

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 and Privacy Protection 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).

(3) The right of privacy "protects people, not places," *Katz v. United States*, 389 U.S. 347 (1967). Yet if the growing "power of technology to shrink the realm of guaranteed privacy" is not controlled by legislation, science will soon "leave the

1 [citizen's privacy] at the mercy of advancing technology." *Kyllo v. United States*, 533
2 U.S. 27 (2001).

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

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

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

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

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

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

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

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

25 (12) The District of Columbia has a long established tradition of protecting the
26 civil rights and civil liberties of its residents and visitors. As the nation's capital, the

1 District of Columbia must be a beacon of freedom, setting an example for the protection
2 of civil rights and civil liberties across the land.

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

5 Sec. 3 Definitions.

6 As used in this Act:

7 (a) “Biometric technology” means any automated, photographic method of
8 identifying or recognizing an individual based on physiological or behavioral
9 characteristics, including but not limited to an individual’s face, fingerprints, hand
10 geometry, handwriting, iris, retina, vein, or voice.

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

16 (c) “General video surveillance” means the use of remotely-operated cameras to
17 view or record activities occurring in outdoor public areas such as streets, sidewalks,
18 parks and plazas; provided, however, that the term “general video surveillance” does not
19 mean (i) the use, if otherwise lawful, of cameras to view or record the suspected criminal
20 activities of specific individuals who are under surveillance because they are suspected of
21 engaging in, or being about to engage in, a criminal act; (ii) the use, if otherwise lawful,
22 of cameras to monitor the exterior entrances and surfaces of District of Columbia
23 government buildings for security purposes; (iii) the use, if otherwise lawful, of cameras
24 to detect and record motor vehicles violating the traffic laws, when such cameras are
25 activated by such violations and when such cameras are not capable of identifying the
26 occupants of such vehicles; (iv) the use, if otherwise lawful, of cameras at points of
27 traffic congestion for the purpose of real-time traffic control, so long as such cameras are

1 not capable of identifying individuals or license plate numbers; and (v) the use, if
2 otherwise lawful, of cameras installed on police vehicles to record the interactions
3 between police officers and persons stopped or detained.

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

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

8 (f) “Private” means an activity, condition, or location when the area where it
9 occurs or exists or other relevant considerations afford it a constitutionally protected
10 reasonable expectation of privacy.

11 (g) “Video surveillance *stricto sensu*” (or “video surveillance”): video
12 surveillance that does not qualify as “general video surveillance” as defined by Sec. 3 (c).

13 (h) “Law enforcement-related video surveillance”: any surveillance that is defined
14 by Sec. 3 (c) (i).

15 (i) “Videotaping”: recording by analog or digital video surveillance equipment.

16 Sec. 4. Prohibitions.

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

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

22 (c) The District of Columbia government is prohibited from obtaining access to
23 the live video surveillance feeds of other public or private entities, provided, however,
24 that the District of Columbia Metropolitan Police Department may obtain access to the
25 live video surveillance feed of another entity when (i) that entity’s operation of the
26 surveillance camera is itself lawful; (ii) the camera operated by such entity is not a means

1 of general public surveillance; and (iii) the video feed will provide images of exigent
2 circumstances.

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

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

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

12 Section 5. Applications for authorization or approval of law enforcement-related
13 video surveillance.

14 (a) The United States attorney may authorize, in writing, any investigative or law
15 enforcement officer to make application to a court for an order authorizing the use of law
16 enforcement-related video surveillance.

17 (b) The United States attorney may authorize, in writing, any investigative or law
18 enforcement officer to make application to a court for an order of approval of the
19 previous use of law enforcement-related video surveillance, when the contents of such
20 video surveillance:

21 (1) Relate to an offense other than that specified in an order of
22 authorization;

23 (2) Were videotaped in an emergency situation; or

24 (3) Were videotaped in an emergency situation and relate to an offense
25 other than that contemplated at the time the videotape was made.

26 (c) An application for an order of authorization (as provided in subsection (a) of
27 this section) or of approval (as provided in paragraph (2) of subsection (b) of this section)

1 may be authorized only when the videotape may provide or has provided evidence of the
2 commission of or a conspiracy to commit any of the following offenses:

- 3 (1) Act of terrorism;
- 4 (2) Manufacture or possession of a weapon of mass destruction;
- 5 (3) Arson;
- 6 (4) Assault with intent to kill;
- 7 (5) Assault with a deadly weapon;
- 8 (6) Burglary;
- 9 (7) Destruction of property of value in excess of \$1,000;
- 10 (8) Gambling;
- 11 (9) Kidnapping;
- 12 (10) Murder;
- 13 (11) Felony rioting;
- 14 (12) Robbery;
- 15 (13) Bribery;
- 16 (14) Stolen auto;
- 17 (15) Threats; and
- 18 (16) Felony narcotics distribution, possession with intent to distribute and
19 manufacture offenses pursuant to D.C. Official Code §§ 48-904.01(a)(1),
20 48-904.03a, and 48-904.07.

21 Sec. 6. Procedure for authorization or approval of law enforcement-related video
22 surveillance.

23 (a) Each application for an order authorizing or approving the use of law
24 enforcement-related video surveillance shall be made in writing, or by telephone or other
25 appropriate means, upon oath or affirmation to a judge and shall state the applicant's
26 authority to make the application. Each application shall include:

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

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

5 (A) Details as to the particular offense that has been, is being, or is
6 about to be committed;

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

9 (C) A particular description of the person or type of activity the
10 law enforcement-related video surveillance captured or is expected to capture;

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

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

17 (4) A statement of the period of time for which the law enforcement-
18 related video surveillance is or was required to be maintained, and if the nature of the
19 investigation is or was such that the authorization for law enforcement-related video
20 surveillance should not automatically terminate or should not have automatically
21 terminated when the described type of activity has been or was first captured, a particular
22 description of facts establishing probable cause to believe that additional activity of the
23 same type will or would occur thereafter;

24 (5) A full and complete statement of the facts concerning all previous
25 applications, known to the individual authorizing or making the application, made to any
26 judge for authorization to videotape, or for approval of law enforcement-related video

1 surveillance involving any of the same persons, facilities, or places specified in the
2 application, and the action taken by the judge on each such application; and

3 (6) Where the application is for the extension of an order, a statement
4 setting forth the results thus far obtained from the law enforcement-related video
5 surveillance, or a reasonable explanation of the failure to obtain results.

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

8 (c) Upon application the judge may enter an ex parte order, as requested or as
9 modified, authorizing or approving law enforcement-related video surveillance within the
10 District of Columbia, if the judge determines on the basis of the facts submitted by the
11 applicant that:

12 (1) There is or was probable cause for belief that the person whose activity
13 is to be or was captured is or was committing, has committed, or is about to commit a
14 particular offense enumerated in section 5;

15 (2) There is or was probable cause for belief that particular activities
16 relating to that offense will or would be captured through the law enforcement-related
17 video surveillance; and

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

21 (e) Each order authorizing or approving the use of law enforcement-related video
22 surveillance shall specify:

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

25 (2) The nature and location of the law enforcement-related video
26 surveillance;

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

3 (4) The identity of the agency authorized to conduct the law enforcement-
4 related video surveillance, or whose conduct of the surveillance is approved, and of the
5 person authorizing the application; and

6 (5) The period of time during or for which the law enforcement-related
7 video surveillance is authorized or approved, including a statement as to whether or not
8 the law enforcement-related video surveillance shall automatically terminate when the
9 described activity has been first obtained.

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

23 (g) Whenever an order authorizing the use of law enforcement-related video
24 surveillance is entered pursuant to this subchapter, the order may require reports to be
25 made to the judge who issued the order showing what progress has been made toward
26 achievement of the authorized objective and the need for continued law enforcement-

1 related video surveillance. Reports shall be made at such intervals as the judge may
2 require.

3 Section 7. Procedure for approval of law enforcement-related video surveillance
4 in case of emergency.

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

8 (1) An emergency situation exists that requires the use of law
9 enforcement-related video surveillance before an order authorizing the law enforcement-
10 related video surveillance can with due diligence be obtained; and

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

23 (b) When an investigative or law enforcement officer, while conducting law
24 enforcement-related video surveillance in the manner authorized by this subchapter,
25 videotapes persons or activities relating either to offenses other than those specified in the
26 order of authorization or to offenses other than those offenses for which law
27 enforcement-related video 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
2 disclosure and use, in accordance with sections 10(g) and 10(h) of the persons and
3 activities videotaped.

4 Sec. 8. Recording of law enforcement-related video surveillance and maintenance
5 and disposition of records.

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

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

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

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

22 (e) Every recording made pursuant to subsection (a) shall be documented. The
23 documentation shall include a copy of written authorizations pertaining to each period of
24 recording, the name(s) of any person(s) recording, a general description of the activity
25 being recorded, documentation as to when the recording began and ended, and
26 documentation of any data obtained.

27 (f) Every recording shall be maintained and secured by a supervisor designated by

1 the relevant agency director. Appropriate security measures shall be taken against
2 unauthorized access to, alteration, disclosure, accidental loss or destruction of recordings.

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

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

6 (1) If necessary for the purposes of legal proceedings.

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

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

14 Sec. 9. Reporting requirements.

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

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

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

3 Sec. 10. Penalties.

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

10 Sec. 11. Private cause of action.

11 Any person subject to a violation of this Act may bring an action in the Superior
12 Court of the District of Columbia for declaratory and injunctive relief and for damages.
13 The court may award actual damages but not less than liquidated damages in an amount
14 of \$2,500, punitive damages, and reasonable attorneys fees and other litigation costs
15 reasonably incurred to such a person who is a prevailing party in such an action.

16 Sec. 12. Fiscal impact statement.

17 The Council adopts the fiscal impact statement in the committee report as the
18 fiscal impact statement required by section 602 (c)(3) of the District of Columbia Home
19 Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-
20 206.02(c)(3)).

21 Sec. 13. Regulations

22 (a) The Mayor shall issue regulations consistent with this act governing the use of
23 video surveillance by District agencies, including the Metropolitan Police Department,
24 the Department of Transportation, and the Office of Property Management, pursuant to
25 Title I of the District of Columbia Administrative Procedure Act, approved October 21,
26 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.). Each agency shall issue
27 separate regulations specific to that agency's purpose for conducting video surveillance.

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

3 Sec. 14. Public reporting.

4 The Mayor shall, on an annual basis, report to the Council and to the public the
5 extent and capability of video surveillance being conducted by the government of the
6 District of Columbia. This report shall be published in the D.C. Register and shall
7 include the following information:

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

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

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

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

17 (iii) Whether recording has occurred and the disposition of
18 the recordings.

19 Sec. 15. Biennial audit of the use of video surveillance.

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

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

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

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

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

7 Sec. 16. Effective dates.

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

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