



CITY OF SOMERVILLE, MASSACHUSETTS CLERK OF COMMITTEES

November 17, 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	Present	
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 9:02pm.

Councilor McLaughlin was attending two other meetings, and joined just before 7pm.

Others present: Khushbu Webber - Mayor's Office; Christine Koh - SomerStat; David Shapiro - Law; Shannon Phillips - Law; Hannah Pappenheim - Law; Linda Dubuque - Treasurer; Lieutenant Jeff DiGregorio - Police; Sergeant Mike Perrone - Police; Nick Ananavica - Inspectional Services; Eric Weisman - Public Works; Victor Nascimento - OSPCD

Approval of the October 29, 2020 Minutes

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

See 209592.

RESULT:	KEPT IN COMMITTEE
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209592: Requesting approval of the Surveillance Technology General Use Policy.

Chair Davis shared a concern with the way the ordinance is drafted, noting that this is somewhat misnamed, as it is not a general use policy. This is the tool through which information is provided, which sets the baseline. The Technology Impact Reports relate to unapproved uses. The intent is that currently used technology needs to be approved through the Use Policy(ies).

RESULT:

KEPT IN COMMITTEE

210788: Requesting approval of the Surveillance Technology Impact Report for Homeland Security Cameras.

Lieutenant DiGregorio shared that there have been updates to the language for the cameras. The requested audits for the last 60 days, along with the locations of the cameras, are available and will be shared with the Committee through Ms. Webber. The Committee will await the written updates.

RESULT:

KEPT IN COMMITTEE

210789: Requesting approval of the Surveillance Technology Impact Report for GLX Cameras.

The Committee will await the written updates.

RESULT:

KEPT IN COMMITTEE

210790: Requesting approval of the Surveillance Technology Impact Report for 911.

The Committee will await the written updates.

RESULT:

KEPT IN COMMITTEE

210791: Requesting approval of the Surveillance Technology Impact Report for ShotSpotter.

The Committee will await the written updates.

RESULT:

KEPT IN COMMITTEE

210906: Requesting approval of the Surveillance Technology Impact Report for BriefCam.

Lt. DiGregorio introduced this as a potential technology, that is not currently in use, but the Department believes will be valuable. It is a filtration tool to use any video surveillance to filter out hours of video to assist with an investigation. It may be made available at no cost to the department, but there would be hardware that would need to be procured to support it. Sgt. Perrone added that the Criminal Investigation Division and the Detective Bureau frequently sit in front of video for many hours looking for specifics pertaining to an incident and this could significantly increase efficiency.

Councilor Ewen-Campen shared that more details about the safeguards are needed, and the privacy concerns are substantial as this could easily become invasive. He requested follow-up information to the questions submitted by the ACLU. Councilor Niedergang asked whether the technology could pick out a person, and Lt. DiGregorio noted that it can, though the facial recognition component can be disabled. There can be searches for clothing, or direction of walking. Councilor Niedergang expressed concern about how this could be used for individuals and asked how access and use would be controlled and monitored. Lt. DiGregorio noted that the licenses would be limited, and access would be logged and tracked. Sgt. Perrone added that it would be a supervisory tool, and access would be at request, and likely for large-scale investigations where a lot of footage was needed quickly. Councilor Niedergang asked if the ability to disable individual recognition could be possible, and if that would impact the value to the department. Lt. DiGregorio confirmed that facial recognition and race etc. could be disabled, but he is

unsure whether any individual features could be turned off. Sgt. Perrone added that it increases efficiency as investigators in any case, even if just for vehicles.

Chair Davis suggested that the intent of the ordinance is not to approve new technologies not currently in use. The level of detail required to be disclosed makes the barrier to approval high. He emphasized that more detail, parameters, and operating procedures are needed, consistent with what is required in the ordinance. He also encouraged that any technologies not in use be withdrawn. Ms. Webber noted that this is a new endeavor, and finding the right level of comprehensiveness was a challenge.

Councilor Clingan asked how the access is managed for all of the technologies - whether there is a surveillance technology administrator, and whether any safeguards are in place or use is flagged. Lt. DiGregorio noted that there have been cameras in place for 15 years, but the tracking is managed at the supervisory level. These reports have indicated the need for tracking and more monitoring. He added that the RMV tracks searches and confirms the validity.

Ms. Webber clarified that these are all of the impact reports, and to her knowledge none are slated for procurement.

RESULT:	KEPT IN COMMITTEE
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210907: Requesting approval of the Surveillance Technology Impact Report for Covert Device Cameras.

Lt. DiGregorio explained that these are covert cameras hidden in household or other devices as part of a search warrant. It is very specialized and used in a limited capacity. Sgt. Perrone added that they have only been used twice that he is aware of. Councilor Ewen-Campen requested that the ACLU's questions be addressed in writing.

RESULT:	KEPT IN COMMITTEE
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210908: Requesting approval of the Surveillance Technology Impact Report for GPS and Monitor.

Lt. DiGregorio shared that this is used primarily in the case of bicycle theft investigations. It is not affixed to any private property, and requires a warrant. Sgt. Perrone elaborated that for private property, such as affixing to a motor vehicle, a warrant would be obtained. Chair Davis requested that this be specified in the report, to make the parameters of use clear. Councilor Clingan also encouraged transparency and report standardization around who specifically has access to and who manages the technology.

RESULT:	KEPT IN COMMITTEE
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210909: Requesting approval of the Surveillance Technology Impact Report for GreyKey.

Lt. DiGregorio explained that there is only one officer who can use this, and it is only used under the authority of a search warrant. The technology is relatively new and used to unlock codes to gain entry to digital devices such as phones and computers. The City does not own the technology, but the Digital Forensics Investigator can access it through the Attorney General's Office, and only with a warrant. Councilor Ewen-Campen noted that a warrant is a strong protection.

RESULT:

KEPT IN COMMITTEE

210910: Requesting approval of the Surveillance Technology Impact Report for License Plate Readers.

Lt. DiGregorio noted that this is no longer in use. Councilor Niedergang noted that it was highly regarded in the past and wondered what happened, and Lt. DiGregorio suggested that there were some glitches with the technology, though he is not certain why it was phased out. Councilor Ewen-Campen shared concerns about these devices and the large amount of data that they collect. It doesn't act as an investigative tool, but creates pretext for interactions. He does not support using this technology. Councilor Clingan also urged that it remain dormant.

RESULT:

KEPT IN COMMITTEE

210911: Requesting approval of the Surveillance Technology Impact Report for Pole Cameras.

Lt. DiGregorio noted that these are standalone, fixed position cameras. The department submits a request to the New England State Police Information Network, who installs the cameras and provides a link to view. Sgt. Perrone added that there are a limited amount of them, and they can be difficult to obtain. They may be obtained by the FBI as well if needed. The trend and new case law is moving toward requiring a search warrant to install these to surveil a residence, which the department's investigators are aware of. They are mostly used for narcotics cases, and were recently used in a serial arsonist case.

RESULT:

KEPT IN COMMITTEE

210912: Requesting approval of the Surveillance Technology Impact Report for the SPCD Drone Camera.

Mr. Nascimento shared that the OSPCD drone camera is used to collect large scale images, such as landscape views of the skyline, or pictures of neighborhoods or entire parks. IT is not designed to capture any individual in a recognizable way. The images are used for website or public plans, and are stored in a shared folder for OSPCD use. Councilor Ewen-Campen noted that he does not have concerns about this, as it is not used for surveillance. This could be included in a specific technology-use policy, as it is not for law enforcement.

RESULT:

KEPT IN COMMITTEE

210719: That the provisions of Sec. 8-3(1) be amended by changing "for not less than a twelve month period" to "not less than a one month period"

Chair Davis reminded the Committee that this relates to the time period for non-compliance by developers with special permits. Councilor White had suggested waiting a shorter time frame before determining non-compliance. Mr. Antanavica added that he and Ms. Dubuque believe this would be a burden on the administration to implement, due to the logistics of being able to fairly enforce it. It would involve a title search on every building permit. The current enforcement involves a lien at the time of the tax return. Ms. Dubuque elaborated that a notice is sent, followed by a demand, issued through the City Clerk's office. IF those bills are not paid, the unpaid fines and fees are added to the real estate tax bill. Fees are not subject to interest, but water, real estate, and personal property tax are subject to 14% interest. With the exception of this past fiscal year, the collection rate has been 99% or above. It doesn't

seem worth looking up individual bills all year long to address the approximately 0.2% uncollected. The Treasurer's office also has a tax title paralegal who conducts the title searches before a taking. Most of the instances, there is an estate issue or issue with a deferment, and the City doesn't want to foreclose on those individuals, so recommends waiting, while continuing to charge interest, and suggesting that the property owners find financing for the tax bill. Changing the time frame would cause ill will and undue burden for small businesses and owners. Ms. Dubuque offered that this would create an inefficiency and also be detrimental to the City's development.

Chair Davis emphasized that a monthly review would not be necessary. A list would still be furnished annually. Additionally, the licensing authority could determine what action to take. The intent is that the list should include an update of unpaid taxes and fees for a period of time shorter than a year. It would not require any additional tax takings or foreclosures, but would provide a broader range of information to the licensing authorities. Councilor Niedergang added that the concern is not about real estate taxes or water bills, and perhaps the next has been cast too widely. The intent is to prevent a developer who has not paid fines from being able to proceed with their project. The notion is that fines should not be able to accumulate while the developers continue with work.

Mr. Antanavica added that there could be unintended consequences for fair and even enforcement with a change like this. Councilor Niedergang will discuss further with Councilor White to determine if there may be another way to address the concerns that prompted this.

RESULT:

KEPT IN COMMITTEE

210291: That the City Solicitor draft an ordinance, prior to this Council's June 25 meeting, banning racial profiling.

Ms. Phillips shared that the draft has responses from the ACLU, in addition to her legal responses. The draft ordinance contains prohibitions, as well as requirements for annual training and an annual review of practices including demographic data. Regarding pretextual stops, Ms. Phillips clarified that based on both state and federal case law, they are not illegal, but they can be prohibited if they are discriminatory. She added that data are being maintained, and suggested further discussion about what specifically is being sought quarterly. A comment from the ACLU suggested that the demographic data be required, and Ms. Phillips noted that there are practical issues as it is not always possible if the individual refuses and the officer doesn't want to guess.

Chair Davis asked what would constitute discriminatory and Ms. Phillips noted that it would be anything that violated the Equal Protection Clause, including using gender, age, or race to motivate a stop. It is, unfortunately, difficult to prove and the burden is on the individual who is stopped. Chair Davis noted that there is no law that states that pretextual stops must be allowed, so a municipality could presumably take the step to prohibit them. Ms. Phillips countered that there is case law that indicates that they are legal and a law enforcement function. Chair Davis suggested that the City could be a leader on this, as the pretextual stops are often the issue that facilitates discrimination.

Councilor Ewen-Campen asked about complaints, and clarified that currently those go to the Police Department's Office of Professional Standards, and the ordinance does not propose to change that. He encouraged consideration that this be directed elsewhere, as no entity should regulate itself. Councilor Niedergang shared that Cambridge hired a civilian attorney to oversee complaints, which may be an option. He also noted that the data is limited by the forms that the officers use, which do not collect information on race. Ms. Phillips noted that the traffic contacts and field contacts forms do offer the ability to collect race or other demographic information, and it is included in the annual reports, though there are many instances where it is incomplete. Councilor Niedergang requested

more information on what data can be recorded for various types of police actions. Chair Davis elaborated that what data fields are available, as well as what can be required (both without state approval or through a Home Rule Petition), would be valuable information. He encourage pursuing an aggressive data collection strategy, to the extent possible. Councilor McLaughlin asked how the data are logistically captured and whether it is asked or assumed. Ms. Phillips clarified that self-identification cannot be forced, and assumptions can be incorrect and lead to further legal issues.

RESULT:

KEPT IN COMMITTEE

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 that he is collaborating with colleagues in Cambridge and Boston who are undertaking similar work, and Ms. Phillips has noted that there is nothing legally that would prevent a ban. Councilor Ewen-Campen's perception is that tear gas is in a category by itself, as it is indeterminate and has serious medical consequences. Ms. Webber will connect with Chief Fallon to include his thoughts on the short and long-term implications of a ban. Councilor Ewen-Campen added that the Police Department's thoughts on other crowd control measures such as rubber bullets would be welcomed as well, as there may be limitations sought.

RESULT:

KEPT IN COMMITTEE

210742: That the City Solicitor draft an ordinance similar to Boston's PILOT ordinance, formalizing payments in lieu of taxes to create a fair and transparent system of taxation for large tax-exempt non-profit organizations.

Ms. Webber shared the update that she and Mr. Shapiro are reviewing the language with department staff. The administration is interested in moving this forward, and is working toward a more substantive update.

RESULT:

KEPT IN COMMITTEE

209061: That the City Solicitor and the Director of Sustainability and the Environment draft with the Ward 5 Councilor an ordinance to ban or regulate the use of gas-powered leaf blowers.

Chair Davis recapped that there are state laws that would preempt the emissions factors, but the noise output could be addressed. He also clarified that there are leaf blowers below the suggested decibels available. Councilor Niedergang added that work has been done to revise the noise ordinance to regulate leaf blowers more effectively, but DPW and Recreation have noted how essential these machines are to the City. The Cambridge ordinance is not as strong as it could be, but would be a step forward, focusing on some specific restrictions and information.

Chair Davis elaborated that the Cambridge ordinance has blanket exemptions for when leaf blowers can be used, which are specific to large spaces, though there are limitations for the number that can be used. There are also bans for certain months of the year, though there are no explicit noise restrictions. Councilor Niedergang added that there is a 65 DBH limit and a requirement that it must meet EPA standards, and also pointed out the limitations to the times that leaf blowers can be used. Ms. Pappenheim noted that the 65 DBH limit does appear to be without exemption. The exemptions are for the time and date restrictions. She also shared that the EPA reference doesn't change any of the requirements. The City cannot make its own rules on what is appropriate for emissions standards. Ms. Pappenheim will prepare some updated language on what Somerville might implement.

Councilor Niedergang also shared that Cambridge had a public hearing related to a ban of gas powered leaf blowers, and the current restrictions were widely embraced. The current ordinance also has changed the way that Cambridge uses its equipment, and Cambridge has further created green zones, where all gas powered equipment is banned.

RESULT:

KEPT IN COMMITTEE

Handouts:

- ACLU questions - Somerville STIR 11-16 (with 210906, 210907, 210908, 210909, 210910, 210911, 210912)
- Email - M Niedergang (with 209061)
- anti-racial profiling ordinance 11.17.20- edits and comments (with 210291)
- Tear Gas Ban Ordinance (with 210736)