

# DRAFT

## ORDINANCE

### **AN ORDINANCE AMENDING CHAPTER 19 (“POLICE DEPARTMENT”) OF THE OAK PARK VILLAGE CODE TO ADD A NEW ARTICLE 6 (“LAW ENFORCEMENT SURVEILLANCE OVERSIGHT”) TO PROMOTE TRANSPARENCY AND TO PROTECT CIVIL RIGHTS AND CIVIL LIBERTIES WITH RESPECT TO LAW ENFORCEMENT SURVEILLANCE TECHNOLOGY**

**WHEREAS**, the Village of Oak Park (the “Village”) is a home rule unit of local government as provided by Article VII, Section 6 of the Illinois Constitution of 1970 has the authority to exercise any power and perform any function pertaining to its government and affairs except as limited by Article VII, Section 6 of the Illinois Constitution of 1970; and

**WHEREAS**, pursuant to its Constitutional home rule powers, the Village has the authority “to regulate for the protection of the public health, safety, morals, and welfare,” Ill. Const art. 7 § 6; and

**WHEREAS**, the “powers and functions of home rule units shall be construed liberally,” and written “with the intention that home rule units be given the broadest powers possible,” *Scadron v. City of Des Plaines*, 153 Ill.2d 164 (1992); and

**WHEREAS**, the State of Illinois adopted the Freedom from Location Surveillance Act, 725 ILCS 168/1 *et seq.*, in 2014, which requires a court order before a law enforcement agency, which includes the Village’s Police Department, may obtain location information pertaining to a person without a court order except under limited circumstances; and

**WHEREAS**, the Village Board finds it is essential to have an informed public discussion about decisions related to surveillance technology and its potential impact on privacy, civil rights and civil liberties, including those rights guaranteed by the United State Constitution and the Illinois Constitution; and

**WHEREAS**, in order to have such a public discussion, a public hearing is to be required before any surveillance technology is sought, acquired, or used by the Village’s Police Department; and

**WHEREAS**, the Village Board finds that safeguards, including transparency, oversight, and accountability measures, must be in place to protect civil rights and civil liberties before new surveillance technology is deployed by the Village; and

**WHEREAS**, the Village Board finds that an annual surveillance technology report should be provided by Village staff to the Village Board for the purpose of providing information on the use of such technologies to the public; and

**WHEREAS**, this Ordinance is not intended to discourage the adoption of surveillance technology that will make Oak Park’s residents more secure, but is rather intended to: (i)

establish safeguards, including transparency, oversight, approval, and accountability measures to protect civil rights and civil liberties before new surveillance technology is acquired or deployed by the Village's Police Department; (ii) ensure that a public hearing is held before any such new technology is acquired or used by the Police Department; (iii) establish data reporting measures regarding the use and implementation of surveillance technology by the Police Department; (iv) improve public confidence in law enforcement and new technology and equipment that is approved for use; and (v) provide mechanisms for continued oversight and annual evaluation; and

**WHEREAS**, this Ordinance is adopted pursuant to the Village's home rule authority and is supplementary to the Illinois Freedom from Location Surveillance Act.

**NOW THEREFORE, BE IT ORDAINED** by the President and Board of Trustees of the Village of Oak Park, Cook County, Illinois, in the exercise of their home rule powers, as follows:

**Section 1. Recitals Incorporated.** The above recitals are incorporated herein as though fully set forth.

**Section 2. Village Code Amended.** Chapter 19 ("Police Department") of the Oak Park Village Code is amended to add a new Article 6 ("Law Enforcement Surveillance Oversight") as follows:

**ARTICLE 6  
LAW ENFORCEMENT SURVEILLANCE OVERSIGHT**

**19-6-1: DEFINITIONS**

**19-6-2: VILLAGE BOARD REVIEW**

**19-6-3: USE OF UNAPPROVED TECHNOLOGY DURING EXIGENT CIRCUMSTANCES:**

**19-6-4: OVERSIGHT FOLLOWING BOARD APPROVAL**

**19-6-5: INCORPORATION OF STATE LAW; CONFLICT**

**19-6-6: PROHIBITIONS AND PENALTIES:**

**19-6-1: DEFINITIONS:**

For the purposes of this article, The following words and phrases shall have the meanings, and are hereby defined, as follows:

**ANNUAL SURVEILLANCE REPORT:** An annual written report concerning specific surveillance technology that is used by the Police Department.

A. The annual surveillance report shall include all of the following:

1. A general description of the surveillance technology used, including general locations and neighborhoods where technology or equipment was deployed;

2. A general description of whether and how often data acquired through the use of the surveillance technology was shared with outside entities, the type(s) of data, and general justification for the disclosure(s);
3. A summary of community complaints about the surveillance technology item;
4. The results of any internal audits required by the surveillance use policy and information about violations of the policy;
5. Information that may assist the Village Board assess whether the surveillance technology has been effective at achieving its identified purposes;
6. An analysis of any discriminatory or other adverse impacts the use of the surveillance technology may have had on the public's civil rights and civil liberties, including but not limited to those guaranteed by the First, Fourth, and Fourteenth Amendments to the United States Constitution and the Illinois Constitution;
7. Total costs, to the extent possible, including maintenance, and other ongoing costs, for the surveillance technology and anticipated funding for the technology as needed;
8. Any requested modifications to the surveillance technology use policy applicable to the item; and
9. Aggregate information concerning technology or tools exempted pursuant to subsection A(16) under the definition of surveillance technology below.

**EXIGENT CIRCUMSTANCES:** The Police Chief's or the Police Chief's designee's good faith belief that there exists an emergency involving imminent danger of death, serious physical injury to any person, or imminent danger of significant property damage, that requires the use of the Surveillance Technology or the information it provides.

**PERSONAL COMMUNICATION DEVICE:** A cellular telephone that has not been modified beyond stock manufacturer capabilities, a personal digital assistant, a wireless capable tablet, or similar wireless two-way communications and/or portable Internet accessing devices, whether procured or subsidized by the Village or personally owned, that is used in the regular course of conducting Village business.

**SURVEILLANCE IMPACT REPORT:** A written report including at a minimum the following:

- A. Information describing the surveillance technology and how it works;

B. Information on the proposed purpose(s) and use(s) for the surveillance technology, along with any existing independent evaluations demonstrating that the surveillance technology can help achieve that purpose;

C. If applicable, the location(s) where it may be deployed and crime statistics for such location(s);

D. The known fiscal costs for the surveillance technology, including initial purchase, personnel, and other known ongoing costs, and any current or potential sources of funding;

E. A description of any possible adverse impacts the use of the surveillance technology may have on civil rights and liberties, and: (1) the safeguards that will be implemented to prevent the impacts; and (2) the potential uses of the surveillance technology that will be expressly prohibited; and

F. Whether use or maintenance of the surveillance technology will require data gathered by the technology to be handled or stored by a third-party vendor on an ongoing basis.

**SURVEILLANCE TECHNOLOGY:** Any device or system designed, used, or intended to be used to collect, retain, process, or share audio, electronic, visual, location, thermal, olfactory, or similar information associated with, or capable of being associated with, any specific individual or group of specific individuals by the Police Department for law enforcement purposes. Examples of surveillance technologies include, but are not limited to: cell site simulators (stingrays); automatic license plate readers; gunshot detectors; facial recognition software; gait analysis software; surveillance enabled or capable light bulbs or light fixtures; social media monitoring software; video cameras that record audio or video and can transmit or be remotely accessed; and software designed to integrate or analyze data from surveillance technology, including surveillance target tracking and predictive policing software based on surveillance. The enumeration of surveillance technology examples herein shall not be interpreted as an endorsement or approval of their use by the Police Department.

A. "Surveillance technology" does not include the following devices, hardware, or software:

1. Body-worn cameras as required by the Illinois Law Enforcement-Worn Body Camera Act, 50 ILCS 706/10-1 *et seq.*, as amended;
2. In-vehicle Police Department squad cameras;
3. Office hardware, such as televisions, computers, credit card machines, copy machines, telephones, and printers that are in widespread use by Village departments and used for routine Village business and transactions;
4. Village databases and enterprise systems that contain information kept in the ordinary course of Village business and do not contain any data or other information

- collected, captured, recorded, retained, processed, intercepted, or analyzed by surveillance technology, including, but not limited to human resources, permits, parking, business records, payroll, accounting, or other fiscal databases;
5. Information technology security systems, including firewalls and other cybersecurity systems;
  6. Physical access control systems, employee identification management systems, and other physical control systems;
  7. Infrastructure and mechanical control systems, including those that control or manage street lights, traffic lights, electrical, natural gas, water or sewer functions, and pedestrian and bicycle traffic management;
  8. Manually-operated technological devices used primarily for internal Village and departmental communications and are not designed to surreptitiously collect surveillance data, such as radios, Personal Communication Devices, and email systems;
  9. Manually-operated, non-wearable, handheld cameras, audio recorders, and video recorders that are not designed to be used surreptitiously and whose functionality is limited to manually capturing and manually downloading video and/or audio recordings;
  10. Surveillance devices that cannot record or transmit audio or video or be remotely accessed, such as image stabilizing binoculars or night vision equipment;
  11. Computers, software, hardware, or devices used in monitoring the work and work-related activities involving Village buildings, employees, contractors, and volunteers or used in conducting internal investigations involving Village employees, contractors, and volunteers;
  12. Medical equipment and systems used to record, diagnose, treat, or prevent disease or injury and are used and/or kept in the ordinary course of providing Village services;
  13. Parking enforcement and management devices;
  14. Police department interview room, holding cell, and Police Department internal security audio/video recording systems;
  15. Police Department computer aided dispatch (CAD), records/case management, live scan, booking, and related dispatch and operation or emergency services systems and state and federal law enforcement databases;

16. Technology or tools used to investigate specific criminal incidents where such technology or tools are not readily known to the public and for which the effectiveness of the technology or tool would be compromised by disclosure;
17. Camera systems employed for the safety and security of the public at Village-owned facilities and for the security of such facilities;
18. Access control systems, including license plate recognition technology, used at Village-owned facilities to administer Village parking permit programs and to administer daily parking fee programs;
19. Smart meter technology employed for water and sewer utility purposes;
20. Any technology that collects information exclusively regarding Village employees or contractors; and
21. Technology or tools used by Village police officers solely while they are working as part of an established federal task force.

**SURVEILLANCE USE POLICY:** A policy adopted by the Police Chief for the use of the surveillance technology. Such policy shall be posted and available to the public on the Village's website for as long as the policy is in effect. The policy must, at a minimum, provide as follows:

- A. **Purpose:** The specific purpose(s) that the surveillance technology item is intended to advance.
- B. **Authorized Use:** The uses that are authorized, and the rules and processes required prior to and associated with such use.
- C. **Data Collection:** The information that can be collected by the surveillance technology, including "open source" data.
- D. **Data Access:** The category of individuals who can access or use the collected information, and the rules and processes required prior to access or use of the information.
- E. **Data Protection:** The general safeguards that protect information from unauthorized access, including encryption and access control mechanisms. Nothing in this subsection shall be construed to require the disclosure of information that could reveal vulnerabilities to, or otherwise increase the potential for an attack on, any information technology system of the Village.
- F. **Data Retention:** The time period, if any, for which information collected by the Surveillance Technology will be routinely retained, the reason such retention period is appropriate to further the purpose(s), the process by which the information is regularly deleted

after that period lapses, and the specific conditions that must be met to retain information beyond that period.

G. Whenever fixed surveillance technology is moved or deployed, the Police Department shall provide notice of the locations of the surveillance technology in accordance with its policy. The Police Department will attempt to provide notice as soon as practicable, but at a minimum will require posting the notice on the Village's website. Such notice will not be provided if the surveillance technology is being used to investigate specific criminal incidents or if the disclosure would otherwise impair an investigation.

H. Public Access: How collected information can be accessed or used by members of the public, including criminal defendants.

I. Third Party Data Sharing: If and how other Village or non-Village entities can access, use, or retain the information, including any required justification or legal standard necessary to do so and any obligations imposed on the recipient of the information.

J. Training: The training required for any individual authorized to use the surveillance technology or to access information collected by the surveillance technology.

K. Auditing and Oversight: The mechanisms to ensure that the surveillance use policy is followed, including internal personnel assigned to ensure compliance with the surveillance use policy, internal record keeping of the use of the technology or access to information collected by the technology, technical measures to monitor for misuse, any independent person or entity with oversight authority, and the legally enforceable sanctions for violations of the surveillance use policy. The surveillance use policy will provide for an audit of all technology used by the Police Department, which shall include technology or tools exempt from this article and will restrict the use of information obtained from such exempt technology or tools.

**19-6-2: VILLAGE BOARD REVIEW:**

A. The Police Department must obtain Village Board approval subsequent to a public hearing at which the public is afforded an opportunity to provide written and verbal comments prior to any of the following:

1. Seeking funds for new law enforcement surveillance technology, including but not limited to applying for a grant, or soliciting or accepting state or federal funds or in-kind or other donations;
2. Acquiring or borrowing new law enforcement surveillance technology, whether or not that acquisition is made through the exchange of monies or other consideration;
3. Using new or existing surveillance technology for a purpose or in a manner not previously approved by the Village Board in accordance with this Ordinance, including

the sharing of surveillance data therefrom; or

4. Soliciting proposals for or entering into an agreement with any other person or entity to acquire, share or otherwise use law enforcement surveillance technology or surveillance data.

B. Prior to seeking Village Board approval pursuant to this section, the Police Department shall submit to the Village Board a surveillance impact report and a proposed surveillance use policy at least thirty (30) days prior to the public hearing required by subsection A above. Within twenty-four (24) hours of submission, notice of the public hearing, the surveillance impact report and proposed surveillance use policy shall be posted on the Village's website with a notice that any written public comment must be filed with the Village Clerk prior to the scheduled public hearing. The Village Clerk shall post the timely received public comments on the website. In addition, notice of the public hearing, the surveillance impact report, and the proposed use policy shall be promptly emailed to all individuals that have filled out a request for notice of the Reports with the Division of Public Affairs and shall be posted to the Village's social media channels.

C. Prior to approving or rejecting any action described in subsection (a), the Village Board may request that revisions be made by the Village Manager or Police Department as appropriate.

D. Upon consideration of the surveillance impact report and any public comment, and consideration and reliance upon the proposed use policy, the Village Board may approve any action described in this section by a majority vote.

E. Notwithstanding any other provision in this article, nothing herein shall be construed to prevent, restrict or interfere with any person providing evidence derived from surveillance technology to the Police Department for the purposes of conducting a criminal investigation, nor require the Village to violate any applicable law, including, but not limited to, the Freedom from Drone Surveillance Act, 725 Illinois Compiled Statutes 167/1 *et seq.*, and the Freedom from Location Surveillance Act, 725 Illinois Compiled Statutes 168/1 *et seq.*

### **19-6-3: USE OF UNAPPROVED TECHNOLOGY DURING EXIGENT CIRCUMSTANCES:**

The Police Chief or the Police Chief's designee may authorize the Police Department's temporary acquisition or temporary use of surveillance technology in exigent circumstances without following the provisions of this article before that acquisition or use. If the Police Department acquires or uses surveillance technology pursuant to this Section, the Police Department shall:

- A. Use the surveillance technology to solely respond to the exigent circumstance;
- B. Cease using the surveillance technology within thirty (30) days or when the exigent circumstance ends, whichever is sooner. All use must end when the exigent circumstances end;



C. Only keep and maintain data related to the exigent circumstance and dispose of any data that is not relevant to an ongoing investigation;

D. Within thirty (30) days after the end of the exigent circumstances submit a report to the Village Manager to be provided with the Village Board. The report must explain the exigent circumstances, why the technology or equipment was needed to address the exigent circumstances, how the exigent circumstances prevented the Police Department from following the approval process in this ordinance, and describe how the technology or equipment was used. This report shall be promptly posted on the Village's website.

**19-6-4: OVERSIGHT FOLLOWING BOARD APPROVAL:**

A. By the end of each fiscal year, the Police Department must present a written annual surveillance report to the Village Board. If the Police Department is unable to meet the deadline, the Police Chief shall notify the Village Board in writing and request an extension, including the reasons for that request. The Village Board may grant a reasonable extension(s) for the Police Department comply with this section.

B. Within five (5) business days of the submission of the annual report, the report shall be made publicly available on the Village's website. At least thirty (30) days after the posting of the report, the Village Board shall have on a Board meeting agenda a presentation of the report. At such meeting, citizens will be given an opportunity to comment on the report, including in writing. The Village Board need not take any action on an annual report but may vote to cease the use of any particular surveillance technology or may propose modifications to the use policy for any of the surveillance technologies in the report.

**19-6-5: INCORPORATION OF STATE LAW; CONFLICT:**

The Freedom from Drone Surveillance Act, 725 Illinois Compiled Statutes 167/1 *et seq.*, and the Freedom from Location Surveillance Act, 725 Illinois Compiled Statutes 168/1 *et seq.*, are incorporated herein by reference as part of this article. In the case of a conflict between a provision of state law and a provision of this article, the more stringent provision shall control.

**19-6-6: PROHIBITIONS AND PENALTIES:**

A. The Village shall not enter into any contract or agreement that conflicts with the provisions of this article.

B. Any Village officer or employee who knowingly violates this article shall be subject to appropriate discipline pursuant to the Village's disciplinary procedures for officers or employees.

**Section 5. Severability and Repeal of Inconsistent Ordinances.** If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity thereof shall not affect any of the other provisions of this Ordinance. All ordinances in conflict herewith are

hereby repealed to the extent of such conflict.

**Section 6. Effective Date.** This Ordinance shall be in full force and effect after its approval, passage and publication as provided by law.

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2023, pursuant to a roll call vote at follows:

Voting	Aye	Nay	Abstain	Absent
President Scaman				
Trustee Buchanan				
Trustee Enyia				
Trustee Parakkat				
Trustee Robinson				
Trustee Straw				
Trustee Wesley				

**APPROVED** this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Vicki Scaman, Village President

**ATTEST**

\_\_\_\_\_  
Christina M. Waters, Village Clerk

Published in pamphlet form this \_\_\_\_ day of \_\_\_\_\_, 2023.

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Christina M. Waters, Village Clerk