



INSTITUTE FOR JUSTICE

October 12, 2023

**Via E-Mail**

CEO Michael L. Thurmond  
Commissioner Robert Patrick  
Commissioner Michelle Long Spears  
Commissioner Larry Johnson  
Commissioner Steve Bradshaw  
Commissioner Mereda Davis Johnson  
Commissioner Ted Terry  
Commissioner Lorraine Cochran-Johnson  
1300 Commerce Drive  
Decatur, GA 30030

*RE: DeKalb County's Unconstitutional Surveillance Camera Ordinance*

Dear Mr. Thurmond & the Board of Commissioners:

The Institute for Justice (“IJ”) is writing you concerning DeKalb County’s new Video Surveillance Ordinance, which requires certain businesses to install and maintain security cameras, keep video footage from those cameras for at least 60 days, and provide the DeKalb County Police Department with access to that footage on demand. Because the Ordinance violates the constitutional rights of business owners throughout the County, we recommend that the County reverse course and repeal the Video Surveillance Ordinance.

The Institute for Justice is a national nonprofit law firm that works to protect and defend people’s rights to be secure in their persons and property against government encroachment. The right to exclude strangers, including government officials, from one’s property is a hallmark of both property rights and the Fourth Amendment to the United States Constitution. IJ has been litigating search-and-seizure cases across the nation for years, including challenges to rental inspection ordinances in Iowa and Pennsylvania, and major class actions against the FBI, DEA, and other federal agencies. These and other cases have led to the entry of consent decrees, including one against the City of New York prohibiting it from conditioning a business owner’s right to remain in business on his agreement to provide the NYPD unfettered access to his laundromat’s security footage. *See Cho, et al. v. City of New York, et al.*, No. 1:16-cv-7961 (S.D.N.Y.).

Our work challenging government surveillance programs led us to learn about the County's Video Surveillance Ordinance. The text of that ordinance, along with the comments that Commissioners have made to the media, demonstrates that people risk losing their business licenses unless they install high-definition security cameras and lighting at their businesses. They must then maintain timestamped footage for 60 days and turn it over to the police without a warrant supported by probable cause.

Forcing business owners to give up their constitutional right to be free from unreasonable searches and seizures violates the Fourth Amendment. And conditioning licenses on a business's willingness to conduct surveillance on behalf of the government is also unconstitutional. The United States Supreme Court has repeatedly held that government officials cannot make a discretionary benefit contingent on the applicant's willingness to give up their constitutional rights. *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 607 (2013). The Court has applied this "unconstitutional conditions" doctrine specifically in instances where the government refused to issue building permits unless property owners agreed to conditions that impermissibly infringed upon their constitutional rights. *Dolan v. City of Tigard*, 512 U.S. 374, 385 (1994); see also *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825, 831-32 (1987).

That is precisely what the County is doing to gas stations and convenience stores. For people to maintain their business licenses, the Ordinance requires them to both install security cameras (at their own expense) and consent to warrantless, suspicionless inspections, as well as the seizure and search of the security footage those cameras create. As Commissioner Cochran-Johnson recently confirmed to 11 Alive News, businesses that have not complied by January 1, 2024, will not be able to renew their business licenses.

As the Supreme Court recently held in *City of Los Angeles v. Patel*, the Fourth Amendment to the United States Constitution prohibits government officials from demanding unfettered access to a business's guest registries. 576 U.S. 409 (2015). The same is true for a business's security footage. To acquire that footage, police would need a business' consent, a warrant based on probable cause, or exigent circumstances.

The Ordinance's effort to short-circuit that process by punishing a business's failure to comply with the Video Surveillance Ordinance violates both the Fourth Amendment and Article I, Section 1, Paragraph XIII of the Georgia Constitution. By allowing police to demand ready access to surveillance footage whenever they unilaterally decide they need it, the Ordinance authorizes police to act as a law unto themselves.


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We urge the County to repeal the Video Surveillance Ordinance. Although public safety is a laudable goal, it cannot come at the expense of people's constitutional rights. Unless the County repeals the Ordinance, it will likely invite a meritorious lawsuit from a member of the community, depleting the County of resources by forcing it to both defend against the lawsuit and ultimately pay attorney's fees to the prevailing party.

The Institute for Justice is willing to work with communities that wish to protect public safety while ensuring people's constitutional rights. Should you wish to discuss this matter in more detail, please contact us at your earliest convenience.

Thank you,



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