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**REPORT OF:** President’s Work Group to Develop City-Wide Surveillance  
Equipment and Data Management Policies

**TITLE:** Recommendations on Surveillance Technology Use and  
Acquisition

**DATE:** [completion date] **December 10, 2019 Version**

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**WORK GROUP MEMBERS:** Alder Rebecca Kemble (Chair), Alder Paul Skidmore, Alder Samba Baldeh, Alder Sheri Carter, and Ledell Zellers as Alder through April, 2019 and as resident member from August, 2019

## **BACKGROUND**

In 2003, the Common Council established the Ad Hoc Committee on Security Cameras, which was tasked with developing a city-wide policy on use and installation of security cameras. The Committee collected survey information on City agencies’ security camera usage. As a result of that survey, the Committee recommended developing “guidelines for agencies to use in writing their own policies” through the creation of an Administrative Procedure Memorandum (APM). APM 3-17, Use of Surveillance Cameras (<https://www.cityofmadison.com/mayor/apm/3-17.pdf>), and APM 3-9, Appropriate Use of Computer Resources (<https://www.cityofmadison.com/mayor/apm/3-9.pdf>), are currently in effect.

In 2017, the President’s Work Group on Police and Community Relations recommended the creation of a “policy governing the purchase and use of all surveillance equipment employed by all City agencies including MPD” (p. 11).<sup>1</sup> The Work Group expressed concern over the growing ubiquity of surveillance technologies and the lack of a comprehensive surveillance policy for the City.

Additionally, concerns were raised by alders and residents that many of the cameras owned and operated by the City had the capability of rotating, zooming and recording video of private spaces and residences. Council members thought it important to develop policy prohibiting the viewing and recording of private spaces.

In order to carry out the development of the recommended policy, on December 5<sup>th</sup>, 2017, the Common Council approved a resolution establishing the President’s Work Group to Develop City-Wide Surveillance Equipment and Data Management Policies (RES-17-00937).

## **CHARGE OF THE WORK GROUP**

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<sup>1</sup> Report of the President’s Work Group on Police and Community Relations, submitted 5/12/2017.

The charge of the President's Work Group to Develop City-Wide Surveillance Equipment and Data Management Policies is to:

- Develop a policy governing the purchase and use of all surveillance equipment employed by all City agencies, also addressing data management and storage, which will be developed in consultation with City of Madison staff and officials, including staff from Information Technology, the City Attorney, and all departments and divisions that currently use or plan to utilize surveillance equipment;
- Seek expert opinions from a variety of departments;
- Use a racial equity and social justice lens throughout its work; and
- Create an inventory of all City of Madison surveillance equipment

### **SUMMARY OF RECOMMENDATIONS**

The President's Work Group to Develop City-Wide Surveillance Equipment and Data Management Policies (Surveillance Work Group) collaborated with City staff to develop a citywide policy on the acquisition of surveillance technology in the form of a proposed ordinance. The Work Group makes the following recommendations:

- That the Common Council approve the proposed ordinance on surveillance technology
- That the Common Council Executive Committee (CCEC), in consultation with the Mayor, further develop the approval processes referred to in the proposed ordinance
- That the CCEC and the Mayor review the Madison Police Department resident camera registration program with a view towards increasing transparency for the general public
- That city staff to continue working with the Mayor to develop a corresponding APM so that City agencies have clear direction on how to comply with the ordinance

### **OVERVIEW OF ACTIVITIES**

The Work Group met [22] times of the course of approximately 23 months from January 2018 through December 2019. Over the course of their meetings, they reviewed other cities' surveillance policies, surveyed and compiled an inventory of City agencies' surveillance technology and policies, heard presentations from several City agencies, and created a proposed surveillance technology acquisition and use ordinance.

The Work Group created a survey to collect information about City agencies' surveillance technology and distributed it to all of the City departments and divisions for completion. The 27-question survey (attached) covered a broad list of topics, including the types, amount, locations, and policies regulating City agencies' use of surveillance technology.

### ***Review of Peer Cities' Surveillance Policies***

The Work Group conducted a review of surveillance policies from four local governments: Seattle, WA, Santa Clara County, CA, Sommerville, MA, and Nashville, TN. These policies were analyzed focusing primarily on the following elements:

- Purchase approval processes
- Use policies and approval of those policies
- Policies related to data management
- Level of transparency, and public engagement
- Oversight processes
- Exemptions (law enforcement and other)
- Policy enforcement processes

### ***Findings of Work Group after Inventory and Department Presentations***

The Work Group found a lack of uniformity of practices and policies across departments regarding the purchase and use of surveillance technology. Currently, there is spotty oversight of what was purchased or how it is being used. There are currently no generally utilized training protocols for safeguarding the privacy of the general public against misuse of surveillance technology, and there are unclear and uneven accountability measures in the event of such misuse by a city employee. These findings reinforced the need to develop a comprehensive policy that applies to all city agencies in a uniform manner.

In the interest of transparency, the Work Group recommends that, with a few exceptions, surveillance technology purchased by City of Madison agencies be approved by the Common Council through public processes. Some of the details of those processes still need to be worked out, so the Work Group recommends that the CCEC work in consultation with the Mayor to finalize them as soon as possible.

The Work Group also recommends that the CCEC and the Mayor review the Madison Police Department's resident camera registration program. As the Work Group discussed the issue of posting notice to the general public about the presence of surveillance cameras, the topic of this program arose. The issue of whether information about the location of residents' cameras that have been registered with MPD to support its surveillance and crime investigation activities should be made public was not settled by the Work Group, but the Work Group agrees this is an issue of concern that should be taken up by the CCEC.

### ***Creation of Proposed Surveillance Technology Ordinance***

The draft ordinance covers the acquisition of new surveillance technology, via city money, grant funds, or accepting donations of said technology. It also addresses entering into agreements with other entities to share surveillance technology or data. Additionally, the ordinance requires all City agencies to submit an annual report to the

Common Council with specifically-designated information. The proposed ordinance contains sections on definitions, an approval process, a reporting process, and exemptions to the established processes.

### *Definitions*

The proposed ordinance provides the following definitions (see attached draft ordinance for additional detail):

- **Surveillance:** Observation of a place, person, group, or ongoing activity in order to gather information;
- **Surveillance Data:** Any electronic data collected, captured, recorded, retained, processed, intercepted, analyze, or shared by surveillance technology;
- **Surveillance Technology:** Any hardware, software, electronic device, or system utilizing an electronic device, owned by the City or under contract with the City, designed, or primarily intended, to collect, retain, process, or share audio, electronic, visual, location, thermal, biometric, olfactory, or other personally identifiable information of members of the public for the purpose of surveillance;
- **Sensitive Surveillance Technology Information:** Any information about Surveillance Technology that public disclosure of would unreasonably expose or endanger City infrastructure; would adversely impact operations of City agencies; or may not be legally disclosed.

### *Approval Process*

The proposed ordinance delineates an approval process for the acquisition of new, or substantive changes in the use of, surveillance technology. The Department's request for Surveillance Technology will be approved only upon the determination that the benefits to the citizens and residents of the City outweigh the potential negative impact upon civil liberties and civil rights and that, in the judgment of the Common Council, there is not an effective alternative with a lesser impact upon civil rights or civil liberties nor is there an alternative with equivalent impact on civil rights or civil liberties but with a lesser economic cost. The approval process for acquisition or contracting of new surveillance technology that will be part of the citywide network enterprise system consists of referral to the Common Council either as part of the annual budget approval process or through a resolution. If the technology will not be connected to the citywide system, departments must notify the Mayor, Common Council leadership, and the information technology director, and post a notice to its website.

### *Exemptions*

The proposed ordinance lists the following four categories of exemption from the approval process outlined above:

- The surveillance technology is deemed to be "sensitive surveillance technology" as defined in the proposed ordinance.

- The technology is acquired through a federal property disposition program, and it is necessary to acquire it quickly. However, before installation or use, the agency must obtain approval.
- Acquisition of the surveillance technology is deemed to be needed to address an emergency “that poses an imminent and serious risk of death or substantial bodily harm.”
- The acquisition is needed to implement a technical patch or upgrade. Prior to acquisition the acquiring department must consult with the IT department and include a description of the upgrade in the agency’s annual technology report.

### *Reporting Process*

The proposed ordinance also establishes an annual review process for all departmental surveillance technology. All City agencies “will complete an Annual Surveillance Technology Report which will be submitted to the Common Council.” The Annual Surveillance Technology Report will include an inventory of the agency’s surveillance technology, along with a narrative describing how the agency uses its surveillance technology, how it is being shared, how it is being protected, and how it is resolving any complaints it has received regarding its technology.

### ***Working with City Staff and Mayor’s Office on Corresponding Administrative Procedures Memorandum***

City staff, in particular IT Director Sarah Edgerton, Assistant City Attorney Marci Paulsen, and Assistant Chief of Police Vic Wahl, discussed with the Work Group the creation of an Administrative Procedures Memorandum intended to provide more detail about how City staff would comply with the proposed ordinance. The drafting of that APM is still underway. The same city staff provided ongoing recommendations and insights into preparation of the draft ordinance.

**ATTACHMENTS**

Draft Surveillance Ordinance

APM 3-9

APM 3-17

Report of the President's Work Group on Police and Community Relations

RES-17-00937

Peer Cities' Policy Matrix

Survey of City Departments with responses

City Surveillance Technology Inventory

ACLU Model Legislation

File # 49284: Operating Security Cameras at Convenience Stores

Presentations given by: Information Technology, Madison Metro, Traffic Engineering, Water Utility, CDA Housing (no presentation available), Monona Terrace (no presentation available), Parking Utility, and Engineering.