



# Public Safety & Transportation Committee Report

## City of Newton In City Council

**Wednesday, February 9, 2022**

Present: Councilors Downs (Chair), Lipof, Malakie, Grossman, Markiewicz, Bowman, Oliver and Lucas

City Staff: Chief John Carmichael, Jr. Newton Police Department

Others Present: NewTV; Kade Crockford, Director, Technology for Liberty Program, American Civil Liberties Union (ACLU) of Massachusetts

**#136-22      Requesting a discussion on facial recognition and camera technology, public safety and privacy.**

COUNCILORS DOWNS, LAREDO, MARKIEWICZ, BOWMAN, HUMPHREY, RYAN, DANBERG, LUCAS AND BAKER requesting a discussion on facial recognition and camera technology, public safety, and privacy.

**Action:      Public Safety & Transportation No Action Necessary 8-0**

**Note:**      Chief John Carmichael, Jr. Newton Police Department and Kade Crockford, Director, Technology for Liberty Program, American Civil Liberties Union (ACLU) of Massachusetts joined the Committee for discussion on this item.

Chair Downs stated that in 2020, Senator Creem mentioned a ban on facial technology that Brookline, MA had passed and that Sen. Creem strongly suggested Newton consider a similar law. Senator Creem helped amend the 2020 state Police Reform Bill that included some limits on facial recognition technology. Chair Downs invited Ms. Crockford tonight, because there is a lot of information to understand.

Ms. Crockford stated that she will speak on general regulatory approaches to surveillance at the municipal level and zeroing in specifically on facial surveillance, what has been done in the State and what the ACLU is recommending the Government do to improve the regulations, and what the ACLU is recommending municipalities do.

Ms. Crockford stated that the ACLU and partner organizations have worked in communities in Massachusetts and across the country to pass ordinances that ACLU calls "Community Control of Police Surveillance" ordinances. The goal of these ordinances is to address a problem that we have seen which is 'surveillance policymaking by procurement.'

What's been happening for the past 20 years since the digital revolution, since 9/11 and post 9/11 we've seen a lot of Federal grants for state and local surveillance technology acquisitions. We've seen state and local police being integrated into Federal information sharing and intelligence architecture.

Most acquisitions have taken place without any democratic oversight, transparency, accountability from elected officials at the local and state level. Not all surveillance is necessarily bad, that's not the issue. We feel that elected officials ought to be involved in the decision-making process about what types of surveillance technologies are acquired by local government and how those technologies are used.

We've seen too often, places where we don't have ordinances in place where the police use their general budget funds or grant funds to purchase technology, but when they do so they give Council a vague description of the types of technologies that they're seeking to purchase or how they would be used.

As a result, people have no idea what types of surveillance technologies are in use in their communities and oftentimes, there are no policies in place to govern how those technologies are to be used, how the data will be retained, shared, etc. This can lead to controversy.

When the public or reporters discover that a Police Department has a cutting-edge surveillance technology, like drones, this can also lead to crisis. Democratic oversight and accountability can help a community avoid such controversy. It is also vital to oversee and have transparency around data management.

The way to address this, is to pass laws that require Council approval of not only surveillance technology acquisitions, but also surveillance sharing agreements. The community control ordinances say anytime the police or any other city agency wants to acquire new surveillance technology, they must come to the Council first, explain what they want, cost, purchaser, uses and need to show a policy that governs the technology and the data it gathers, and then receive approval. The council can hear from members of the public about the benefits and drawbacks to make an informed decision.

Ms. Crockford provide Committee members with a PowerPoint presentation, attached. Please note that Boston, MA should be included on the map of those communities with surveillance oversight laws in place on slide #3.

### **Facial Surveillance**

The ACLU believes that biometric surveillance (anything unique to you as a person) or facial recognition poses special risks to privacy, freedoms of speech/association/religion, racial justice and due process. Facial recognition is dangerous when it works and when it doesn't. There have been several studies that have shown that there are gender, race and age bias issues with various facial recognition algorithms. There is a nationwide movement to prohibit or strictly limit government uses of these technologies. The ACLU has been a leader in that movement. The ACLU believes that this is a key moment for lawmakers in the United States at the municipal, state and federal levels, to take control and implement some democratic guardrails ensuring that the future use of this technology does not in any way harm people's civil rights and civil liberties. The ACLU would like to ensure that in Massachusetts and nationwide we do not go down the road that countries like China and Russia are

going down, which is to say we don't allow this technology to be used for dragnet surveillance purposes, which raises several serious concerns about political surveillance.

**Three different kinds of facial recognition:**

1) Surveillance and tracking is the use of facial recognition algorithms to analyze video data or moving images. The data sits dormant waiting for a human being to review. Automated analysis algorithms facilitate waking up the data and enables Government agencies to search video data and people's movements. The ACLU feels that Government use of technology for this purpose ought to be permanently prohibited in the United States. It's too dangerous and it's not possible to regulate in a meaningful way. The benefit to the Government does not nearly outweigh the cost to civil rights and civil liberties.

2) Emotion/affect analysis. This is science that's contested; it purports to be able to determine how someone is feeling based on the physical characteristics of their face. The ACLU believes that it has no place in law enforcement or in Government, and it shouldn't be used and should be prohibited.

3) Image matching in criminal investigations. Image matching uses a still photo of a person. The ACLU believes that image matching can be regulated and are working with State Government, including Senator Creem's office, to strengthen the existing regulations put in place in the 2020 police reform legislation that limits and regulates the ways in which police can use image matching for criminal investigations. At the municipal level, municipalities are somewhat restricted in terms of what you're able to regulate and how.

**Municipal Bans:** The ACLU has helped communities stop the use of this technology at the municipal level. We have passed eight municipal bans on government use of facial recognition at the local level, most recently in Worcester, MA in December 2021. Boston, Cambridge, Somerville, Springfield, and Worcester have passed municipal prohibitions. The ACLU believes this is the right approach. This type of technology shouldn't be used in schools, libraries, public parks, etc.

There is some statewide controls on law enforcement use of image matching. The laws centralize at the State Police the use of image matching technology, requiring law enforcement to obtain a court order to perform one of those searches. The ACLU believes the bill should be strengthened, there are no due process protections in the legislation and no warrant requirement. The court order in the statute now states that the police must show a judge that the search is relevant and meets the standard of probable cause. There is no clear prohibition in the state law of surveillance and affect recognition.

The state law also does not apply to non-police government agencies including schools. This is a dangerous technology to use in the public schools; it raises concerns, for instance, for undocumented parents, who want to feel safe and free to visit their child's school and to be involved in the public school community. The use of a technology like this could be really chilling and deter participation, which is necessary for healthy school communities. The ACLU is looking to the state legislature to be

clear about keeping this technology out of non-law enforcement areas of government which Senate bill 47, (House 135) does.

In closing, Ms. Crockford stated that the ACLUM would be happy to partner with Newton on possible municipal options. Their draft surveillance oversight ordinance creates a process for democratic oversight and control of surveillance technology in the community with transparency and accountability in a way that aligns with Newton's values.

ACLU also has a draft ordinance to ban facial surveillance in schools, libraries and parks. Police would still be able to use facial recognition subject to the state law and the regulations.

#### Committee members comments, questions, answers

##### Comments:

I am hopeful an action item will be docketed to move this ordinance forward.

Help from the ACLU would certainly be beneficial and supported.

In the past, corporate America and government cyber security wasn't done well, it is the weakest link in the chain.

It would be helpful if we could partner with the ACLU and receive examples of draft ordinance examples from other communities.

It would be beneficial to create an ordinance that separates where we still can solve crime using surveillance just for safety.

In the future, we would like to have the Police Department explain what Newton is doing on data, how data being is being captured, how data is being stored or deleted and what information they have access to.

There is the ability for this technology to recognize people based on their race, and that is concerning. People shouldn't be able to look up and track your movements.

If the City moves forward with facial recognition technology, we perhaps should also limit the powers and the scope. It is about finding a healthy balance.

Due to an incident in the library, the City has requested cameras be installed at the libraries, city hall, and at school doors.

##### Questions and Answers:

What are some of the common places where ring cameras and business cameras are installed? Is the information actively monitored or dormant? Ms. Crockford answered that we have seen an explosive growth in the number of government owned surveillance cameras including schools, public streets and municipal buildings. We've also seen local governments increasingly adopting technology that allows

the police to track where people are driving using license plate readers. The police have a reasonable explanation for why they like license plate readers, they can automatically flag when a car that's connected to an Amber or Silver Alert drives pass a camera and can identify cars that are connected to people who are wanted for dangerous offenses. The policy that these ordinances essentially necessitate at the legislative level is helpful because it can separate the use of surveillance technology for purposes that the community thinks are valuable from those that may cause some real concern about the degree to which people are being monitored, even when they're not suspected of any wrongdoing. Another example is data systems, there are many data systems including corporate and government databases that local police are increasingly accessing and contributing information to.

Chief Carmichael stated from a police perspective, we certainly share everybody's concerns. As far as public safety, we always want to make sure that we have a very careful balance in what we do with public safety and the privacy of people, especially the tracking devices and the technology that exists today. One thing that came to mind during the presentation was the Boston Marathon bombing. If it wasn't for the technology and the video systems that were available to law enforcement, that outcome could have been much different. In today's world, technology is extremely important for criminal investigations. The typical police officer doesn't have a whole lot of time to scroll through data, but it does come in handy when certain types of crimes happen. Another example, in the summer of 2021, we had a lot of house breaks which came down to physical evidence at the scene and sharing of ring camera videos that was collected by residents that gave us video and still photographs of the suspect.

The Police Department has a completely voluntary database of ring camera locations, and the department does not monitor each camera. If there was a crime in a neighborhood, we canvass the area following the crime and ask homeowners if they have video. In Massachusetts, you must have a search warrant for pole cameras. To put a camera out to do surveillance, based on reasonable suspicion that a crime might be taking place, you must rise to the level of probable cause after the Commonwealth vs. Mora case.

At one time, Newton had plate readers, but do not now. Statewide, some cameras have been removed from some highways. Body cameras is a big issue in Massachusetts because there's a push to have police wear body cameras.

The Police Reform Law covers facial recognition technology. A commission will be formed to review information, including whether a law enforcement agency would have to get a search warrant to access the database through the Registry of Motor Vehicles (RMV). Currently, a request must be made in writing to the RMV, unless there's immediate danger, like an Amber or Silver Alert. If video is available to cross reference with facial recognition, we will be able to do that based on an immediate threat.

Chair Downs stated that she would be very interested in pursuing the legislation and discuss with the community to determine how people feel about surveillance technology. The City may want to implement controls on data sharing, to whom and perhaps some other protections because we don't

want data to be misused for other reasons than legitimate police or governmental purposes on how data is collected by the government, access, protected and shared.

Committee members thanked Ms. Crockford for the fantastic and informative presentation.

Without further discussion, Councilor Lipof made a motion for no action necessary. Committee members agreed 8-0.

**#114-22 Request to amend Chapter 24 and Sec. 19-46 for Traffic Personnel**

HER HONOR THE MAYOR requesting to amend Chapter 24 of the Ordinances by adding a new Sec. 24-11 Supplemental Paid Traffic Control Detail Personnel and to amend Sec. 19-46 to include the new Supplemental Paid Traffic Control Detail appointees.

**Action:** Public Safety & Transportation Approved 7-0-1, Councilor Malakie abstaining

**Note:** Chief John Carmichael, Newton Police Department joined the Committee for discussion on this item.

Chair Downs stated that this item has been negotiated with both police unions, The Newton Police Superiors Officers Association (NPSOA) and the Newton Police Association (NPA) in the most recent round of contract negotiations. The ordinance will allow the city to staff details with part time personnel as needed if they have specific qualifications. She then stated that this ordinance would help the City bridge its chronic shortage of people who can do traffic and construction details.

Chief Carmichael stated that the contract is specific on how police details would be filled and in which order. Members of the unions would be offered the details first, then it falls into a supplementary list. Active-duty Newton police officers, retired Newton special police officers, active duty out of town officers and finally supplemental pay detail personnel. This includes retired Massachusetts municipal police officers, retired state police officers, sheriffs, etc. Since the department is now under Police Officers Standards and Trainings (POST), there's certain training and requirements that individuals would have to have to work as a police officer on a detail.

Committee members questions and answers:

The ordinance specifies that unpaid auxiliary police shall not direct traffic at construction sites in the public way. Is there a particular reason for this? Chief Carmichael answered no, it's the standard. They must have certain training.

Who else could be included, beyond the categories presented? Chief Carmichael answered that it could be retired sheriffs who were previously law enforcement officers. The department would review their experience and determine if their training is acceptable. POST establishes the training. For example, if an officer comes from out of state but they don't technically have all the hours to be certified as a police officer here there will be bridge programs set up so that they would be able to participate in extra added training giving the necessary additional hours to reach the standards of a Massachusetts officer.

Does the City only allow active Newton Police Officers, retired Newton Special Police Officers and active out of town officers? Chief Carmichael answered that the process and the practice that's been used is that Newton calls its officers first, then surrounding communities with which we have a memorandum of understanding (MOA). This past summer, the Department tried to recruit other agencies, but couldn't get anyone to sign the MOA because they were also busy and had the same problem. The department tries to establish robust lists so that we have more people to draw from, especially in those months of heavy construction activity.

What percentage will this increase the police detail pool? Chief Carmichael answered it's difficult to say because last summer, the department tried recruiting from the Middlesex County Sheriff's Department who were a hot commodity. The situation turned into something like they were shopping for the highest rate. Newton lost out to other departments that offered higher rates.

Has the department explored opportunities to provide additional training to current city employees as backup or flaggers to create a safer situation?

Last year, a dance was held at the Boys and Girls Club where the Police Department had difficulty filling the police detail. Was the detail request for traffic or ensuring the event was secure? Chief Carmichael answered that a special certified police officer under the POST standards work security details. An officer was assigned from the Community Services Bureau for that event.

Is this docket item specific to traffic and/or construction details? Does the item include specific categories that are not included? Chief Carmichael answered that most Boston College detail requests are for traffic with some security details. Untrained officers or officers not meeting POST standards are not used. There's a difference between a trained officer working as a public safety employee versus directing traffic around a site.

What does the term "based on superannuation" refer to? Is this the rate they will be paid or the ranking within each category? Is the rate the same rate as their pension? Chief Carmichael answered that is retired police officers. He then stated that he did not know what the word superannuation means in this case. Chair Downs added that the City agreed that police details wouldn't affect police officers' pensions if they wanted additional work after retirement.

Chair Downs stated that a clarification would be made to the term "based on superannuation" prior to the City Council meeting.

Without further discussion, Councilor Bowman made a motion to approve this item. Committee members agreed 7-0-1, Councilor Malakie abstaining.

The meeting adjourned at 8:22 p.m.

**Respectfully submitted,**

**Andreae Downs, Chair**

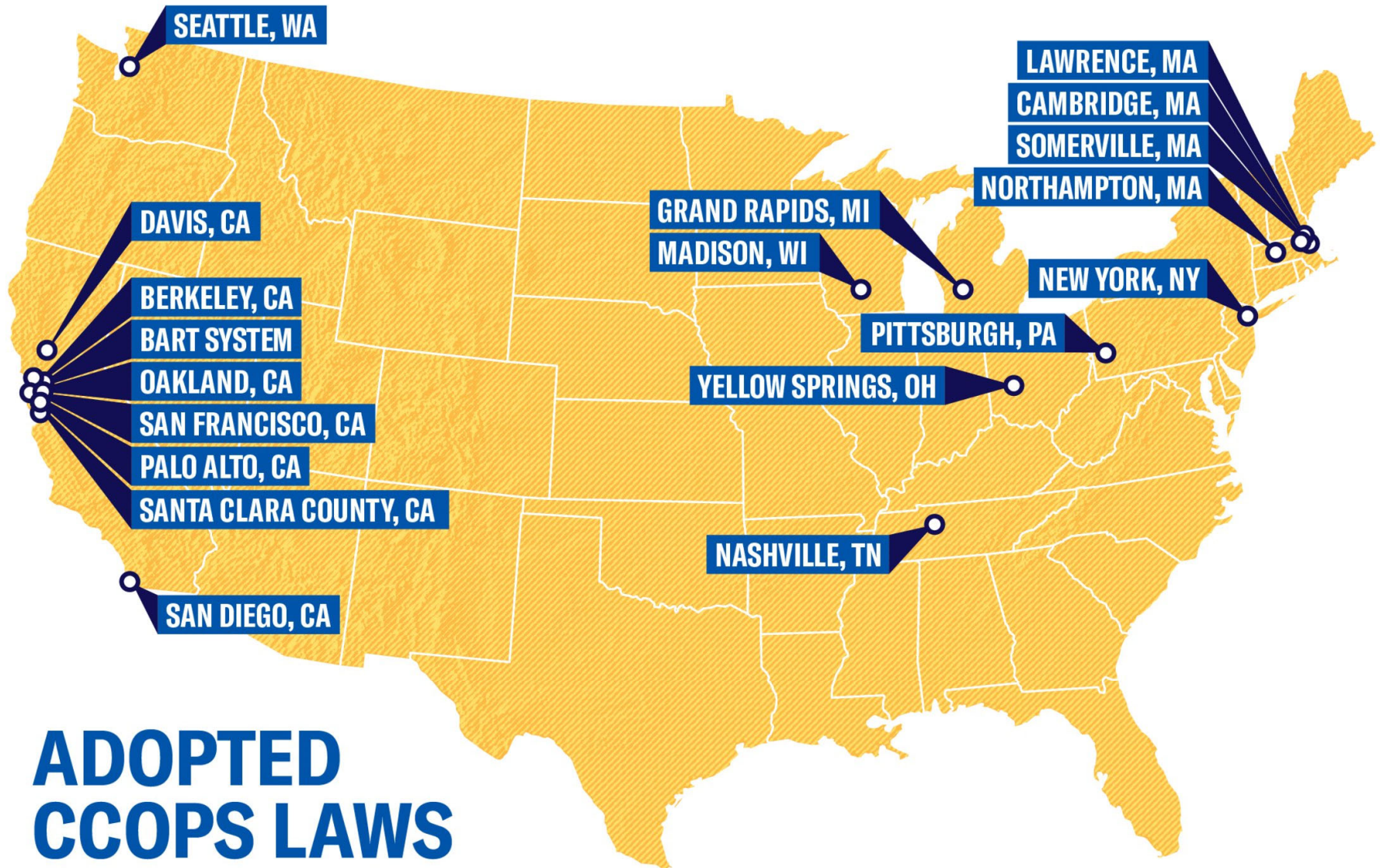
# Municipal Surveillance Law

A survey of the issues and regulatory approaches



## Surveillance oversight approaches

- Surveillance policymaking by procurement
  - No or limited public engagement
  - Often leads to controversy, can lead to crisis
- Surveillance oversight and transparency laws
  - In place in Boston, Cambridge, Somerville, and Lawrence, as well as cities nationwide
  - Center transparency and public accountability
  - Require city council buy-in before procurement
  - Invite expert and community input, to balance contractor claims
  - Govern police relationships with private surveillance companies like Amazon's Ring



# ADOPTED CCOPS LAWS

# Facial surveillance

- Special risks to privacy, freedoms of speech/association/religion, racial justice, due process
- Accuracy and bias problems
- Subject of nationwide movement to prohibit or limit government use
- Key moment for lawmakers to take democratic control of burgeoning surveillance tool
- Prevent dragnet surveillance like we see in China and Russia

# Facial surveillance

1. Surveillance and tracking
2. Emotion/affect analysis
3. Image matching in criminal investigations

Municipal bans on  
government use of  
face surveillance

- Dozens nationwide
- In Massachusetts:
  - Boston
  - Brookline
  - Cambridge
  - Easthampton
  - Northampton
  - Somerville
  - Springfield
  - Worcester

## Massachusetts state law

- Initial regulations established in 2020 police reform law
  - Centralized at State Police
  - Court order required
  - No due process protections, no warrant requirement
  - Not explicit about prohibiting surveillance and affect recognition
- Regulations do not apply to non-police government agencies
- ACLU working to strengthen regulations to ensure they protect civil rights and apply to government broadly (S.47/H.135)

## Possible municipal law reform in Newton

- Surveillance oversight ordinance
  - Vet all existing surveillance technologies and agreements
  - Provide transparency and accountability for existing and future technologies
  - Ensure policies align with Newton's values
- Face surveillance ban
  - Prohibit the use of face surveillance in schools, libraries, public parks
  - Police use subject to statewide regulations
  - Join statewide and national movement pushing for democratic control of new surveillance technology