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

(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

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

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

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

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

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

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

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

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

(12) The District of Columbia has a long established tradition of protecting the civil rights and civil liberties of its residents and visitors. As the nation’s capital, the
District of Columbia must be a beacon of freedom, setting an example for the protection of civil rights and civil liberties across the land.

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

Sec. 3 Definitions.

As used in this Act:

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

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

(c) “General video surveillance” means the use of remotely-operated cameras to view or record activities occurring in outdoor public areas such as streets, sidewalks, parks and plazas; provided, however, that the term “general video surveillance” does not mean (i) the use, if otherwise lawful, of cameras to view or record the suspected criminal activities of specific individuals who are under surveillance because they are suspected of engaging in, or being about to engage in, a criminal act; (ii) the use, if otherwise lawful, of cameras to monitor the exterior entrances and surfaces of District of Columbia government buildings for security purposes; (iii) the use, if otherwise lawful, of cameras to detect and record motor vehicles violating the traffic laws, when such cameras are activated by such violations and when such cameras are not capable of identifying the occupants of such vehicles; (iv) the use, if otherwise lawful, of cameras at points of traffic congestion for the purpose of real-time traffic control, so long as such cameras are
not capable of identifying individuals or license plate numbers; and (v) the use, if
otherwise lawful, of cameras installed on police vehicles to record the interactions
between police officers and persons stopped or detained.

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

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

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

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

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

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

Sec. 4. Prohibitions.

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

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

(c) The District of Columbia government is prohibited from obtaining access to
the live video surveillance feeds of other public or private entities, provided, however,
that the District of Columbia Metropolitan Police Department may obtain access to the
live video surveillance feed of another entity when (i) that entity’s operation of the
surveillance camera is itself lawful; (ii) the camera operated by such entity is not a means
of general public surveillance; and (iii) the video feed will provide images of exigent circumstances.

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

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

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

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

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

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

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

(2) Were videotaped in an emergency situation; or

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

(c) An application for an order of authorization (as provided in subsection (a) of this section) or of approval (as provided in paragraph (2) of subsection (b) of this section)
may be authorized only when the videotape may provide or has provided evidence of the commission of or a conspiracy to commit any of the following offenses:

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

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

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

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

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

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

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

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

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

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

(5) A full and complete statement of the facts concerning all previous applications, known to the individual authorizing or making the application, made to any judge for authorization to videotape, or for approval of law enforcement-related video
surveillance involving any of the same persons, facilities, or places specified in the
application, and the action taken by the judge on each such application; and

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

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

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

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

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

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

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

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

(2) The nature and location of the law enforcement-related video
surveillance;
(3) A particular description of the person or type of activity sought to be or which was videotaped, and a statement of the particular offense to which it relates;

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

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

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

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

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

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

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

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

(b) When an investigative or law enforcement officer, while conducting law enforcement-related video surveillance in the manner authorized by this subchapter, videotapes persons or activities relating either to offenses other than those specified in the order of authorization or to offenses other than those offenses for which law enforcement-related video surveillance was made pursuant to subsection (a) of this
section, he shall make an application to a judge as soon as practicable for approval for
disclosure and use, in accordance with sections 10(g) and 10(h) of the persons and
activities videotaped.

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

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

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

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

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

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

   (f) Every recording shall be maintained and secured by a supervisor designated by
the relevant agency director. Appropriate security measures shall be taken against
unauthorized access to, alteration, disclosure, accidental loss or destruction of recordings.

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

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

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

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

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

Sec. 9. Reporting requirements.

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

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

Sec. 10. Penalties.

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

Sec. 11. Private cause of action.

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

Sec. 12. Fiscal impact statement.

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

Sec. 13. Regulations

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


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

1. Which District of Columbia government agencies are conducting video surveillance and for what purposes;

2. The extent and capability of video surveillance being conducted by District of Columbia government agencies, including:
   (i) How many cameras are being operated by each agency and any technological enhancements that may be being used in conjunction with the cameras;
   (ii) Locations of cameras being used by each agency and their periods of operation; and
   (iii) Whether recording has occurred and the disposition of the recordings.

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

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

1. The cost of video surveillance being conducted by District of Columbia government agencies, broken down by personal, non-personal and capital spending of each agency;
(2) Whether the original objectives of the use of video surveillance contained in section 3 of this act are being achieved;

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

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

Sec. 16. Effective dates.

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

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