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5 Councilmember Kathy Patterson
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7
8 A BILL
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11
12 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
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16 Councilmember Kathy Patterson introduced the following bill, which was referred to the
17 Committee on _____.
18

19 To authorize the limited use of video surveillance for specific law enforcement, security and
20 traffic management purposes by the Mayor; require public notice before a camera is
21 deployed; require a court order for certain uses of video surveillance; create procedures for
22 obtaining a court order for the use of video surveillance; authorize the Mayor to conduct a
23 pilot project for the purpose of evaluating the effectiveness of the use of video
24 surveillance in preventing, detecting, deterring or investigating crime in District of
25 Columbia neighborhoods; authorize the Mayor to enter into agreements with other
26 jurisdictions to use their video feeds; require the promulgation of administrative
27 regulations by District of Columbia government agencies regulating the use of video
28 surveillance; require regular public reporting by the Mayor to the Council and the public
29 on the government's use of video surveillance; require the District of Columbia Auditor to
30 conduct a biennial audit on the use of video surveillance by the District of Columbia
31 government; and to provide for penalties for violation of the act.
32

33 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That
34 this act may be cited as the "Limited Authorization of Video Surveillance and Privacy Protection
35 Act of 2002".

36 Sec. 2. Definitions.

37 For the purposes of this act, the term:

1 (1) “Biometric technology or software” means an automated method of
2 recognizing an individual based on physiological or behavioral characteristics, including an
3 individual’s face, fingerprints, hand geometry, handwriting, iris, retina, vein, and voice.

4 (2) “Covert surveillance” means observation intended to be concealed from any
5 subject of the observation.

6 (3) “Deploy” means to install or place a video surveillance camera in a particular,
7 fixed location.

8 (4) “Exigent circumstances” means unanticipated, temporary situations that
9 threaten the immediate safety of individuals or property within the District of Columbia.

10 (5) “Legitimate law enforcement objective” means the detection, investigation,
11 deterrence or prevention of crime, or apprehension and prosecution of a suspected criminal. An
12 action by a law enforcement officer is “reasonably likely to achieve a legitimate law enforcement
13 objective” if there are articulable reasons for concluding that one of these objectives may be met
14 by taking the action.

15 (6) “Part 1 crime” means a homicide, sexual assault, robbery, assault with a deadly
16 weapon, burglary, theft, stolen auto or arson.

17 (7) “Private” means an activity, condition, or location when the area where it
18 occurs or exists or other relevant considerations afford it a constitutionally protected reasonable
19 expectation of privacy.

20 (8) “Public notice” shall at a minimum include publication in the D.C. Register,
21 posting on the Metropolitan Police Department website, written notice to the Council, written

1 notice to the relevant Advisory Neighborhood Commission, and issuance of a press release.

2 (9) “Telescopic” means the capability to make visible details not naturally visible
3 to the naked eye because of distance.

4 (10) “Video surveillance” means use of a lawfully positioned camera as a means of
5 viewing or recording activities or conditions other than those occurring within the sight or
6 immediate vicinity of a government official or agent thereof who is aware of such use.

7 Sec. 3. Authorization to use video surveillance.

8 The Mayor is authorized, subject to the limitations contained in this act, to conduct video
9 surveillance for specified law enforcement, security and traffic management purposes limited to:

10 (a) Temporary management of public resources during major events that have the
11 potential to threaten the safety and well being of District of Columbia residents, visitors and
12 property;

13 (b) Temporary management of the flow of traffic into, through and out of the
14 District of Columbia during times of heightened traffic congestion;

15 (c) Temporary covert use as part of the investigation of a crime;

16 (d) Monitoring areas within the interior and exterior of government buildings
17 where there is no reasonable expectation of privacy for the purpose of maintaining the security of
18 those areas;

19 (e) Temporary use as part of an effort to prevent, detect, and investigate crime in
20 neighborhoods pursuant to section 11.

21 Sec. 4. Public Notice.

1 (a) Before a camera is deployed to conduct video surveillance for the purposes described
2 in section 3(a), (b), and (e), the Mayor shall

3 (1) Provide public notice of his or her intention to deploy a camera;

4 (2) Provide public notice of the general capabilities of the camera being deployed,
5 its use, its location, and the planned duration of the deployment;

6 (3) Allow the public 30 days to submit comments to the Mayor regarding the
7 proposed deployment of a camera;

8 (4) Post signage in the vicinity of the camera alerting the public of the deployment
9 of the camera. The signage shall be within 30 feet of the camera and shall:

10 (i) Inform the public that a camera is in operation;

11 (ii) Allow people entering the area to make a reasonable approximation of
12 the area covered by the camera; and

13 (iii) Identify the District of Columbia government as the owner of the
14 camera and give a telephone number and address should the public
15 require further information or wish to provide an opinion or complaint
16 about the camera.

17 (b) When a camera is deployed to conduct video surveillance for the purposes described
18 in section 3 (c), the Mayor shall, after the related investigation is completed, report the location,
19 duration and purpose of the deployment as part of the report referenced in section 15 of this act.

20 (c) When a court order is obtained pursuant to sections 7, 8 and 9 to conduct video
21 surveillance, the Mayor shall, after the related investigation is completed, report the location,

1 duration and purpose of the video surveillance as part of the report referenced in section 15.

2 (d) Within 30 days of the effective date of this act, the Mayor shall provide the
3 information required in section 4(a)(2), and shall post signage pursuant to section 4(a)(4), for
4 video surveillance cameras already deployed as of the effective date of this act.

5 Sec. 5. Use of video surveillance for law enforcement investigation purposes.

6 (a) The Mayor is authorized to use covert video surveillance of public places as part of a
7 law enforcement investigation, exempt from the requirements of section (4)(a) of this act, when a
8 supervisory law enforcement official concludes that the surveillance will be reasonably likely to
9 achieve a legitimate law enforcement objective.

10 (b) Use of video surveillance pursuant to this section shall be the subject of Metropolitan
11 Police Department general orders.

12 Sec. 6. Uses of video surveillance for which a court order is required.

13 The Mayor is authorized to use the following forms of video surveillance only after
14 obtaining a court order pursuant to the procedures in sections 7, 8 and 9:

15 (a) Video surveillance technology with audio capability;

16 (b) Video surveillance for which the viewing area includes or intrudes into private space
17 where there is a reasonable expectation of privacy, including the interior of a residence or
18 commercial building; and

19 (c) Video surveillance technology that has telescopic zoom capability that is of such a
20 high magnification that it enables the facial identification of the individuals being videotaped.

21 Sec. 7. Applications for authorization or approval of videotape surveillance.

1 (a) The United States attorney may authorize, in writing, any investigative or law
2 enforcement officer to make application to a court for an order authorizing the use of videotape
3 surveillance.

4 (b) The United States attorney may authorize, in writing, any investigative or law
5 enforcement officer to make application to a court for an order of approval of the previous use of
6 videotape surveillance, when the contents of such videotape:

- 7 (1) Relate to an offense other than that specified in an order of authorization;
- 8 (2) Were videotaped in an emergency situation; or
- 9 (3) Were videotaped in an emergency situation and relate to an offense other than
10 that contemplated at the time the videotape was made.

11 (c) An application for an order of authorization (as provided in subsection (a) of this
12 section) or of approval (as provided in paragraph (2) of subsection (b) of this section) may be
13 authorized only when the videotape may provide or has provided evidence of the commission of
14 or a conspiracy to commit any of the following offenses:

- 15 (1) Act of terrorism;
- 16 (2) Manufacture or possession of a weapon of mass destruction;
- 17 (3) Arson;
- 18 (4) Assault with intent to kill;
- 19 (5) Assault with a deadly weapon;
- 20 (6) Burglary;
- 21 (7) Destruction of property of value in excess of \$200;

- 1 (8) Gambling;
- 2 (9) Kidnapping;
- 3 (10) Murder;
- 4 (11) Felony rioting;
- 5 (12) Robbery;
- 6 (13) Bribery;
- 7 (14) Stolen auto;
- 8 (15) Threats; and
- 9 (16) Felony narcotics distribution, possession with intent to distribute and
- 10 manufacture offenses pursuant to D.C. Official Code §§ 48-904.01(a)(1), 48-
- 11 904.03a, and 48-904.07.

12 Sec. 8. Procedure for authorization or approval of videotape surveillance.

13 (a) Each application for an order authorizing or approving the use of videotape
14 surveillance shall be made in writing, or by telephone or other appropriate means, including
15 facsimile transmissions or other electronic communications, upon oath or affirmation to a judge
16 and shall state the applicant's authority to make the application. Each application shall include:

17 (1) The identity of the investigative or law enforcement officer making the
18 application, and the officer authorizing the application;

19 (2) A full and complete statement of the facts and circumstances relied upon by
20 the applicant to justify his belief that an order should be issued, including:

21 (A) Details as to the particular offense that has been, is being, or is about

1 to be committed;

2 (B) A particular description of the nature and location of the facilities from
3 which or the place where the videotaping is occurring;

4 (C) A particular description of the person or type of activity the
5 videotape surveillance captured or is expected to capture;

6 (D) The identity of the person, if known, who committed, is committing,
7 or is about to commit the offense and whose activities are to be or were videotaped;

8 (3) A full and complete statement as to whether or not other investigative
9 procedures have been tried and failed or why they reasonably appear or appeared to be unlikely
10 to succeed if tried or to be too dangerous;

11 (4) A statement of the period of time for which the videotape surveillance is or
12 was required to be maintained, and if the nature of the investigation is or was such that the
13 authorization for videotape surveillance should not automatically terminate or should not have
14 automatically terminated when the described type of activity has been or was first captured, a
15 particular description of facts establishing probable cause to believe that additional activity of the
16 same type will or would occur thereafter;

17 (5) A full and complete statement of the facts concerning all previous
18 applications, known to the individual authorizing or making the application, made to any judge
19 for authorization to videotape, or for approval of videotape surveillance involving any of the
20 same persons, facilities, or places specified in the application, and the action taken by the judge
21 on each such application; and

1 (6) Where the application is for the extension of an order, a statement setting forth
2 the results thus far obtained from the videotape surveillance, or a reasonable explanation of the
3 failure to obtain results.

4 (b) The judge may require the applicant to furnish additional testimony or documentary
5 evidence in support of the application.

6 (c) Upon application the judge may enter an ex parte order, as requested or as modified,
7 authorizing or approving videotape surveillance within the District of Columbia, if the judge
8 determines on the basis of the facts submitted by the applicant that:

9 (1) There is or was probable cause for belief that the person whose activity is to
10 be or was captured is or was committing, has committed, or is about to commit a particular
11 offense enumerated in section 7;

12 (2) There is or was probable cause for belief that particular activities relating to
13 that offense will or would be captured through the videotape surveillance; and

14 (3) Normal investigative procedures have or would have been tried and have or had
15 failed or reasonably appear or appeared to be unlikely to succeed if tried or to be too dangerous.

16 (e) Each order authorizing or approving the use of videotape surveillance shall specify:

17 (1) The identity of the person, if known, or otherwise a particular description of
18 the person, if known, whose activities are to be or were videotaped;

19 (2) The nature and location of the videotape surveillance;

20 (3) A particular description of the person or type of activity sought to be or
21 which was videotaped, and a statement of the particular offense to which it relates;

1 (4) The identity of the agency authorized to conduct the videotape surveillance, or
2 whose conduct of the surveillance is approved, and of the person authorizing the application;
3 and

4 (5) The period of time during or for which the videotape surveillance is authorized
5 or approved, including a statement as to whether or not the videotape surveillance shall
6 automatically terminate when the described activity has been first obtained.

7 (f) No order entered under this section may authorize or approve the use of videotape
8 surveillance for any period longer than is necessary to achieve the objective of the authorization,
9 nor in any event longer than 30 days. Extensions of an order may be granted, but only upon
10 application for an extension made in accordance with subsection (a) of this section and the court
11 making the findings required by subsection (c) of this section. The period of extension shall be
12 no longer than the authorizing judge deems necessary to achieve the purposes for which it was
13 granted and in no event for longer than 30 days. Every order and extension thereof shall contain a
14 provision that the authorization to intercept shall be executed as soon as practicable, shall be
15 conducted in such a way as to minimize or eliminate the videotaping of persons or activities not
16 otherwise subject to videotape surveillance under this subchapter, and must terminate upon
17 attainment of the authorized objective, or in any event in 30 days.

18 (g) Whenever an order authorizing the use of videotape surveillance is entered pursuant to
19 this subchapter, the order may require reports to be made to the judge who issued the order
20 showing what progress has been made toward achievement of the authorized objective and the
21 need for continued videotape surveillance. Reports shall be made at such intervals as the judge

1 may require.

2 Sec. 9. Additional procedure for approval of videotape surveillance.

3 (a) Notwithstanding any other provision of this subchapter, any investigative or law
4 enforcement officer, specially designated by the United States Attorney for the District of
5 Columbia, who reasonably determines that:

6 (1) An emergency situation exists that requires the use of videotape surveillance
7 before an order authorizing the videotape surveillance can with due diligence be obtained; and

8 (2) There are grounds upon which an order could be entered under this subchapter
9 to authorize the videotape surveillance, may use videotape surveillance if an application for an
10 order approving the videotape surveillance is initiated in accordance with this section within 12
11 hours and is completed within 72 hours after the videotape surveillance has occurred, or begins to
12 occur. In the absence of an order, the videotape surveillance shall immediately terminate when
13 the person or activity sought is captured or when the application for the order is denied,
14 whichever is earlier. In the event the application for approval is denied, or in any other case
15 where the videotape surveillance is terminated without an order having been issued, the contents
16 of any videotape surveillance shall be treated as having been obtained in violation of this
17 subchapter.

18 (b) When an investigative or law enforcement officer, while conducting videotape
19 surveillance in the manner authorized by this subchapter, videotapes persons or activities relating
20 either to offenses other than those specified in the order of authorization or to offenses other
21 than those offenses for which videotape surveillance was made pursuant to subsection (a) of this

1 section, he shall make an application to a judge as soon as practicable for approval for disclosure
2 and use, in accordance with sections 10(g) and 10(h) of the persons and activities videotaped.

3 Sec. 10. Recording of video surveillance and maintenance and disposition of records.

4 (a) The Mayor is authorized to record video surveillance only when there is specific
5 written approval of the director of the agency conducting the recorded video surveillance, and
6 only when there is reason to believe that a crime or dangerous incident will occur which the
7 recording will help to investigate or review.

8 (b) Recordings shall be maintained for 10 business days after which time they will be
9 recorded over or destroyed.

10 (c) Recordings may be maintained beyond 10 business days if the recordings contain
11 evidence of criminal activity or capture an occurrence that may subject the District of Columbia
12 to civil liability. Recordings that contain evidence of criminal activity or recordings that capture
13 an occurrence that may subject the District of Columbia government to civil liability shall be
14 maintained until final case disposition.

15 (d) Agency directors must provide, in writing, any decision to retain any recording
16 beyond 10 business days. Decisions to retain recordings beyond 10 business days must include
17 the purpose of the retention, the nature of the recording, and the length of time for the retention.

18 (e) Every recording made pursuant to subsection (a) shall be documented. The
19 documentation shall include a copy of written authorizations pertaining to each period of
20 recording, the name(s) of any person(s) recording, a general description of the activity being
21 recorded, documentation as to when the recording began and ended, and documentation of any

1 data obtained.

2 (f) Every recording shall be maintained and secured by a supervisor designated by the
3 relevant agency director. Appropriate security measures shall be taken against unauthorized
4 access to, alteration, disclosure, accidental loss or destruction of recordings.

5 (g) Access to and use of the recordings shall only take place:

6 (1) In compliance with the needs of law enforcement in connection with the
7 investigation of a crime;

8 (2) If necessary for the purposes of legal proceedings.

9 (h) The showing of recordings to the public will be allowed only in accordance with the
10 needs of law enforcement in connection with the investigation of a crime.

11 (i) Recordings shall not be used to identify, track, or catalogue individuals or any
12 characteristics of individuals who are not suspected of criminal activity or considered to be a
13 threat to public safety. For the purposes of this subsection, the terms “identify,” “track,” and
14 “catalogue” shall not mean a brief, inadvertent appearance in the view of a video surveillance
15 camera.

16 Sec. 11. Pilot project.

17 (a) The Mayor is authorized to conduct a temporary pilot project for the purpose of
18 evaluating the effectiveness of the use of video surveillance in preventing, detecting, deterring or
19 investigating crime in neighborhoods in the District of Columbia.

20 (b) The Mayor may deploy video surveillance cameras, for a period not to exceed one-
21 year, in a specific area within two neighborhoods in the District of Columbia, pursuant to the

1 public notice requirements contained in section 4 of this act, and only in areas where there is a
2 measure of public support for the cameras. “Public support” as used in this subsection shall
3 include a vote in favor of the cameras by the affected Advisory Neighborhood Commission. The
4 term “specific area” as used in this subsection may include a commercial corridor in a residential
5 neighborhood or an area with a consistently relatively high rate of crime, as examples.

6 (c) After the conclusion of the one-year period, the Mayor shall evaluate the effectiveness
7 of the use of video surveillance in preventing, detecting, or investigating crime in the specific areas
8 by examining the following factors:

9 (1) The rate of Part 1 crime in the specific areas’ Police Service Areas (PSAs)
10 within the one-year evaluation period, compared with the rate of Part 1 crime in the same
11 PSAs within the previous four years;

12 (2) The number of calls for service, including calls for service for public disorder,
13 drug activity, and prostitution, in the specific areas’ PSAs within the one-year evaluation
14 period, compared with the number of calls for service in the same PSAs within the
15 previous four years;

16 (3) The same information in paragraphs (1) and (2) in the PSAs surrounding the
17 specific areas, for the purpose of measuring any potential displacement of crime caused
18 by the deployment of the video surveillance cameras in the specific areas;

19 (4) General crime trends in the specific areas’ PSAs, the PSAs surrounding the
20 specific areas, the specific areas’ police districts, and the District of Columbia, within the
21 previous four years;

1 (5) The number of crimes in the specific areas detected and reported to the
2 Metropolitan Police Department because of the presence of the video surveillance
3 cameras.

4 (6) The number of investigations aided by the video surveillance cameras in the
5 specific areas within the one-year evaluation period.

6 (d) The results of the Mayor's evaluation of the pilot project shall be presented to the
7 Council in the form of a report.

8 Sec. 12. Agreements with other jurisdictions to use their video feeds.

9 (a) The Mayor is authorized to enter into agreements with:

10 (1) Public entities outside of the District of Columbia government; and

11 (2) Private entities;

12 to access their external video feeds for discreet, temporary periods and only in exigent
13 circumstances.

14 (b) The Mayor shall use video feeds from other entities only pursuant to this act.

15 Sec. 13. Illegal uses of video surveillance technology.

16 (a) The Mayor shall not use video surveillance technology for the purpose of denying,
17 inhibiting, or infringing upon, the First Amendment rights of residents of or visitors to the
18 District of Columbia.

19 (b) The Mayor shall not use video surveillance technology for the purpose of observing
20 individuals solely because of their race, color, religion, national origin, sex, age, marital status,
21 personal appearance, sexual orientation, familial status, family responsibilities, matriculation,

1 political affiliation, disability, source of income, place of residence or business or other
2 classifications protected by law.

3 (c) The Mayor shall not use video surveillance technology to identify, track, or catalogue
4 individuals or any characteristics of individuals who are not suspected of criminal activity or
5 considered to be a threat to public safety. For the purposes of this subsection, the terms
6 “identify,” “track,” and “catalogue” shall not mean a brief, inadvertent appearance in the view of
7 a video surveillance camera.

8 (d) The Mayor shall not use biometric technology or software in combination with any
9 government use of video surveillance without specific legislative authorization.

10 Sec. 14. Regulations

11 (a) The Mayor shall issue regulations consistent with this act governing the use of video
12 surveillance by District agencies, including the Metropolitan Police Department, the Department
13 of Transportation, and the Office of Property Management, pursuant to Title I of the District of
14 Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C.
15 Official Code § 2-501 *et seq.*). Each agency shall issue separate regulations specific to that
16 agency’s purpose for conducting video surveillance.

17 (b) The Board of Education shall issue regulations consistent with this act governing the
18 use of video surveillance by the District of Columbia Public Schools.

19 Sec. 15. Public reporting.

20 The Mayor shall, on an annual basis, report to the Council and to the public the extent
21 and capability of video surveillance being conducted by the government of the District of

1 Columbia. This report shall be published in the D.C. Register and shall include the following
2 information:

3 (1) Which District of Columbia government agencies are conducting video surveillance and
4 for what purposes;

5 (2) The extent and capability of video surveillance being conducted by District of
6 Columbia government agencies, including:

7 (i) How many cameras are being operated by each agency and any
8 technological enhancements that may be being used in
9 conjunction with the cameras;

10 (ii) Locations of cameras being used by each agency and their
11 periods of operation; and

12 (iii) Whether recording has occurred and the disposition of the
13 recordings.

14 Sec. 16. Biennial audit of the use of video surveillance.

15 The District of Columbia Auditor shall audit, on a biennial basis, the effectiveness and
16 cost of the District of Columbia government's use of video surveillance. This audit shall be
17 transmitted to the Mayor and Council in the form of a report, and a notice of its publication shall
18 be published in the D.C. Register. The report shall include the following information and
19 analysis:

20 (1) The cost of video surveillance being conducted by District of Columbia government
21 agencies, broken down by personal, non-personal and capital spending of each agency;

1 (2) Whether the original objectives of the use of video surveillance contained in section 3
2 of this act are being achieved;

3 (3) Whether video surveillance is being conducted by government agencies in accordance
4 with this act and with corresponding administrative regulations; and

5 (4) A summary of feedback received by District residents on the use of video surveillance
6 by District government agencies.

7 Sec. 17. Penalties.

8 Any District of Columbia government employee who violates this act shall be subject to
9 appropriate disciplinary action including dismissal and shall be subject to a fine not to exceed
10 \$1,000.

11 Sec. 18. Sunset.

12 Section 11 of this act shall expire two years after its effective date.

13 Sec. 19. Fiscal impact statement.

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

17 Sec. 20. Effective date.

18 This act shall take effect following approval by the Mayor (or in the event of a veto by
19 the Mayor, action by the Council to override the veto), a 30-day period of Congressional review
20 as provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December
21 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(2)), and publication in the District of

1 Columbia Register.

