



Committee on Legislative Matters and the Northampton City Council

Members

Councilor William H. Dwight, Chair

Councilor Maureen Carney

Councilor Alisa F. Klein

Councilor David A. Murphy

MEETING MINUTES

Date: December 9, 2019, Time: 5 p.m.

Location: City Council Chambers, 212 Main St., Northampton, Massachusetts

1. **Meeting Called to Order and Roll Call:** At 5 p.m., Councilor William H. Dwight called the meeting to order. On a roll call, the following councilors were present: William H. Dwight, Maureen T. Carney, Alisa F. Klein and David Murphy. Also present was City Solicitor Alan Seewald.
2. **Announcement of Audio and Video Recording**
Councilor Dwight announced that the meeting was being audio and video recorded.
3. **Public Comment**
None.
4. **Approval of Minutes of Previous Meeting**
Councilor Klein moved to approve the minutes of November 12, 2019. Councilor Carney seconded. The motion passed unanimously 4:0 by voice vote.
6. **Items Referred to Committee**
 - A. **19.137 An Ordinance to Amend Chapter 312 Vehicles and Traffic [to delete handicapped parking space on Pleasant Street]**
Councilor Dwight noted that Councilor Nash was not present to speak to this measure, but it was forwarded by the Transportation and Parking Commission with a positive recommendation.

Councilor Murphy moved to forward the ordinance to the full City Council with a positive recommendation. Councilor Klein seconded. The motion passed unanimously 4:0.
 - B. **19.176 An Ordinance Prohibiting the Use of Face Surveillance Systems - referred by City Council November 21, 2019**
Councilor Dwight read the ordinance into the record.

Councilor Klein moved to forward the ordinance with a positive recommendation. Councilor Carney seconded.

Councilor Carney moved to recognize Bill Newman of the western Massachusetts office of the American Civil Liberties Union (ACLU). The motion passed unanimously 4:0 by voice vote.

Attorney Newman expressed his understanding that everyone in the room is familiar with the ordinance and has considered it at some length. "I think this is a good first step," he affirmed. Facial recognition prohibition ordinances are being adopted across Massachusetts and across the country, he reported.

They are talking about a technology that is relatively new and seriously flawed. He thinks it is important for the City of Northampton to take the position that this is not the kind of technology that, at this moment, they are going to adopt and utilize. The ordinance is straightforward; its words are simple and direct with the benefit that there is no confusion, he asserted. It's not a comprehensive ordinance but it's an important step forward and he would urge the city to adopt it, he concluded.

Councilor Klein explained the reasoning behind her sponsorship of the ordinance and gave some background. As Attorney Newman said, this is a flawed technology. In fact, one of its main creators has publicly stated that it only has a 30% chance of accurately reading faces. Her main concern besides that is potential racial bias. It was found through research by MIT and other venerable researchers to unfairly target people of color in the sense that it's not able to read features of people of color as well as white people, particularly women of color. It's just a highly-flawed technology that could in fact lead to racial bias in the criminal justice system. An ordinance restricting the use of municipally-owned surveillance technology adopted several years ago did include a prohibition on the use of face surveillance technology, she confirmed. However, this goes beyond that in that it talks about the city not obtaining, retaining or accessing face surveillance systems rather than just not employing it as a technology in the downtown area.

As background, she noted that they had conversations with the Mayor and police chief. Police Chief Kasper expressed that if this technology improves over the next several years, she would really like to revisit this and have the option of using it. They came to a compromise in Section 3 by adding a provision that three years from the date of acceptance of the ordinance the City Council would revisit it, and this made it more acceptable to the chief.

Members asked questions and offered comments.

It's worth noting that this is a significant modification to what was originally proposed in consultation with the Mayor, the solicitor and the police chief, Councilor Dwight added. There is no directive to employees other than the fact that they are restricted from using resources, which are something the City Council has authority over. Under the separation of powers, the City Council is not authorized to limit employees' speech or direct them to perform in any way, he reminded.

It is also worth noting that this is not software that currently exists in the city; it is not being purchased and not being used to the best of the police chief's knowledge, Councilor Dwight reported. As Councilor Klein said, she did want to reserve the right to use it when at some point it seemed efficacious, he stressed. He doesn't feel comfortable arguing the police chief's case without her presence, so he won't. His driving concern, as Councilor Klein noted, is that when it fails it fails in a direction that seems to most hurt the most vulnerable. It has a gender bias and a racial bias. He's not sure why, but they are fallible systems. The

sponsors' concern is that they do not want this tool employed when it stands to jeopardize the rights of many individuals.

Councilor Murphy noted that their reason for rejecting it today is that it's not that accurate. If it had 95% accuracy, would they like it more or like it less? He wondered aloud.

"We don't like it because it's not reliable enough," Councilor Murphy observed. "Would we like it even less if it worked perfectly?"

For herself, she can say that there are some real civil liberty issues involved if it were accurate, Councilor Klein responded.

What is really needed are state or federal comprehensive guidelines as to how the technology is to be used, Attorney Seewald suggested. Inaccuracies and other issues could all be dealt with if there were some control over these things, but there's none now, he pointed out.

As he's often cited, technology sometimes outstrips the policies and laws surrounding it, and, in the interim, there are opportunities for the exploitation of faulty technology and for it not to be applied fairly, Councilor Dwight explained. "In the absence of a policy...we felt compelled to call for a pause," he said.

He referred to a three-year review clause built into the ordinance to allow it to be re-examined. He expressed his understanding that the state is in the process of reviewing laws to govern this technology. "In the interim, we would like to put this in as a failsafe," he related.

He still thinks it was misguided not to allow the city to use cameras for observation purposes, but he does think it is important that some level of government put constraints on the use of facial recognition technology, particularly on law enforcement, Councilor Murphy opined. He expressed the opinion that law enforcement officials should be required to get an order from a judge to use the technology to gather evidence for prosecution purposes. He feels very strongly about constraining this because he's very familiar with the technology and, although it's not perfect now, it will be soon.

He adamantly thinks the city should have the right to set up observation cameras, but this is a step beyond that, he continued. The video can be run through the software and people can be identified without a judge's consent. "That's where it gets intrusive to me," he indicated. While he thinks the prohibition for cameras is an overreach, he doesn't think this is at all, he concluded.

"Councilor Murphy's observations are really well-taken," Attorney Newman chimed in. A three-year review gives a chance for the federal government and state to act and for the courts to make rulings. "In the interim, let's not have this in Northampton. I think that makes enormous sense," he concurred. He referred to published reports of how the technology is being used in other countries. "The potential for abuse here is extraordinary," he observed. He described the decision to 'push pause' as a "sensible, logical, relatively-conservative position."

Councilor Dwight mentioned that, in China, a person who jaywalks can receive a ticket at his house even though no police officer was present because is able to be identified by facial recognition software.

Councilor Dwight voiced his perception that there was consensus that this is a fairly modest 'speed bump.' He said he believed the Mayor had signed off on it, so everyone appeared to be in accord.

There being no further discussion, Councilor Dwight called the motion to a vote, and it passed unanimously 4:0 by voice vote.

5. **New Business**

None.

6. **Adjourn**

Councilor Klein moved to adjourn. Councilor Carney seconded. The motion passed unanimously 4:0. The meeting was adjourned at 5:38 p.m.

Prepared By:

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