

331
04/05/2022

(O-2021-67 REV.)
COR. COPY 2

ORDINANCE NUMBER O- 21446 (NEW SERIES)

DATE OF FINAL PASSAGE APR 12 2022

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 6,
DIVISION 00 OF THE SAN DIEGO MUNICIPAL CODE BY
ADDING NEW SECTIONS 26.42 AND 26.43, ALL RELATING
TO ESTABLISHING THE PRIVACY ADVISORY BOARD.

WHEREAS, the San Diego City Council (City Council) finds that the use of surveillance technology is important to protect public health and safety, but such use must be appropriately monitored and regulated to protect the privacy and other rights of San Diego residents and visitors; and

WHEREAS, the Council proposes to create a new Charter section 43(a) citizen advisory board known as the Privacy Advisory Board to advise the Mayor and City Council on transparency, accountability, and public deliberation in the City's acquisition and usage of surveillance technology; and

WHEREAS, the use of open data associated with surveillance technology offers benefits to the City, but those benefits must also be weighed against the costs; and

WHEREAS, while the City Council acknowledges an individuals' right to privacy, it also recognizes that surveillance technology may be a valuable tool to support community safety, investigations, and prosecution of crimes; and

WHEREAS, the City Council finds that surveillance technology includes not just technology capable of accessing non-public places or information, but also may include technology that aggregates publicly available information, which, in the aggregate or when pieced together with other information, has the potential to reveal details about a person's familial, political, professional, religious, or intimate associations; and

WHEREAS, awareness that the government may be watching may chill associational and expressive freedoms; and

WHEREAS, the City Council recognizes that data from surveillance technology can be used to intimidate and oppress certain groups more than others, including those that are defined by a common race, ethnicity, religion, national origin, income level, sexual orientation, or political perspective; and

WHEREAS, the City Council finds that safeguards, including robust transparency, oversight, and accountability measures, must be in place to protect civil rights and civil liberties before City surveillance technology is deployed; and

WHEREAS, the City Council finds that decisions regarding if and how the City's surveillance technologies should be funded, acquired, or used should include meaningful public input; and

WHEREAS, the City Council recognizes that prior to making a final determination on whether to approve the proposed ordinance creating the Privacy Advisory Board, the City must comply with the Meyers-Milias Brown Act (MMBA), California's collective bargaining law set forth at California Government Code sections 3500 through 3511, which is binding on the City; and

WHEREAS, the City Council also recognizes that depending on the outcome of the meet-and-confer process and the extent of any revisions to the proposed ordinance creating the Privacy Advisory Board resulting from that process, the City may be required to reintroduce this ordinance; and

WHEREAS, the City Council conducted a first reading of this ordinance on November 10, 2020; and

WHEREAS, the City's management team for labor relations provided written notice regarding this ordinance to the City's recognized employee organizations on October 30, 2020; November 5, 2020; November 13, 2020; December 14, 2021; and March 4, 2022. Further, the City's management team for labor relations held a coalitional bargaining session on November 30, 2020, and met with the San Diego Police Officers Association (SDPOA) on February 1, 2022. The City also provided written response to the SDPOA's questions and concerns by communication dated on February 4, 2022. The City's labor team requested that all of its recognized employee organizations notify the City's management team in writing by March 11, 2022, if there were further matters under the MMBA to address. The City's labor team received no additional requests to engage in bargaining, and the City Council wishes to proceed with final consideration of this ordinance; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. Chapter 2, Article 6, Division 00 of the San Diego Municipal Code is amended by adding new sections 26.42 and 26.43 to read as follows:

§26.42 Privacy Advisory Board

(a) Purpose and Intent

It is the purpose and intent of the Council to establish a Privacy Advisory Board to serve as an advisory body to the Mayor and Council on policies and issues related to privacy and surveillance. The Board will provide advice intended to ensure transparency, accountability, and public deliberation in the *City's* acquisition and use of surveillance technology.

- (b) There is hereby established a Privacy Advisory Board to consist of nine members, who shall serve without compensation. At least six members shall be residents of the City of San Diego. Members shall be appointed by the Mayor and confirmed by the Council.
- (c) All terms appearing in italics in sections 26.42 and 26.43 have the same meaning as in Chapter 2, Article 10, Division 1, of this Code, relating to the Transparent and Responsible Use of Surveillance Technology.
- (d) Qualifications of Members
 - (1) All members of the Privacy Advisory Board shall be persons who have a demonstrated interest in privacy rights through work experience, civic participation, and/or political advocacy.
 - (2) The Mayor shall appoint the nine members from the following representative areas of organizational interest, expertise, and background:
 - (A) At least one attorney or legal scholar with expertise in privacy or civil rights, or a representative of an organization with expertise in privacy or civil rights;
 - (B) One auditor or certified public accountant;
 - (C) One computer hardware, software, or encryption security professional;

- (D) One member of an organization that focuses on open government and transparency or an individual, such as a university researcher, with experience working on open government and transparency; and
 - (E) At least four members from equity-focused organizations serving or protecting the rights of communities and groups historically subject to disproportionate surveillance, including communities of color, immigrant communities, religious minorities, and groups concerned with privacy and protest.
- (3) No member may have a state law prohibited financial interest, employment, or policy-making position in any commercial or for profit facility, research center, or other organization that sells data products, surveillance equipment, or otherwise profits from recommendations made by the Privacy Advisory Board.
- (e) Terms
- (1) Members shall serve two-year terms, and each member shall serve until a successor is duly appointed and confirmed. Members are limited to a maximum of eight consecutive years.

- (2) Initial members shall be appointed in staggered terms. For the initial appointments, five members shall be appointed to an initial term that will expire in 2023, and four members shall be appointed to an initial term that will expire in 2024. Initial appointments for less than the full term of two years shall not have the initial term count for purposes of the eight-year term limit.
 - (3) All terms shall expire on March 15 in the year of termination. Any vacancy shall be filled for the remainder of the unexpired term.
- (f) Rules
- (1) The Board shall adopt rules for the government of its business and procedures in compliance with the law. The Board rules shall provide that a quorum of the Privacy Advisory Board is five members.
 - (2) At the first regular meeting, and subsequently at the first regular meeting of each year, members of the Privacy Advisory Board shall select a chairperson and a vice chairperson.

§26.43 Privacy Advisory Board – Duties and Functions

The Privacy Advisory Board shall:

- (a) Provide advice and technical assistance to the *City* on best practices to protect resident and visitor privacy rights in connection with the *City's* acquisition and use of *surveillance technology*.
- (b) Conduct meetings and use other public forums to collect and receive public input on the above subject matter.

- (c) Review *Surveillance Impact Reports* and *Surveillance Use Policies* for all new and existing *surveillance technology* and make recommendations prior to the City seeking solicitation of funds and proposals for *surveillance technology*.
- (d) Submit annual reports and recommendations to the City Council regarding:
 - (1) The *City's* use of *surveillance technology*; and
 - (2) Whether new *City surveillance technology* privacy and data retention policies should be developed, or existing policies should be amended.
- (e) Provide analysis to the City Council of pending federal, state, and local legislation relevant to the *City's* purchase and/or use of *surveillance technology*.
- (f) The Privacy Advisory Board shall make reports, findings, and recommendations either to the City Manager or the City Council, as appropriate. The Board shall present an annual written report to the City Council. The Board may submit recommendations to the City Council following submission to the City Manager.

Section 2. That a full reading of this Ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 3. That this ordinance shall take effect and be in force on the thirtieth day from
and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By Joan F. Dawson
Joan F. Dawson
Senior Deputy City Attorney

JFD:JLB:jvg:cm
09/02/2020
11/09/2020 COR. COPY
04/04/2022 REV. COR. COPY
08/29/2022 COR. COPY 2
Or.Dept: Council District 4
Doc. No. 2516149_6

I hereby certify that the foregoing Ordinance was passed by the Council of the City of
San Diego, at this meeting of APR 05 2022.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

(See attached memo and signature page.)

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 236-6220

DATE: August 29, 2022

TO: Gil Sanchez, Associate Management Analyst
Matt Hilario, Legislative Recorder I
Connie Patterson, Legislative Recorder I

FROM: City Attorney

SUBJECT: Correction of San Diego Ordinance O-21446 (Apr. 12, 2022)

This Office has prepared a corrected copy of San Diego Ordinance O-21446 (Apr. 12, 2022) (Item #331 on the City Council docket of April 5, 2022), relating to the establishment of the Privacy Advisory Board (Privacy Advisory Board Ordinance), for the reasons discussed in this Memorandum.

This Office has identified a clerical error that occurred related to the placement into the San Diego Municipal Code (Municipal Code) of the provisions added by San Diego Ordinance O-21514 (Aug. 10, 2022) (Surveillance Technology Ordinance) (Item #56 on the City Council docket of August 2, 2022). By Memorandum dated August 29, 2022, this Office has advised that the placement of the provisions added by the Surveillance Technology Ordinance must be corrected to ensure its proper codification as well as that of San Diego Ordinance O-21409 (Jan. 27, 2022) (Item #57-B on the City Council docket of January 11, 2022).

In accordance with San Diego City Charter (Charter) section 275(a), this Office has prepared a corrected copy of the Surveillance Technology Ordinance to place its provisions in Chapter 2 of the Municipal Code, in a new Article 10, Division 1, sections 210.0101, 210.0102, 210.0103, 210.0104, 210.0105, 210.0106, 210.0107, 210.0108, 210.0109, and 210.0110.

This correction also requires correction of the Privacy Advisory Board Ordinance, which refers to the numbers in the Surveillance Technology Ordinance.

The correction of San Diego Ordinance O-21446 is clerical in nature, involving correction of numbering and clarification of words. This correction is necessary to ensure consistency between the Privacy Advisory Board Ordinance and the Surveillance Technology Ordinance. The correction does not materially or substantially alter the contents, requirements, rights, responsibilities, conditions, or prescriptions contained in the original text of the Privacy

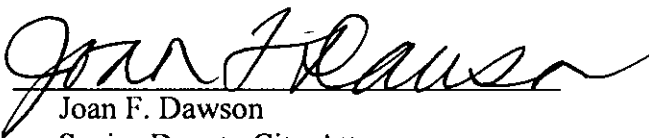
Gil Sanchez, Associate Management Analyst
Matt Hilario, Legislative Recorder I
Connie Patterson, Legislative Recorder I
August 29, 2022
Page 2

Advisory Board Ordinance. Therefore, this correction may be performed by the City Clerk as permitted by Charter section 275(a). By this Memorandum, this Office provides the legally required approval and concurrence related to this correction.

The legislative recorders for these items are Matt Hilario (Ordinance O-21409) and Connie Patterson (Ordinance O-21446 and Ordinance O-21514).

Please let this Office know if you have any questions regarding this Memorandum. This Office is available to assist further, if needed.

MARA W. ELLIOTT, CITY ATTORNEY

By 
Joan F. Dawson
Senior Deputy City Attorney

JFD:cm

Doc. No. 3074173

Attachments:

- O-2021-67 REV. COR. COPY 2 Ordinance
- O-2021-67 REV. COR. COPY 2 Strikeout
- San Diego Ordinance O-21409 (Jan. 27, 2022)
- San Diego Ordinance O-21446 (Apr. 12, 2022)
- San Diego Ordinance O-21514 (Aug. 10, 2022)

Section 3. That this ordinance shall take effect and be in force on the thirtieth day from
and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Joan F. Dawson
Joan F. Dawson
Senior Deputy City Attorney

JFD:JLB:jvg:cm
09/02/2020
11/09/2020 COR. COPY
04/04/2022 REV. COR. COPY
Or.Dept: Council District 4
Doc. No. 2516149_5

I hereby certify that the foregoing Ordinance was passed by the Council of the City of
San Diego, at this meeting of APR 0 5 2022.

ELIZABETH S. MALAND
City Clerk

By Connie Patterson
Deputy City Clerk

Approved: 4/12/22
(date)

Todd Gloria
TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~

NEW LANGUAGE: Double Underline

ORDINANCE NUMBER O-_____ (NEW SERIES)

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08/29/2022 COR. COPY 2
Or.Dept: Council District 4
Doc. No. 2515607_6

Passed by the Council of The City of San Diego on APR 0 5 2022, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage APR 1 2 2022.

AUTHENTICATED BY:

TODD GLORIA
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Kristell Medina, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

NOV 1 0 2020, and on APR 1 2 2022.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Kristell Medina, Deputy

Office of the City Clerk, San Diego, California
Ordinance Number O- <u>21446</u>