



An Issue Brief on

Surveillance Oversight Ordinances



What are surveillance oversight ordinances?

Since 1977, state and local police budgets have increased by over 40%.ⁱ After 9/11, new grants from DHS and other sources were made available to local police for “counter-terrorism”—much of this money was appropriated to acquiring surveillance technology. Due to scope drift, surveillance technologies originally justified by “counterterrorism” end up being used to enforce minor and drug-related offenses. It’s now routine for police departments to use expensive military-surveillance equipment like StingRays to track down minor crime suspects.ⁱⁱ Federally subsidized fusion centers are often weaponized against protesters, and police in Minneapolis have justified using frequent and expensive surveillance helicopter flights in order to “prevent” car-jackings.ⁱⁱⁱ Even smart city tech has been used to surveil protestors: San Diego terminated a “smart streetlight” project in 2020 because local police were using the data without a court order or warrant, in 175 criminal investigations and during BLM protests.^{iv}

The default in the United States is that local elected officials have authority over the local police budget. However, when it comes to equipment acquisition, police departments have developed several ways to skirt around this oversight. The Department of Defense’s “1033 Program” sends military equipment and surveillance technologies previously used abroad to police departments for just the cost of shipping. Another, similar program is the DHS’s Urban Areas Security Initiative (UASI), which provides grants to local police to buy surveillance equipment. Another avenue for equipment acquisitions is inter-police partnerships, like Massachusetts’ “Law Enforcement Councils” and police foundations. These are 501(c)(3)s that can acquire equipment themselves and lend it to police departments—all without oversight. Last, some wealthy individuals pay for equipment and give it to police departments outright. The result is that local elected officials often don’t approve the deployment of a particular surveillance technology, and sometimes don’t even know it’s being deployed. When it’s deployed, it’s often deployed in areas police have identified as being “high-crime”, which overlap heavily with areas where Black people, indigenous people, and people of color live. There is often no

recourse in law against a police deployment of surveillance technology in your neighborhood.

Consequently towns, cities, and counties across the US – 15 so far - have started to take a more proactive approach to reining in government use of surveillance and military technology.^v Since 2016, RT4, ACLU, EFF, and Secure Justice have been especially active in spreading these initiatives.

The ordinances vary, but have the same basic structure:

- **For any surveillance technology**, broadly defined,
- The deploying **agency must have a plan** for its deployment that they submit to local elected officials (usually a City Council or Board of Supervisors.
- The **elected officials have the power to approve or deny** both the plan and the technology.
- **Regular reports** are required on how surveillance tech is used
- There are **consequences** for agencies that use the tech otherwise than outlined in the approved plan. (Often, this takes the form of a private right of action—which gives individuals affected the right to sue—fines, or making violating the ordinance a misdemeanor.)

Increasingly, these ordinances are accompanied by bans on law enforcement use of facial recognition technology, or by language restricting police militarization, or both.

Restore The Fourth is a partner with the ACLU’s “CCOPS” initiative, which develops and refines model ordinances.^{vi} CCOPS lays out some useful guiding principles:

- Surveillance tech should not be funded, acquired, or approved without express city council approval.
- Local communities should play a significant and meaningful role in determining if and how surveillance technologies are funded, acquired, or used.
- The process for considering the use of surveillance technologies should be transparent and well-informed:
- The use of surveillance technologies should not be approved generally; approvals, if provided, should

be for specific technologies and specific, limited uses.

- Surveillance technologies should not be funded, acquired, or used without addressing their potential impact on civil rights and civil liberties.
- Surveillance technologies should not be funded, acquired, or used without considering their financial impact.
- To verify legal compliance, surveillance technology use and deployment data should be reported publicly on an annual basis.
- City council approval should be required for all surveillance technologies and uses; there should be no “grandfathering” for technologies currently in use.

Why does Restore the Fourth recommend these ordinances?

For many people living in heavily surveilled communities, these ordinances can look like a bureaucratic, proceduralist solution that will not meaningfully decrease the surveillance they experience when compared to efforts to abolish surveillance. However, we view efforts at surveillance abolition, and efforts at surveillance reform, as

working hand in hand. Local groups will favor the one tactic over the other, based on their own assessment of what works at that time and what has worked in other places.

However, there is evidence that ordinances can stop, as well as regulate, surveillance, in part due to police departments not wanting to deal with the process of obtaining approval from elected officials. In Cambridge, MA, for example, documents show that the mere prospect of an ordinance thwarted a partnership between Cambridge PD and Amazon Ring.^{vii} Next door in Somerville, MA, pushback from City Council during the process of approving surveillance technology impact reports led Somerville PD to withdraw its requests for permission to deploy ALPR and Briefcam technologies.

This doesn’t make each ordinance bulletproof, though. After an ordinance passed in San Francisco, San Francisco PD partnered with private businesses to evade it, so that it could surveil BLM protests without approval from San Francisco’s Board of Supervisors. Activists there were able to pass a resolution to require certain business districts to disclose use of surveillance technology, and require that police seek approval before making use of those business districts’ surveillance tech.^{viii} The same

Jurisdictions with Surveillance Oversight Ordinances

California

- Berkeley, CA
- Davis, CA
- Oakland, CA
- Palo Alto, CA
- San Francisco, CA
- San Francisco Bay Area Rapid Transit District (BART)
- Santa Clara County, CA

Massachusetts

- Boston, MA
- Cambridge, MA
- Lawrence, MA
- Somerville, MA

Other States¹

- New Orleans, LA
- Detroit, MI
- New York, NY
- Dayton, OH
- Yellow Springs, OH
- Nashville and Davidson County, TN
- Seattle, WA
- Madison, WI (proposed)

¹ Of these ordinances, only Dayton, Detroit, Seattle, and Yellow Springs follow the model outlined in this issue brief. In New York, the City Charter does not give the City Council the authority to deny police surveillance technologies, so the ordinance is informational only, though still useful. The New Orleans and Nashville ordinances were created independently.

process in each community with an ordinance will tend to strengthen these ordinances over time.

What has Restore The Fourth done to pass surveillance ordinances?

RT4 chapters in the San Francisco Bay Area and Boston have been active in passing these ordinances, taking an active role in the passage of the ordinances in Cambridge, MA; New York City, NY; Oakland, CA; Palo Alto, CA; Santa Clara County, CA; and Somerville, MA. Our Boston chapter has successfully passed an ordinance in Boston, MA, and our chapter in Minnesota is campaigning to pass one in Minneapolis.

If you're looking to start or join a campaign to pass an ordinance in your town, city, or county, please [get in touch](#).

ⁱ <https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/state-and-local-backgrounders/criminal-justice-police-corrections-courts-expenditures#:~:text=From%201977%20to%202017%2C%20state,for%20the%20past%2040%20years.>

ⁱⁱ <https://www.usatoday.com/story/news/2015/08/23/baltimore-police-stingray-cell-surveillance/31994181/>

ⁱⁱⁱ <https://unicornriot.ninja/2019/police-fusion-center-tied-to-fake-social-media-accounts/>

<https://www.startribune.com/minneapolis-residents-demand-transparency-after-police-inflate-carjacking-charges/600031950/>

^{iv} <https://voiceofsandiego.org/2020/07/09/years-into-smart-streetlights-program-council-will-write-surveillance-rules/>

^v <https://static1.squarespace.com/static/5c1bfc7eee175995a4ceb638/t/602430a5ef89df2ce6894ce1/1612984485653/New+CC+OPS+On+The+Beat.pdf>

<https://www.lawfareblog.com/fourteen-places-have-passed-local-surveillance-laws-heres-how-theyre-doing>

^{vi} https://www.aclu.org/sites/default/files/field_document/aclu_ccops_model_bill_october_2020.pdf

^{vii} https://2f8dep2znrkt2udzwp1pbyxd-wpengine.netdna-ssl.com/wp-content/uploads/2019/09/Ring_RequestFINAL_Redacted-1.pdf

^{viii} <https://sfgov.legistar.com/View.ashx?M=F&ID=9083509&GUID=E2B2D583-A5F9-41A2-8BEA-F6C41ED98027>