



CITY OF SOMERVILLE, MASSACHUSETTS  
CLERK OF COMMITTEES

December 3, 2020  
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	Absent	
Matthew McLaughlin	Ward One City Councilor	Present	
Jesse Clingan	Ward Four City Councilor	Present	

The meeting was held via GoToWebinar and was called to order by Chair Davis at 6:06pm and adjourned at 8:41pm.

Others present: Khushbu Webber - Mayor's Office; Lauren Racaniello - Mayor's Office; David Shapiro - Law; Shannon Phillips - Law; Chief David Fallon - Police; Interim Chief Charles Femino - Police; Deputy Chief Stephen Carrabino - Police; Captain Chris Ward - Police; Sergeant Michael Perrone - Police; Christine Koh - SomerStat

**Approval of the November 17, 2020 Minutes**

**RESULT: ACCEPTED**

**209639: That the Administration work with the Committee on Legislative Matters to consider revisions to the Surveillance Technology Ordinance.**

Chair Davis noted that the ordinance requires the City Council to take action on the impact reports within 60 days of their submission. There have been requests for revisions to provide more detailed information, so this may be a challenge. Ms. Webber noted that several revised drafts were sent this evening, though some do require additional information. She expressed confidence that final reports could be submitted in time for the City Council's December 17 meeting. The Chair shared his intent to reject any impact reports for technology not currently in use. He suggested that any reports needing further revision could be withdrawn and re-submitted. Ms. Webber added that the general use policy should be clarified, and there might be two separate policies for Police and other departments, which will help the administration finalize the reports.

**RESULT: KEPT IN COMMITTEE**

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

Ms. Koh added that clarification of what is outlined in the Use Policy vs the Impact Reports would be helpful. Chair Davis noted that the Use Policy needs to include the details of all technology currently in use and the Impact Reports are for acquiring or otherwise using technology that is not approved. The details might be included in the Use Policy through attaching the reports.

<b>RESULT:</b>	<b>KEPT IN COMMITTEE</b>
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**210788: Requesting approval of the Surveillance Technology Impact Report for Homeland Security Cameras.**

<b>RESULT:</b>	<b>KEPT IN COMMITTEE</b>
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**210789: Requesting approval of the Surveillance Technology Impact Report for GLX Cameras.**

Ms. Webber noted that the GLX User Login report might help address questions around this Impact Report.

<b>RESULT:</b>	<b>KEPT IN COMMITTEE</b>
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**210790: Requesting approval of the Surveillance Technology Impact Report for 911.**

Ms. Webber shared that this report has been updated in Section 1b to add language indicating how operators are trained and in Section 3b to note how passwords are assigned, activity is tracked, and information is stored. Further updates to Section 8a clarify the supervision. She noted that the ACLU did not have questions related to this report.

<b>RESULT:</b>	<b>KEPT IN COMMITTEE</b>
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**210791: Requesting approval of the Surveillance Technology Impact Report for ShotSpotter.**

Ms. Koh commented that the update to the report was based on the question about response time, which has been added in the final paragraph of Section 1. Councilor Niedergang shared concerns about the audio and other potential issues with false-positives and what is recorded. Captain Ward clarified that when ShotSpotter signals, the audio will only play the bang or crackle. There have been false-positives due to large tractor trailers on the highway. Officers will respond and determine it is a false alarm, and a report will be filed and detectives will follow up. Councilor Niedergang noted that Digital Fourth listed a number of concerns about the audio capabilities, and he would like more information. Captain Ward added that the recording stops immediately after the shot stops, and often needs to be played several times in order to hear it because the recording is so brief. Councilor Clingan asked if the ongoing recording could be obtained by a law enforcement agency, and Chair Davis requested additional clarification from the department. The administration will review the submission from Digital Fourth and respond accordingly.

<b>RESULT:</b>	<b>KEPT IN COMMITTEE</b>
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**210906: Requesting approval of the Surveillance Technology Impact Report for BriefCam.**

The Chair noted that this technology is not currently in use, and as such, the intent is to reject this impact report.

<b>RESULT:</b>	<b>KEPT IN COMMITTEE</b>
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**210907: Requesting approval of the Surveillance Technology Impact Report for Covert Device Cameras.**

<b>RESULT:</b>	<b>KEPT IN COMMITTEE</b>
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**210908: Requesting approval of the Surveillance Technology Impact Report for GPS and Monitor.**

<b>RESULT:</b>	<b>KEPT IN COMMITTEE</b>
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**210909: Requesting approval of the Surveillance Technology Impact Report for GreyKey.**

<b>RESULT:</b>	<b>KEPT IN COMMITTEE</b>
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**210910: Requesting approval of the Surveillance Technology Impact Report for License Plate Readers.**

The Chair noted that this technology is not currently in use, and as such, the intent is to reject this impact report.

<b>RESULT:</b>	<b>KEPT IN COMMITTEE</b>
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**210911: Requesting approval of the Surveillance Technology Impact Report for Pole Cameras.**

<b>RESULT:</b>	<b>KEPT IN COMMITTEE</b>
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**210912: Requesting approval of the Surveillance Technology Impact Report for the SPCD Drone Camera.**

The discussion in item 209639 reflects the administration's concerns about the potential need for separate policies for Police and other departments, which will help the administration complete the impact reports.

<b>RESULT:</b>	<b>KEPT IN COMMITTEE</b>
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**210291: That the City Solicitor draft an ordinance, prior to this Council's June 25 meeting, banning racial profiling.**

Ms. Phillips noted that there have been no changes made to the draft previously shared. One item for discussion included the reference to discriminatory pretextual stops in Section B. The ACLU requested banning all pretextual stops, but there are legal issues and violations of MA statutes, so the Solicitor's Office does not recommend removal. It also would require a fact-intensive inquiry to determine the nature of each stop. The Supreme Judicial Court (SJC) does need to approve any changes to the fields for violations of City ordinances, but traffic citations involve a Massachusetts state form, which includes race

and ethnicity data, as do most police reports. Officers are encouraged to fill those categories out based on perception, but they do not specifically ask demographic questions and the fields are not required.

Chair Davis emphasized that collecting the data is important, within reason, as it provides important pieces of information for analysis. Councilor Niedergang added that he would like the City to approach the SJC about collecting this data for all police interactions. He also clarified that the data would be used in the aggregate, so occasional mistakes based on misinterpretations would be acceptable.

**Chair Davis moved that the administration and Police Department discuss with the Legislative Matters Committee, potential revisions to the citation form for violations of City ordinances, to include demographic data. The motion was approved on a roll call vote of 4 in favor (Clingan, McLaughlin, Niedergang, Davis), 0 opposed and 1 absent (Ewen-Campen).**

Deputy Carrabino noted that the ordinance tickets were recently revised, and this type of demographic data was not allowed by the District Court, given that the tickets are often mailed and visible to the public. He has never seen a ticket with that data included.

Chair Davis commented that for pretextual stops, determining that something is discriminatory also requires analysis of the event. There is a clear impact if the word discriminatory is removed, as a stop would not be allowed as a pretext for other things. The intent aside, data show that these stops disproportionately impact people of color. Councilor Niedergang commented that the court rulings seem convincing, so he would be in favor of removing that line. Deputy Chief Carrabino explained that the department rarely does pretextual stops. Traffic enforcement is generally conducted in a specific location for drivers disobeying the law. Pretextual stops are generally focused on guns and drugs, and there have been less than 5 conducted in the last year. As an example, neither the vehicle or the individual presumed to have a gun in the car can be stopped just because there is information that they have an illegal firearm. The stop is done on the basis of a traffic violation, and is only done when there is visual evidence of the individual or vehicle in question. When they are conducted, it is reserved for serious matters.

Ms. Phillips noted that if pretextual stops are prohibited by the ordinance, it would be a very different intent of the ordinance. Chair Davis asked what would change in the Police Department if this was the case. Deputy Chief Carrabino noted that it would make it harder to act on information that the department has, and would be less safe. Ms. Phillips elaborated that currently, discriminatory pretextual stops are illegal. Prohibiting all pretextual stops could open any stop up to being a mini-trial and a civil suit. Councilor Niedergang added that the ordinance cannot go against state law, and also noted that discriminatory traffic stops were not an issue raised in the City. Chair Davis clarified that there is no state law that prohibits these stops, though there is not one that permits them, so the City would not be preempted from taking an approach that would go further than state law.

Councilor Niedergang also commented that the language in the ordinance states that all complaints should be directed to the Office of Professional Standards (OPS), but noted that other bodies are being created that may be a good venue for involvement and suggested adding the language to include other appropriate City bodies. Chair Davis noted that a process for civilian oversight, when created, would likely have several things redirected to it, and this could be among them.

**Chair Davis moved that the Solicitor's Office submit the draft dated 11.17.20 to the City Council for approval. The motion was approved on a roll call vote of 4 in favor (Clingan, McLaughlin, Niedergang, Davis), 0 opposed and 1 absent (Ewen-Campen).**

**RESULT:****WORK COMPLETED****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.**

Councilor Ewen-Campen shared a draft that includes kinetic impact projectiles (rubber bullets).

**Chair Davis moved that the City Council consider an ordinance banning chemical crowd control agents and kinetic impact projectiles. The motion was approved on a roll call vote of 4 in favor (Clingan, McLaughlin, Niedergang, Davis), 0 opposed and 1 absent (Ewen-Campen).**

Councilor Davis clarified that there are definitions provided in the draft, which do include mace, but those could be discussed during the consideration. Councilor McLaughlin asked when Police have used this equipment. Chief Fallon noted that there is no tear gas in the department's possession, nor have most of these been used, but the officers do carry oleoresin capsicum (known as OC Spray or pepper spray). The department's intent is to enable peaceful protest, but also keep people safe. The Chief would like to review to ensure that there are no unintended consequences and ensure that the department has reasonable options for crowd control. Chair Davis clarified that there may not be an outright ban on all of these agents, but prohibit them for specific uses, with exceptions.

Councilor Clingan asked if this ordinance would provide jurisdiction over other entities that may come into Somerville, and Chief Fallon noted that there are a number of dual-jurisdiction areas, and it would be reviewed with those entities. Jeffrey Feuer, of the National Lawyers Guild, shared that this is based on an ordinance before the Boston City Council and about to go before the Cambridge City Council. There are 9 out of 12 Councilors in Boston who support this. He echoed that it is not a ban on chemical weapons nor kinetic impact projectiles, but rather a response to the use of such weapons and the injuries that they can cause, particularly in situations involving innocent people engaged in the legal exercise of their First Amendment rights. He also emphasized that this law is intended to address worst case scenarios that could occur in the future. Chair Davis noted that an updated ordinance might include an outright ban on some of these chemicals. Chief Femino requested that the definitions need to be seriously considered, in light of the model policy mandated as part of the accreditation process.

**RESULT:****KEPT IN COMMITTEE****Handouts:**

- TearGas-Somerville-Language-v1 (with 210736)

**Referenced documents not attached:**

- Impact Report - Advanced\_ Next Gen 911 (with 210790)
- Impact Report - Covert Device Cameras (with 210907)
- Impact Report - GLX Cameras (with 210789)
- Impact Report - Pole Cameras (with 210911)
- Impact Report - Homeland Security Cameras (with 210788)
- Impact Report - ShotSpotter (with 210791)
- Impact Report - GreyKey (with 210909)
- Impact Report - GPS and Monitor (with 210908)

- User Logon Report (002)
- Video Surveillance Policy (with 209592)
- GLX User Login Report (with 210789)