



CITY OF SOMERVILLE, MASSACHUSETTS
CLERK OF COMMITTEES

February 4, 2021
REPORT OF THE LEGISLATIVE MATTERS COMMITTEE

Attendee Name	Title	Status	Arrived
Lance L. Davis	Chair	Present	
Mark Niedergang	Vice Chair	Present	
Ben Ewen-Campen	Ward Three City Councilor	Present	
Matthew McLaughlin	Ward One City Councilor	Present	
Jesse Clingan	Ward Four City Councilor	Present	

Others present: Lt. Jeff DiGregorio - SPD, Shannon Phillips - Law, Khushbu Webber - Director of Governmental Affairs, Lauren Racaniello - Legislative Liaison, Rose Durham - Clerk of Committees, Peter Forcellese - Legislative Clerk.

The meeting took place virtually via GoToWebinar and was called to order at 6:00 PM by Chair Davis and adjourned at 8:05 PM on a roll call vote of 4 in favor (Councilors McLaughlin, Ewen-Campen, Niedergang and Davis), none against and one absent (Councilor Clingan).

Approval of the January 21, 2021 Minutes

RESULT:	ACCEPTED
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209592: Requesting approval of the Surveillance Technology General Use Policy.

Chair Davis and Ms. Racaniello reviewed the changes made to the policy. Among the changes made by the administration, were:

- **Sec II** - The name and contact information for each Compliance Officer, and the department they represent, shall be made publicly available on the City's website,
- **Sec 1 A ii and iii** - added language requiring approval by the mayor and City Council,
- **Sec 1 C** - accurate documentation of the scope of the approved use of the particular Surveillance Technology to be included in Surveillance Technology Impact Reports and, where applicable, a Technology-Specific Use Policy,
- **Sec 1 E** - included language for notification to and approval from the City Council to accept funds
- **Sec 2 A** - included language to indicate the purpose(s) the Surveillance Technology will be used for,

- **Sec 2 B** - The use of any Surveillance Technology by the City is subject to Mayoral and City Council approval,
- **Sec 10** - new section for use of Surveillance Technology Requiring a Warrant

Chair Davis pointed out an inconsistency in the language of 2 sentences in **Section II** and Ms. Racaniello will correct the unintentional error. Three other minor changes were made, as follows:

- **Sec 5** - the words “his/her” will be changed to “their”,
- **Sec 5** - Ms. Racaniello will verify all cross references, e.g., “under subsection A above”,
- **Sec 9** - add the words “pursuant to the ordinance” after the words “(unless the 90-day deadline is extended)”

Ms. Racaniello thinks that the best way to incorporate video surveillance language is to add a section that addresses it right into the use policy. Lt. DiGregorio said that he made some changes to the current SPD video policy to reflect changes in the new city policy. He pointed out that these changes have not yet been approved internally but he believes that the Police Chief has the authority to approve them. Ms. Racaniello said that most of the policy language would be ready to be included in the general use policy. Chair Davis commented that if video surveillance language is included in the general use policy, the individual reports could then just reference the general use policy. He asked that the changes be made to all documents, as needed, with respect to video surveillance and to the general use policy, as noted. Ms. Racaniello will take care of that.

Chair Davis noted that the time for approving the impact reports and use policies is running out and he asked if the administration was going to withdraw the current items and re-submit them to re-start the clock. Ms. Webber said that she hopes to get the current items approved by the City Council on February 11th. She will send updated drafts to the committee members for review early next week. Chair Davis found that acceptable and reserved right to make changes, if needed. He doesn't want to take time at the City Council meeting to debate the items. If the matter becomes problematic, the items will be withdrawn and resubmitted.

The meeting was recessed at 6:57 PM and reconvened at 7:02 PM

RESULT:	KEPT IN COMMITTEE
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209639: That the Administration work with the Committee on Legislative Matters to consider revisions to the Surveillance Technology Ordinance.

RESULT:	KEPT IN COMMITTEE
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211103: Requesting approval of the Surveillance Technology Impact Report for Pole Cameras.

RESULT:	KEPT IN COMMITTEE
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211104: Requesting approval of the Surveillance Technology Impact Report for Homeland Security Cameras.

RESULT:	KEPT IN COMMITTEE
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211105: Requesting approval of the Surveillance Technology Impact Report for GLX Cameras.

RESULT:	KEPT IN COMMITTEE
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211106: Requesting approval of the Surveillance Technology Impact Report for Covert Device Cameras.

RESULT:	KEPT IN COMMITTEE
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211107: Requesting approval of the Surveillance Technology Impact Report for GPS and Monitor.

RESULT:	KEPT IN COMMITTEE
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211108: Requesting approval of the Surveillance Technology Impact Report for GreyKey.

Councilor Ewen-Campen commented that some questions were submitted by Digital4 about training, cost full capability, etc. He would like the administration to review those questions before next week and provide their feedback and also to verify that a warrant is required.

RESULT:	KEPT IN COMMITTEE
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210736: That the City Solicitor draft an Ordinance banning the use of tear gas by the Police Department and other law enforcement agencies operating in Somerville.

RESULT:	KEPT IN COMMITTEE
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211003: That this Council consider an ordinance banning chemical crowd control agents and kinetic impact projectiles.

Councilor Ewen-Campen explained that he submitted language, taken from the City of Boston's ordinance, that applies to substances beyond tear gas. He pointed out that the language is not a ban, but rather provides conditions for when they can be used, e.g., under the direction of a high rank police official and after 2 separate announcements to disperse have been made.

Since his earlier submission, he submitted a revise draft that does ban the use of tear gas, noting that the SPD does not have nor use tear gas. He met with the administration and the Police Department today to discuss the matter further. The major topic of discussion was about pepper spray. The Police Department wants it regulated differently than tear gas and allowed for use at an officer's discretion, under certain circumstances. A compromise would be that pepper spray may be regulated differently but it is still not appropriate to use on crowds. Enforcement of the policy was also discussed.

Chair Davis stated that he was not expecting a vote tonight on this item as he wants to allow time for committee members to review and digest the information. Ms. Racaniello referenced the administration's draft which, was circulated earlier today, and the edits that were made regarding pepper spray and enforcement.

Councilor Ewen-Campen spoke about the substantial changes made by him including: definitions to Somerville Police Officers; Tear Gas; prohibiting the use of tear gas; having a captain or higher rank officer on scene, and giving 2 separate warnings to disperse prior to releasing a chemical agent. For the enforcement section, he wants to prevent police from claiming qualified immunity, and recommend changes regarding dismissal and public notices. There was a question about whether non-SPD police working in Somerville would be held to this policy.

Councilor Ewen-Campen said that he reviewed the administrations version and noted language that other outside officers must be under the ACTUAL direction of the SPD as well as language relating to amplified voice devices. Chair Davis stated that the definition of pepper spray needs to be tightened up and both Councilor Ewen-Campen and Ms. Racaniello were confident that could be achieved.

Ms. Phillips spoke about 3 sections that should be deleted under the enforcement section to mirror what the City Council already passed in the surveillance ordinance, i.e., qualified immunity, dismissal, and civil suits. She would like more time to research the qualified immunity issue as it is fact dependent and case specific. Removing it would amount to the City Council taking away the right to a defense, available under the constitution, of a civil suit. She doesn't think the Council has the authority to remove that right. Ms. Phillips believes that the 'private right of action' language is in violation of the MA Home Rule Statute. The city cannot set penalties for state and federal courts. Additionally, just cause for discipline is case specific and officers have due process rights. With regard to the dismissal language, Ms. Phillips said that an arbitrator would not have to consider this section. She thinks that it is not enforceable and would cause labor unrest.

Councilor Ewen-Campen sponsored Attorney Jeffrey Feuer, a member of the National Lawyers Guild, to address the council. He said that qualified immunity is judge made case law and that legislative bodies have the right to change the laws to add or take away specific defenses from their ordinances. He told the committee that qualified immunity has been removed as a defense in the state of Colorado. Chair Davis asked Mr. Feuer how this would play out under MA law, and he replied that he didn't know. He said that qualified immunity would have to be clearly established law in the city and would have to be part of police training and all officers must be informed of it. Regarding creating a new civil remedy, he disagrees with Ms. Phillips and said that MA Home Rule sec 7 does not prohibit enacting civil laws. Further, Chapter 41 sec 97 states that selectman may make suitable regulations of police departments and the officers thereof.

Councilor Ewen-Campen acknowledged that this is complicated law and he hopes to raise 3 issues: can qualified immunity be eliminated as defense?; is violation of this ordinance just cause for discipline?; and can a private right of action be created? He wants the strongest possible enforcement and suggested that Ms. Phillips and Mr. Feuer get something down in writing about their comments for the committee to review.

RESULT:	KEPT IN COMMITTEE
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Handouts:

Surveillance Use Policy Draft 2-3-21 with Highlights (with 209592)

TearGas-Somerville-Language-v2-redline (with 211003)

TearGas-Somerville-Language-v2-redline (with 211003)

Chemical Crowd Control Agents and Kinetic Impact Projectiles Ordinance with Proposed Edits 2.4 (with 211003)