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Councilmember

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Councilmember(s) _____ introduced the following bill, which was referred to the Committee on _____.

To prohibit the use of general video surveillance and biometric technology by the District of Columbia government.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,
That this act may be cited as the "District of Columbia Anti-Surveillance Act of 2002."

Sec. 2. Findings.

The Council of the District of Columbia finds that:

(1) As Justice Louis D. Brandeis wrote, "The right to be let alone [is] the most comprehensive of rights and the right most valued by civilized [people]." *Olmstead v. United States*, 277 U.S. 438 (1928).

(2) As the District of Columbia Court of Appeals has stated: "The notion that the individual exists for the good of the state is, of course, quite antithetical to our fundamental thesis that the role of the state is to ensure a maximum of individual freedom of choice and conduct." *In re Osbourne*, 294 A.2d 372 (D.C. 1972).

1 (3) The right of privacy “protects people, not places,” *Katz v. United*
2 *States*, 389 U.S. 347 (1967). Yet if the growing “power of technology to shrink
3 the realm of guaranteed privacy” is not controlled by legislation, science will
4 soon “leave the [citizen’s privacy] at the mercy of advancing technology.” *Kyllo v.*
5 *United States*, 533 U.S. 27 (2001).

6 (4) The residents of the District of Columbia, and visitors to our city, have
7 a reasonable expectation that they will not be the subjects of governmental
8 surveillance if they are not engaged in conduct that appears to be unlawful.

9 (5) The use of video cameras for general surveillance in public areas
10 significantly diminishes the privacy and liberty that are the hallmarks of a free
11 society.

12 (6) General video surveillance in public areas such as streets,
13 sidewalks, parks and plazas provides no significant benefit to public safety.

14 (7) The primary purpose of the Metropolitan Police Department is to
15 provide for the safety of District of Columbia residents in their communities. But
16 many District of Columbia neighborhoods suffer from inadequate police
17 presence.

18 (8) Public safety will be better served if the resources that would be
19 devoted to general video surveillance are used instead for increased
20 community policing.

21 (9) The use of general video surveillance in public areas such as
22 streets, sidewalks, parks and plazas is therefore not warranted given its
23 deleterious effect on individual freedom and its ineffectiveness for public safety
24 purposes.

25 (10) The mere presence of general video surveillance cameras in public
26 areas such as streets, sidewalks, parks and plazas has the same deleterious
27 effect, whether or not the cameras are in operation at any given time.

1 (11) The use of biometric technology, whereby individuals may be
2 identified by cameras and computers based upon physiological or behavioral
3 characteristics such as the geometry of an individual's face, hands, iris, voice
4 or handwriting, presents a serious threat to individual privacy and liberty.

5 (12) The District of Columbia has a long established tradition of
6 protecting the civil rights and civil liberties of its residents and visitors. As the
7 nation's capital, the District of Columbia must be a beacon of freedom, setting
8 an example for the protection of civil rights and civil liberties across the land.

9 (13) The use of general video surveillance and biometric technology by
10 the District of Columbia government should therefore be prohibited.

11 Sec. 3 Definitions.

12 As used in this Act:

13 (a) "Biometric technology" means any automated, photographic method
14 of identifying or recognizing an individual based on physiological or behavioral
15 characteristics, including but not limited to an individual's face, fingerprints,
16 hand geometry, handwriting, iris, retina, vein, or voice.

17 (b) "District of Columbia government" has the same meaning as the
18 term "District Government," as that term is defined in D.C. Official Code § 47-
19 393(5), and additionally includes all persons acting as employees, agents or
20 contractors of the District of Columbia, and all Business Improvement District
21 corporations registered pursuant to the terms of D.C. Official Code Title 2,
22 Chapter 12, Subchapter VIII.

23 (c) "General video surveillance" means the use of remotely-operated
24 cameras to view or record activities occurring in outdoor public areas such as
25 streets, sidewalks, parks and plazas; *provided, however*, that the term "general
26 video surveillance" does not mean (i) the use, if otherwise lawful, of cameras to
27 view or record the suspected criminal activities of specific individuals who are

1 under surveillance because they are suspected of engaging in, or being about
2 to engage in, a criminal act; (ii) the use, if otherwise lawful, of cameras to
3 monitor the exterior entrances and surfaces of District of Columbia government
4 buildings for security purposes; (iii) the use, if otherwise lawful, of cameras to
5 detect and record motor vehicles violating the traffic laws, when such cameras
6 are activated by such violations and when such cameras are not capable of
7 identifying the occupants of such vehicles; (iv) the use, if otherwise lawful, of
8 cameras at points of traffic congestion for the purpose of real-time traffic
9 control, so long as such cameras are not capable of identifying individuals or
10 license plate numbers; and (v) the use, if otherwise lawful, of cameras installed
11 on police vehicles to record the interactions between police officers and
12 persons stopped or detained.

13 Sec. 4. Prohibitions.

14 (a) The District of Columbia government is prohibited from conducting or
15 engaging in general video surveillance.

16 (b) Within thirty days of the effective date of this Act, all remotely-operated
17 video surveillance devices that have already been deployed by the District of
18 Columbia government for the purpose of conducting general video surveillance
19 shall be removed.

20 (c) The District of Columbia government is prohibited from obtaining
21 access to the live video surveillance feeds of other public or private entities,
22 *provided, however,* that the District of Columbia Metropolitan Police Department
23 may obtain access to the live video surveillance feed of another entity when (i)
24 that entity's operation of the surveillance camera is itself lawful; (ii) the camera
25 operated by such entity would be lawful if operated by the District of Columbia
26 government; and (ii) the video feed will provide images of exigent

1 circumstances threatening the life or safety of individuals in the District of
2 Columbia.

3 (d) The District of Columbia government is prohibited from obtaining
4 access to video surveillance recordings from other public or private entities
5 except pursuant to a lawfully-obtained search warrant, subpoena or court order.

6 (e) Notwithstanding any other provision of this Act, the District of
7 Columbia government is prohibited from conducting or engaging in video
8 surveillance of individuals or groups engaged in expressive public events such
9 as demonstrations, rallies, marches, picketing or handbilling.

10 (f) The District of Columbia government is prohibited from using
11 biometric technology.

12 Sec. 5. Reporting requirements.

13 (a) Any employee, agent or contractor of the District of Columbia
14 government who has knowledge of facts that may constitute a violation of this
15 Act shall report them in writing to the head of his or her agency or to the
16 Inspector General of the District of Columbia within seven days of acquiring
17 such knowledge. The Mayor shall take appropriate action to inform District of
18 Columbia employees, agents and contractors of their obligations under this
19 Act.

20 (b) Within thirty days of receiving such a report, or of otherwise becoming
21 aware of facts that may constitute a violation of this Act, the Inspector General
22 and the head of any District of Columbia agency shall submit a written report to
23 the Mayor and the Council setting forth the results or status of any investigation
24 that has been conducted and the results or status of any disciplinary action that
25 has been taken or proposed. If an investigation or disciplinary proceeding is
26 open at the time of such report, follow-up reports shall be submitted every sixty
27 days until any investigation or disciplinary proceeding is concluded. All such

1 reports shall become public documents upon the conclusion of any
2 investigation or disciplinary proceeding.

3 Sec. 6. Penalties.

4 (a) Any employee, agent or contractor of the District of Columbia government
5 who (i) violates this act, or (ii) causes another person to violate this act, or (iii)
6 has knowledge of facts that may constitute a violation of this Act and fails to
7 report them to the head of his or her agency or to the Inspector General of the
8 District of Columbia within seven days of acquiring such knowledge, shall be
9 subject to appropriate disciplinary action including dismissal and shall be
10 subject to an administrative fine not to exceed \$5,000.

11 (b) Any employee, agent or contractor of the District of Columbia government
12 who (i) violates this act, or (ii) causes another person to violate this act, or (iii)
13 has knowledge of facts that may constitute a violation of this Act and fails to
14 report them to the head of his or her agency or to the Inspector General of the
15 District of Columbia within seven days of acquiring such knowledge, shall be
16 guilty of the crime of video spying and shall be imprisoned for not more than
17 five years and fined not more than \$50,000.

18 Sec. 7. Private cause of action.

19 Any person adversely affected by a violation of this Act may bring an
20 action in the Superior Court of the District of Columbia for declaratory and
21 injunctive relief and for damages. The court may award reasonable attorneys
22 fees to such a person who is a prevailing party in such an action.

23 Sec. 8. Fiscal impact statement.

24 The Council adopts the fiscal impact statement in the committee report
25 as the fiscal impact statement required by section 602 (c)(3) of the District of
26 Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C.
27 Official Code § 1-206.02(c)(3)).

1 Sec. 9. Effective dates.

2 (a) This Act, except for section 5(b) thereof, shall take effect following
3 approval by the Mayor (or in the event of a veto by the Mayor, action by the
4 Council to override the veto), a 30-day period of Congressional review as
5 provided in section 602(c)(1) of the District of Columbia Home Rule Act,
6 approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-
7 206.02(c)(1)), and publication in the District of Columbia Register.

8 (b) Section 5(b) of this Act shall take effect following approval by the
9 Mayor (or in the event of a veto by the Mayor, action by the Council to override the
10 veto), a 60-day period of Congressional review as provided in section 602(c)(2)
11 of the District of Columbia Home Rule Act, approved December 24, 1973 (87
12 Stat. 813; D.C. Official Code § 1-206.02(c)(2)), and publication in the District of
13 Columbia Register.