorney shall assign an attorney to provide legal advice to the Board on matters concerning the Board. The assigned attorney shall review all agenda items for the Board to ensure compliance with the Ralph M. Brown Act and any other applicable laws and regulations. The assigned attorney shall also ensure that the items on the agenda do not exceed the subject matter jurisdiction of the Board as set forth in this chapter 2.27. In addition, the assigned attorney shall provide advice to the Board at its regular and special meetings.

2.27.060 -- BOARD MEETINGS AND GOVERNANCE

(a) The Board shall hold regular meetings on the third Thursday of every other month beginning with the first full month after adoption of this ordinance by the City Council. Provided there is no business for the Board to conduct at a regular meeting (i.e. there are no items requiring board action on the agenda), the City Staff Liaison may cancel a regular meeting as long as such cancellation occurs at least 72 hours before the scheduled start of the meeting. The City Staff Liaison may also cancel any meeting in the event of an emergency declared by the emergency authority of the City, State or Federal government. If there is a need to cancel a meeting for any other reason, the City Staff Liaison may only cancel such meeting with the written consent of the Board Chair and Vice Chair. Any meeting cancellation must be in writing and must clearly state the reason for the cancellation. The Board may agendaize a discussion of the cancellation policy and may, on the affirmative vote of a majority of the Board, suggest to the City Council a different cancellation policy amendment to the cancellation policy, however, such amendment to the cancellation policy must be adopted or amended by the Council and must comply with all applicable laws including, but not limited to, the Ralph M. Brown Act. In no event shall the Board meet less than once every six (6) months. If City staff submits a request for review of an acquisition or borrowing of Surveillance Technology, the Board shall hear the request at its next regular meeting or, if necessary to comply with the timeline in section 2.27.030(d), the Board may hold a special meeting as provided by law. All meetings of the Board shall be subject to the Ralph M. Brown Act.

(b) In the event of a vacancy caused by resignation and/or disability or death, the appointing entity may appoint a replacement to fill out the remaining period of the term pursuant to chapter 2.26 of this code. Members may continue to serve as holdovers beyond their term until their appointing entity renews their term or replaces them. Members may be removed from the Advisory Board in accordance with the City Charter and/or the Municipal Code.

(c) At the first meeting of the Board, members shall select among themselves officers as set forth in section 2.26.070 of this code. The City Staff Liaison shall serve as the secretary as set forth in section 2.26.070.

2.27.070 – GENERAL RULES AND REGULATIONS

The Board shall comply with the general rules and regulations for all boards, commissions and committees as set forth in Chapter 2.26 of this code unless otherwise provided by ordinance or resolution.

2.27.075 ENFORCEMENT

Any member of the public shall have the legal right to seek enforcement of this ordinance.

2.27.080 – MODIFICATION OF ORDINANCE

The Board shall have the right to seek changes to this chapter from the City Council as the Board may, by majority decision, feel are needed.

SECTION 3. SEVERABILITY

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Article. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof, irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 4. EFFECTIVE DATE

This ordinance shall become effective thirty (30) days after adoption by the City Council.