



January 31, 2023

Mayor Ted Wheeler & Portland City Commissioners  
Portland City Hall  
1221 SW 4th Ave  
Portland, OR 97204

Re: A strong surveillance ordinance is urgently needed

Mayor Wheeler And members of the Portland City Council:

We are a coalition of twenty-three civil society organizations and over two hundred individuals in the Portland area, and we urge you to speedily adopt a strong and effective surveillance ordinance for the City of Portland.

Personal privacy is necessary to human dignity and to a free society, and in the interest of a livable and welcoming city, strictly limiting and tightly controlling surveillance is important.

In spite of any possible benefits, surveillance systems and strategies lead to negative consequences as well. The chilled expression<sup>1</sup> of free speech<sup>2</sup>, reduced civil participation in constitutionally-protected association and assembly, and the potential for racial<sup>3</sup>, socioeconomic<sup>4</sup>, and algorithmic bias<sup>5</sup> are all significant issues. Widespread surveillance directly harms quality of life as well. Who wants to live in, or even visit, a place where one feels “big brother” constantly looking over their shoulder, watching and recording every movement? Also, the potential for abuse<sup>6,7,8</sup> in the use of these systems, and use outside of their originally-intended purposes<sup>9</sup>, is a clear concern in the absence of citizen oversight. Therefore, the pros and cons of any proposed use of surveillance technology must be carefully weighed.

These decisions should not be made solely by heads of bureaus or by any one individual. They are important decisions of city-wide concern that may only appropriately be made by that body democratically accountable to the people—the City Council—after public testimony, deliberation, and debate.

In May of last year, PDX Privacy sent a letter<sup>10</sup> to Smart City PDX and the Office of Equity and Human Rights outlining specific suggestions to ensure that an adopted surveillance ordinance

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<sup>1</sup> Karen Gullo, “Surveillance Chills Speech—As New Studies Show—And Free Association Suffers”, Electronic Frontier Foundation (May. 19, 2016), available at <https://www.eff.org/deeplinks/2016/05/when-surveillance-chills-speech-new-studies-show-our-rights-free-association>.

<sup>2</sup> Elizabeth Stoycheff, “Mass Surveillance Chills Online Speech Even When People Have “Nothing to Hide””, Slate (May. 3, 2016), available at <https://slate.com/technology/2016/05/mass-surveillance-chills-online-speech-even-when-people-have-nothing-to-hide.html>.

<sup>3</sup> Jillian Dahrooge, “Using the Black Lives Matter Movement as a Basis for Data Surveillance”, Journal of High Technology Law at Suffolk University Law School (Sep. 27, 2020), available at <https://sites.suffolk.edu/jhtl/2020/09/27/using-the-black-lives-matter-movement-as-a-basis-for-data-surveillance/>.

<sup>4</sup> Olga Akselrod, “How Artificial Intelligence Can Deepen Racial and Economic Inequities”, American Civil Liberties Union (Jul. 13, 2021), available at <https://www.aclu.org/news/privacy-technology/how-artificial-intelligence-can-deepen-racial-and-economic-inequities>.

<sup>5</sup> Nicol Turner Lee, Paul Resnick, and Genie Barton, “Algorithmic bias detection and mitigation: Best practices and policies to reduce consumer harms”, The Brookings Institution (May. 22, 2019), available at <https://www.brookings.edu/research/algorithmic-bias-detection-and-mitigation-best-practices-and-policies-to-reduce-consumer-harms/>.

<sup>6</sup> Michael German, Rachel Levinson-Waldman, and Kaylana Mueller-Hsia, “Ending Fusion Center Abuses”, Brennan Center for Justice at NYU Law (Dec. 15, 2022), available at <https://www.brennancenter.org/our-work/policy-solutions/ending-fusion-center-abuses>.

<sup>7</sup> “They are watching”, ACLU of Washington (Mar 4, 2016), available at <https://theyarewatching.org/issues/insider-abuse>.

<sup>8</sup> “COINTELPRO”, Wikipedia, available at <https://en.wikipedia.org/wiki/COINTELPRO>.

<sup>9</sup> Zack Whittaker, “US cell carriers are selling access to your real-time phone location data”, ZDNET, (May 14, 2018), available at <https://www.zdnet.com/article/us-cell-carriers-selling-access-to-real-time-location-data/>.

<sup>10</sup> <https://www.pdxprivacy.org/wp-content/uploads/2023/01/Letter-from-PDX-Privacy.pdf>

is strong enough to effectively accomplish the critical and urgently-needed objectives of such an ordinance. These suggestions align with those already championed by the American Civil Liberties Union (ACLU), the Electronic Frontier Foundation (EFF), Fight for the Future, and other organizations and as documented in the CCOPS Principles<sup>11</sup> and the ACLU's CCOPS Model Bill<sup>12</sup>.

The core principle of an effective surveillance ordinance is both reasonable and easily actionable: Prior to the acquisition or use of any surveillance technology by any city bureau, the City Council must hold public hearings and vote on whether or not to approve such acquisition or use, along with the specific policies that will govern the use of such technology.

Current events demonstrate the urgent necessity of a surveillance ordinance. The City Auditor's report on *Police Intelligence-Gathering and Surveillance*<sup>13</sup> last year concluded that better management of surveillance is needed in order to protect civil rights.

We wholeheartedly agree with the Auditor's conclusion.

Meanwhile, new and intrusive surveillance technologies, such as gunshot detection systems and police body cameras, are under consideration right now. A strong surveillance ordinance is urgently needed to provide a framework for making decisions regarding such technologies in a transparent and democratic manner.

Accordingly, we urge you to act with appropriate dispatch to adopt a strong and effective surveillance ordinance.

Specifically, we urge the Council to:

- Without delay, adopt the resolution<sup>14</sup> prepared by Smart City PDX and the Office of Equity and Human Rights
- Direct Smart City PDX and the Office of Equity and Human Rights to produce a draft surveillance ordinance, modeled on CCOPS legislation, by a specific date no more than a few months hence
- In a timely manner, hold public hearings and vote on the adoption of a strong surveillance ordinance

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<sup>11</sup> "Community Control Over Police Surveillance – Guiding Principles", American Civil Liberties Union, (April 2021), available at <https://www.aclu.org/fact-sheet/community-control-over-police-surveillance-guiding-principles>.

<sup>12</sup> "Community Control Over Police Surveillance (CCOPS) Model Bill", American Civil Liberties Union, (April 2021), available at <https://www.aclu.org/legal-document/community-control-over-police-surveillance-ccops-model-bill>.

<sup>13</sup> "Police Intelligence-Gathering and Surveillance: Better management needed to protect civil rights", City of Portland Auditor, (Apr 6, 2022), available at <https://www.portland.gov/audit-services/news/2022/4/6/police-intelligence-gathering-and-surveillance-better-management>.

<sup>14</sup> "Establish a citywide Surveillance Technology inventory and procedures on Privacy and the City Bureaus' use and acquisition of Surveillance Technology (Resolution)", available at <https://static1.squarespace.com/static/5967c18bff7c50a0244ff42c/t/636991475ae08f716e745ab7/1667862856053/Draft+Resolution+to+establish+a+surveillance+technologies+policy+-+11-02-22.pdf>

We must again emphasize the urgency and need for promptness in attending to this critically-important matter. Delay is not necessary because the City Council has already expressed commitment to digital justice in the adoption of Title 34<sup>15</sup> into the city code, because Smart City PDX and the Office of Equity and Human Rights have already collected extensive community input, and because City Council approval of surveillance technologies and policies prior to their acquisition and use is reasonable and sound policy.

Additionally, delay is unacceptable because new and intrusive surveillance technologies are currently under consideration, and absent an appropriate surveillance ordinance, they may be acquired according to an opaque and anti-democratic process.

Thank you for all your past work in protecting the privacy of Portland's residents and visitors. We urge you now to continue that work by passing this binding resolution and then creating stronger legislation in the form of a surveillance ordinance.

We look forward to engaging with you all further in enacting an ordinance.

Sincerely,

350PDX  
ACLU of Oregon  
Amend4Rights  
Carceral Tech Resistance Network  
Electronic Frontier Foundation  
Fight for the Future  
Freedom to Thrive  
Lucy Parsons Labs  
Media Alliance  
Neon Law Foundation  
Oakland Privacy  
PDX Privacy  
PDXWIT  
Personal Telco Project  
PRADA PDX  
Restore The Fourth  
Restore The Fourth MN  
Secure Justice  
Sisters of the Road  
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<sup>15</sup> Title 34 Digital Justice, Ordinance No. 190114 - City of Portland Code, (Jan 1, 2021), available at <https://www.portland.gov/code/34>.