

TRUST SD COALITION

October 11, 2023

Attention City Council members and Mayor Gloria,

Based on the public meeting of the Public Safety Committee on September 20, 2023, the TRUST SD Coalition has read through a summary of the city's concerns with the current TRUST ordinance.

Our coalition of more than 30 community groups has studied those issues from the docketed presentation, and we have found opportunities for collaboration, as well as areas that we believe do not require any changes to the ordinance for the city to accomplish its goals. Please find our analysis attached to this letter.

Please note that any opportunity we have identified to collaborate is an invitation for stakeholders to work on solutions together, before any solution is solidified into a final proposal.

Members of the TRUST Coalition's steering committee are routinely in spaces shared by representatives of the mayor and representatives of the city's departments. We continually seek collaboration with these parties, and in the rare examples where our offer is accepted, we believe we have helped guide stakeholders to workable solutions that are community-driven and serve the principles of transparency and responsible use.

We would welcome any opportunity to strengthen those stakeholder relationships or increase the frequency of collaboration. Thank you.

Sincerely,

Homayra Yusufi, Lilly Irani and Seth Hall
Writing on behalf of the TRUST SD Coalition Steering Committee

TRUST SD Coalition Analysis of City's Operational Concerns Presentation

Issues With Opportunities For Collaboration (Grant Funding, Community Meetings, Contracts for PAB)

Grant Funding

The city's issue states the following:

"According to the Ordinance, once the City department completes the initial steps and presents them to the Privacy Advisory Board, they can apply for the grant under the condition that the City Council ultimately approves the requested technology. It would be up to the grantor to accept the condition. Generally, grantors, want a clean process without conditions."

TRUST Response:

The TRUST SD Coalition would welcome further clarification and collaboration on this issue. While we have not been able to confirm that our understanding of the city's concern is a correct understanding, we suggest that the following change could resolve the city's concern.

The requirement in §210.0102(a) for a city department to notify the Privacy Advisory Board prior to seeking grant funding (and other actions) could be changed to allow for such notification to take place without the requirement to submit a Surveillance Use Policy and Surveillance Impact Report. The intended result would be that the department simply notifies the PAB of its intention to seek grant funding (among other actions listed under §210.0102(a)), but the department is not precluded from taking its normal steps to pursue grant funding beyond the requirement to notify the PAB. This would be a change to §210.0102(a):

"City staff shall notify the Chair of the Board by written memorandum ~~along with providing a Surveillance Use Policy and a Surveillance Impact Report~~ prior to:"

The requirement to submit a Surveillance Use Policy and Surveillance Impact Report to the PAB prior to seeking City Council approval would continue, as is already stated in §210.0102(e) and §210.0102(f).

If the above amendment is accepted, then in order to ensure the Privacy Advisory Board has sufficient time to consider the details of each proposal, the above amendment would necessitate the following change to §210.0102(d):

"If the Board does not make its recommendation on the item within 90 calendar days of notification **submission of the Surveillance Use Policy and Surveillance Impact**

Report to the Board Chair pursuant to section ~~210.0102(a)~~ **§210.0102(e)(1)**, City staff may proceed to the City Council for approval of the item.”

The above change to §210.0102(d) would also need to be made to **§210.0102(e)(4)** and **§210.0102(f)(6)**.

Community Meetings

The city’s issue states the following:

“For the City’s existing technology, the current model of 9 community meetings per piece of technology results in 2700 meetings. This will likely cost hundreds of thousands of dollars in overtime money during the initial technology approval process.”

TRUST Response:

The TRUST Coalition would welcome a collaboration with the community and city leaders on how best to achieve the important goals of community notification and neighborhood opportunity for dialogue. We offer one suggestion as an example.

§210.0102(e) and §210.0102(f) contain identical provisions for requiring community meetings. A change could be that community meetings can be held online with a public comment period of one week to allow those who cannot attend live to offer questions and comments to designated City staff (and Council members if they wish). This would greatly reduce the existing burden on the city to hold meetings in all districts.

We offer the following amendments to §210.0101(e):

"Community meeting means a **physical or virtual** publicly held meeting that is accessible, noticed at least seventy-two hours in advance, **presented** in at least two languages, for the purpose of educating communities, answering questions, **hearing comments**, and learning about potential impacts of surveillance technology on disadvantaged group, **with a recording and transcript made permanently available online.**"

We offer the following amendments to §210.0102(e) and §210.0102(f):

“Prior to submitting the Surveillance Impact Report, City staff shall complete ~~one or more~~ **one daytime and one evening** community meetings in each City Council district where ~~the proposed surveillance technology is deployed~~ *meeting*, with opportunity for public comment and ~~written response~~ **to relevant City staff during the meeting and for one week after the latter meeting. The entire community meetings and response period must be completed before the City Council considers the proposal under §210.0103.** The City Council may condition its approval of the proposed surveillance

technology on City staff conducting additional community engagement before approval, or after approval as a condition of approval.”

Contracts for PAB

As many have already agreed, it would be better for all stakeholders if PAB has timely access to draft, operative or proposed contracts from the vendors. The above amendment to §210.0102(a) that is supported by TRUST should now enable this to be possible. Accordingly, we request the following amendment to §210.0101(n)(8)

“Fiscal Cost: The forecasted, prior, and ongoing fiscal costs for the surveillance technology, including initial purchase, personnel, and other ongoing costs, **sample or operative or proposed contract**, and any current or potential sources of funding.”

Issues That Require No Change To The Ordinance

Existing Technology Renewal and Process Length

The city's issue states the following:

“However, this extension to the grace period did not address contract renewal dates, grants, the purchasing of additional existing technologies or the replacement of existing technology if damaged beyond repair. The extension does not take into consideration that some older technologies need to be replaced simply to receive current security updates.

As a result, all surveillance technology with a contract up for renewal will need to undergo the 6-month process for final council approval before existing contracts can be renewed.”

TRUST Response

First, regarding existing technology's ongoing use:

The grace period provision of the TRUST ordinance reads:

“The requirement for City staff to seek approval for the use of existing surveillance technology takes effect September 9, 2026, which is four years after the effective date of this Division.”

No change to the ordinance is required for the city to maintain its existing uses of technologies during the grace period. If renewed or replacement versions of technologies have expanded or new functionality, we recommend contractually or technically disabling the new functionality to maintain the technology's status as an existing technology, rather than a new technology.

Second, regarding the “6-month process”:

The claim that each technology must require a 6-month process of approval is false. No such provision exists in the ordinance, and there is no significant record of existing technology being proposed to substantiate the city's 6-month estimate.

The city should submit more technologies through the process so that the process's efficiency can be demonstrated prior to forming any judgment. The community coalition of authors who drafted the ordinance foresaw the possibility that city staff would refuse to participate in the oversight process for one or more items, and we included a grace period with a deadline, and a requirement to shut down nonconforming technology, for exactly that reason.

Technology Covered Under Definition of Surveillance Technology

The city's issue states the following:

"These are common operational tools that appear to be unintended consequences of the broad definition and if included may take valuable review time away from real surveillance technologies that require review: 1. Internet search engines and tools – Google, Bing, Google Maps, Google Earth 2. Physical security and access systems – Access systems at airports and City facilities provide security for the public and City staff and secure areas for access by appropriate personnel. 3.) Operational communications tools – Microsoft Teams and Zoom expand access to meetings by providing electronic audio and video options for meetings. City Clerk meeting transcription and streaming tools provided for additional access for the public to City meetings. 4.) Operational applications and management tools – Examples include the Fleet services tool called Fleet focus to manage City vehicles, Meraki mobile device management to secure City devices."

TRUST Response:

Numerous exemptions for office technology, uses of internal surveillance systems, and other uses of internal city technology are already defined within the surveillance ordinance. Such exemptions do not always list specific examples, but the exemptions are broad and when specific examples are given they are not exclusive. Under 210.0101(m)(1), provisions (A), (D), and (E) are examples of extremely broadly worded exemptions that could address the city's stated concerns.

The city should not include in its inventory of existing surveillance technology any of the many types of technologies that are exempted by the ordinance.

Further expansions into new exemptions would risk severe unintended consequences and risk damaging the goals of transparency and responsible use.

Annual Reports

The city's issue states the following:

"In order to prevent the Privacy Advisory Board and City Council from getting overwhelmed with annual reports being submitted at various times throughout the year, and City Staff from having to organize dozens of annual report dates, City Departments should set annual report dates, regardless of when their technology was approved by Council."

TRUST Response

Nothing in the ordinance prohibits the city from processing annual surveillance reports in a manner of the city's choosing, such as designating a period for annual reports that would fall in

advance of the year-anniversary for some approved technologies. The city should design its annual reporting requirements to support transparency and encourage community awareness and involvement.

Use of San Francisco As A Comparison

The city's presentation warns that San Francisco's surveillance ordinance has resulted in San Francisco's police technology being out of date since 2019.

TRUST Response

In fact, the San Francisco Police Department for years has refused to participate in their surveillance oversight process that was first passed into law in 2019. This obstruction was the sole cause for their technology not being approved as required. Only once the situation had reached a boiling point in 2022 did the police department partner with the city's mayor to launch an all-out attack on legislators' oversight, which failed.

The TRUST Coalition does not desire or support discord between city departments, city leaders, the community and the City Council. Our elected city officials are best positioned to ensure obstruction by any stakeholder does not happen in San Diego.