Committee on City Services, Committee on Legislative Matters and the Northampton City Council

City Services Committee Members:
Chair: Councilor Karen Foster, Vice Chair: Councilor Jamila Gore, Members Councilor Marianne L. LaBarge and Councilor Garrick Perry

Legislative Matters Committee Members:
Councilor Alexander Jarrett, Vice Chair: Marissa Elkins, Members Councilor Stanley W. Moulton, III, and Councilor James Nash

MEETING MINUTES

Date: May 2, 2022 @ Time: 5 p.m.
Virtual Meeting via Zoom

This meeting was held by remote participation. The public was able to follow deliberations by joining the virtual meeting by phone or computer. The meeting was recorded for future upload to the Northampton Government Video Archive on YouTube. Live public comment was available using telephone call-in or video conferencing technology.

1. Meeting Called to Order and Roll Call: At 5 pm Councilor Gore called the meeting to order. Present at the meeting were: Councilor Foster, Councilor Gore, Councilor Perry and Councilor LaBarge. Councilor Gore announced the meeting as being audio and video recorded.
2. Public Comment: Councilor Gore invited members of the public to speak for 2 - 3 minutes.
   a. Andy Anderson from VoterChoice MA wanted to speak about why RCV is an important issue that he is hoping that Northampton will adopt. Mr. Anderson feels that this method of voting is the best possible way to get the best representation of elected officials. About representation, Mr. Anderson stated that we can go back to John Adams, one of the writers of the US Constitution. He noted that the greatest care should be given to gather a representative assembly consisting of an exact portrait of the people that they represent. Elizabeth Morin stated that "if you don't have a seat at the table, then you might end up on the menu". The goal of RCV is ensure fair representation of all members of the public. This is accomplished by instituting a system for eliminating the weakest candidates and allowing people's second or third choice to be considered in future rounds of voting if their preferred candidate is eliminated. Also, if there are multiple seats being elected, RCV has a system to ensure that votes don't pile up for one popular candidate. It is a fair system used in a number of cities.

3. Item Referred to Committee - Three Year Review of city ordinance Article 1 § 290 - Use of Facial Recognition Systems by Municipal Agencies, Officers, & Employees

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Javier Luengo, Organizing Strategist/Community Advocate and Kade Crockford, Director, Technology for Liberty Program from ACLU Massachusetts joined the meeting to discuss the existing ordinance.

On March 14, 2022 the Massachusetts Special Commission to Evaluate Government Use of Facial Recognition Technology in the Commonwealth released its final report, "Special Commission to Evaluate Government Use of Facial Recognition Technology in the Commonwealth". This report was referenced during the meeting.

Javier Luengo notes that the City Council passed its use of facial recognition systems ban in Northampton three years ago. At this point in time, the use of these types of systems is not regulated at the federal level. Kade Crockford runs the Technology for Liberty Program at the ACLU of Massachusetts. She notes that Northampton was one of the first communities to prohibit the use of facial recognition technology in the commonwealth. Since then more communities have passed similar bans on facial surveillance. Boston, Springfield, Worcester & Cambridge are among the eight communities that no longer allow use of the technology. A campaign was launched in 2019 because there was concern that the technology is dangerous when it works and when it doesn't work. There is a lot of evidence to conclude that the technology is not very good yet in some of the areas where it is deployed: specifically, surveillance used to analyze video data, to track people across cameras, or to locate people in a crowd. This is dangerous because it enables governments or corporations to follow where people go in public spaces. It is a form of facial recognition that is not very sophisticated. There are error rates up to 90%. There are a number of studies that have shown that this type of technology performs more poorly when analyzing the faces of women, people with darker skin, young people, and elderly people. It is best when used to identify middle-aged white males. There are also civil liberty concerns. We don't live in a regulated society where a person's every movement is tracked by the government. Kade Crockford was a commissioner on a legislative commission that was established by the Mass state legislature as a result of the omnibus police reform legislation that passed at the end of 2020. This commission was created to study the use of facial recognition systems, some of the accuracy and bias issues, to look at what other countries are doing with respect to regulation, and then to have a conversation about what the regulations should be in Massachusetts to protect the public interest. There was a report published that was endorsed by the ACLU, NAACP, the Mass Bar Association, the Committee for Public Council Services, among others. The report recommends the following:
- The legislature pass a law to require that police get a warrant to perform facial recognition search;
- That the process by which a facial recognition search be centralized at the state police level;
- That there be due process attached to that process (defendants would be given the opportunity to challenge the use of the technology, to seek more information about the search, about the technology, about the training of the individual who performed the search, etc.);
- That the use of technology be limited to serious crimes;
- That the use of the technology be prohibited for use under certain circumstances;
- That emotion technology be prohibited.

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The judiciary committee that was responsible for overseeing the commission is working on their own legislation and it is hoped that the legislation will pass this legislative session.

Councilor LaBarge noted that councilors have no protection from public scrutiny. This happened when the Council was considering reducing the police budget. A public records request was submitted to determine who Councilor LaBarge was speaking to because when the Council reconvened, there was the perception that the Councilor changed her vote. This is not true and the council was proven innocent. Javier Luengo responded that this is complicated because open meeting law looks at serial communication between elected officials. When there are heated conversations @ City Council that people feel deeply about, these kinds of assumptions can be made. This was fully investigated, and proven that a non-city council member was the person who communicated with Councilor LaBarge and therefore, there was no open meeting law violation. The expectation of privacy is diminished when there are public discussions and this can be frustrating.

Councilor Foster wondered if the city ordinance would supersede state and federal laws; Kade Crockford explained that state law would preempt the local ordinance at some level. It wouldn't, for example, preempt the local ordinance from the prohibition to use local resources to buy facial recognition technology. Northampton PD would be allowed to follow any laws allowing them to access this technology, if necessary. It is not clear if the legislators will act at all this session, but if they do, it is also not clear what the scope of the legislation will include.

Councilor Gore wondered if the technology will continue to advance. Kade Crockford responded that the first amendment provides very broad protections in business innovation. However, it is the view of the ACLU that the government must play a role in regulating how these technologies can be used. There are some people who believe that emotion recognition technology has no place in government. There are ways that the technology can be used by private entities; there was recently a report that ZOOM is looking to introduce ER technology. Some corporations are using the technology to assess if someone is reliable; trustworthy, etc. There are people who are working on getting legislators to adopt laws so that this technology can not be used to hurt people for employment or housing. Stopping development of this technology is unconstitutional and not plausible; however, there are things that can be done at the local and state level so that the use of this technology doesn't hurt people.

Councilor Perry had a question about data storage. Is there any regulation about how long companies can hang on to data. Kate Crockford stated that there is no data privacy law in Massachusetts. The ACLU has been working on it during this legislative session; however, there is a bill called the Massachusetts Information Privacy Act which would create some rules about how companies can collect data and share personal information. The best place to address this on a local level is to create language for contracts to put pressure on companies to purge data at regular intervals. The city needs to be careful about is the public record law which has mandatory retention periods for certain types of records. The city should have knowledge of and approval of any company which shares information that is stored on its behalf. Javier Luengo commented that sometimes municipalities have to ask themselves whether the material they are about to create is worth the risk of having to make this available to the public.

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At 5:40 pm the Committee on Legislative Matters convened. On a roll call the following council members were present: Councilor Jarrett, Councilor Elkins, Councilor Moulton & Councilor Nash.

Councilor Moulton stated that his interpretation of the city ordinance was that it was unlawful for any city official to use resources to obtain or access facial recognition software and that he interprets this broadly, including money or time. If his interpretation is correct, he wonders if the legislation is passed, which portions of the Northampton ordinance would be superseded and which would be left in effect. Kade Crockford responded that it would be difficult to know how the legislation would read; but if they do what the recommendations suggest, then the only thing that would change is that the NPD would be able to get a warrant and take a photograph of someone they want to identify in a felony investigation, and send it to the State Police for a facial recognition search. Javier Luengo noted that the city's ordinance reflects "no city resources" vs. "no city official", and this is powerful.

Councilor Nash asked whether the ACLU recommended no changes to the city's ordinance, and both Javier Luengo and Kade Crockford agreed. Councilor Nash reflected that this is about surveillance protections in general. There were concerns raised about license plate reading technologies. In California, data like this has been collected by cruisers on highways. Councilor Nash wondered if there was a position about license plate reading technology. Kade Crockford responded that license plate reader technology can be purchased by anyone. There are private companies that collect and sell the data. This allows mass tracking of where people are going. Police can use this technology to find cars and also dragnet mass surveillance to determine patterns of peoples' travels.   The ACLU thinks that there should be a limited retention time that data is stored and if the city was interested, an ordinance could be crafted with the council that addresses license plate reader technology.

Javier Luengo noted that in 2019, a company purchased by Motorola shared their database with more than 9,000 ICE agents which represents 5 billion datapoints shared with an arm of Homeland Security.

Councilor Perry wondered if there were other technologies that the council should consider; Kade Crockford suggested a citywide audit about what technologies were being used to capture data, what the policies are like to protect the data and to get a sense of what is happening. The council should communicate with the executive branch that it wishes to be involved in policy making with respect to data capturing technologies.

Councilor LaBarge agreed that a citywide audit would be helpful.

At 5:57 Councilor Jarrett assumed the position of Chair for the next portion of the meeting to discuss Ranked Choice Voting.

4. Items Referred to Committee - 22.072 An Order For Special Legislation Relative To Ranked Choice Voting In The City Of Northampton

Process Note:

4/14/2022 - Presentation of Ranked Choice Voting committee recommendation presented by Robert Boulrice, Committee Chair

4/14/2022 - City Council approved sending item to City Services, Legislative Matters & Board of Registrars. This item will be placed on City Council agenda for 5/19/2022 for final vote. Committees are asked to complete their review of the legislation & provide their recommendation back to City Council no later than 5/16/2022.

Additional Resources:

Chair of the Ranked Choice Voting Committee, Robert Boulrice and Vice Chair Catherine Kay were present to discuss the recommendations made by the committee. They suggested a website, www.fairvote.org, which talked about how ranked choice voting works, and give great examples of ballots and detailed explanations about the various aspects of RCV. Candidates on a ballot are ranked in order of preference. In order to gain maximum power of RCV, education must include informing the voter to rank all candidates as this gives the voter an additional voice if their preferred candidate does not win. RCV provides a greater degree of representation and better expresses what voter intent is by virtue of how votes are counted. The process works by transferring excess votes from candidates who have been deemed elected and the transfer up of subsequent preferences of candidates not elected. Those actions in combination end up with a more representative reflection of the voter preference. Calculating the threshold is an important part of the process. If it is a one seat race, the candidate with the majority wins. Two seats require 33% plus one vote. The threshold is important because it helps to know when there are excess votes that need to be redistributed in subsequent rounds of ballot counting. The committees reviewed an example of how RCV worked. The demonstration showed that the allocation of excess votes and votes of those candidates not able to win continues in rounds until all seats are filled.

The committee reviewed a video that described the RCV process.

Councilor Nash asked about the Weighted Inclusive Gregory Method; it seems complicated. He wondered if there were other methods considered that would be easier to explain. Chair Boulrice explained that the committee considered four or five other methods. The WIGM method was chosen because it provides the most defensible outcomes. Some of the other methods showed surprising outcomes that were not defensible and were proven to cause problems resulting in the removal of RCV as the election method in other communities. Amherst has also chosen this method after considerable research because the outcome was more acceptable. Catherine Kay notes that using the WIGM method, when she casts a ballot, her cast votes are more fully included in the results. Other methods transfer votes from eliminated candidates only. Excess votes are discarded for candidates who are elected and therefore wasted. Under the WIGM methods, a voter's preferences continue until all votes are exhausted. She notes that she had to be convinced because this seems challenging to explain. Integrity of the voting process is important and people need to understand how the process works in order to be assured of its integrity.

Councilor Foster asked about managing the election process. Clerk Powers explained that the application of RCV software would likely happen the day following an election resulting in a

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longer period to determine winners in multi-seat races. The ballot will look different, but the scanner will read and summarize the choices at the voting precinct. Individual precincts will bring their results to City Hall where the information will be run through software that will perform the ranking analysis. The purchase of the software will cost about $9,000. In close races winners may not be known until the day following an election.

Councilor Jarrett asked about write-in candidates. Clerk Powers explained that there is a process in place today to manually summarize write-in candidates and this will still need to be done under the RCV method.

Councilor Moulton feels that the selling point for RCV is that it will keep every voter "in the game for as long as it lasts". He notes that RCV has been used successfully and that Minneapolis has a good model for an educational material for how RCV works.

Chair Boulrice notes that Cambridge has been doing it since 1940. When conducting an election where the threshold is 20%, Cambridge uses a method by randomly picking 20% of the ballots where the subsequent choices are reallocated. The WIGM is a better method for redistributing votes.

Councilor Nash asked about outcomes that we would be avoiding by using the WIGM.   Chair Boulrice explained that if you use the bottom up method, the expression of the voters who voted on candidates that did not get elected is going to be expressed in the number two vote. This might disrupt the number 1,2,or 3 candidate ranking. So a number 2 candidate could be knocked out in the second or third round using this method.

Clerk Powers summarized the process of adopting RCV in Northampton:
The order will go back to city council for approval; Mayor Sciarra will need to approve; Mayor Sciarra will send the measure to the state legislature & Elections Division of the Secretary of the Commonwealth's Office; a question will be placed on ballot for voters to consider; and independent voter education (perhaps cooperative education with Amherst) will need to be conducted.

Councilor Elkins noted that in past elections there have been committees formed to raise funds to promote questions on the ballot that are of interest to the city. The education component will require specific consideration.

Councilor Perry feels that voter rights are being eroded. He feels that it will be a significant task to educate voters and would like to look at more examples of what the education might look like. Chair Boulrice encourages talking to VoterchoiceMA and looking at what is available through their organization. Fairvote.org also has great information. New Jersey and Maine have both done a good job at voter education.

Catherine Kay states that one thing that other municipalities have done is to have a mock election. Using this approach, people will see what the ballot looks like and how to mark it and how the tabulation is done. She feels that this is a good opportunity to get people to vote and get excited about voting.

Andy Anderson from VoterchoiceMA commented that there are only winners after candidates reach the election requirement. Before that, there are only leaders. We should strive to avoid saying that someone has "won the first round".   VoterchoiceMA will continue to be involved once education begins in Northampton.

For Legislative Matters, Councilor Moulton moved to send this back to City Council with a positive recommendation; Councilor Elkins seconded the motion. The motion was approved on a roll call vote of 4 Yes, (Elkins, Moulton, Nash, Jarrett), 0 No.

For City Services, Councilor Perry moved to send the item back to City Council with a positive recommendation; Councilor LaBarge seconded the motion. The motion was approved on roll call vote of 4 Yes (Gore, LaBarge, Perry, Foster), 0 No.

Discussion:
Councilor Jarrett noted that while the process is complicated, once he understood how it worked, it makes sense. He loves the opportunity for anti-gerrymandering that were described; he thought that having a majority of the electorate have a stake in each round is important as is not having to waste votes or having to "strategically vote". He feels that this is worth the education that has to be done and he will be supporting this.

Councilor Jarrett noted that this will go to the Board of Registrars for consideration and then will go back to City Council on May 19.

At 7:09 pm Councilor Elkins moved to adjourn Legislative Matters; Councilor Moulton seconded the motion. The motion was approved on a roll call vote of 4 Yes, (Moulton, Nash, Jarrett, Elkins).

At 7:09 pm City Services took a short recess. After the recess the committee took up appointments that were referred by city council.

5. Appointment of Paul Foster-Moore to the Conservation Commission

Process Note:

Referred to Committee on City Services by City Council on 3/31/2022

Conservation Commission
Paul Foster-Moore, 147 Turkey Hill Road, Florence
Term: April 2022-June 2025 To fill a vacancy

Councilor LaBarge interviewed the candidate. He would like to join the Conservation Commission for the following reasons: he has been involved in protecting public land and this is a logical next step. He was the co-chair of the ward 6 committee to save the Mineral Hills area which worked to put this land into conservation restricted status. He has been a member of the Nature Conservancy since the 1980's. He is an outdoor enthusiast and appreciates clean water and the unspoiled outdoors. He understands the work of the Conservation Commission as it pertains to reviewing proposed development plans that might potentially pollute groundwater or harm swamps, floodplains, wildlife habitat and riverfront zones. The work is consistent with the federal Clean Water Act and the Massachusetts Wetlands Protection Act. He would like to focus on local challenges that have solutions he is willing to implement.

Councilor LaBarge moved to return the appointment back to the City Council with a positive recommendation; Councilor Perry seconded the motion. The motion was approved on a roll call vote of 4 Yes (Perry, LaBarge, Gore, Foster).

6. 22.075 Appointments

Process Note:

4/14/2022 - Referred to Committee on City Services by City Council

Community Preservation Committee
Brian Adams, 9 Hayward Road, Florence
Term: July 2022-June 2025, *Reappointment*

Conservation Commission
C. Mason Maronn, 16 Ellington Road, Florence
Term: July 2022-June 2025, *Reappointment*

Disability Commission
Emma Cornwell, 256 Pleasant Street, Apt. 309, Northampton
Term: July 2022-June 2025, *Reappointment*

Historical Commission
Martha Lyon, 313 Elm Street, Northampton
Term: July 2022-June 2025, *Reappointment*
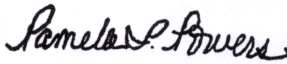
Human Rights Commission
Megan Paik, 9 Laurel Street, Northampton
Term: July 2022-June 2025, *Reappointment*

Councilor LaBarge moved to return the appointments back to City Council with a positive recommendation; Councilor Perry seconded the motion. The motion was approved on a roll call vote of 4 Yes (Gore, LaBarge, Foster, Perry), 0 No.

7. New Business: Councilor Foster invited Bill Newman from the ACLU, and former city councilors Bill Dwight and Alisa Kline to the June meeting. These individuals worked on the original facial recognition technology. She also notes that the appointment of Patrick McCarthy as the Central Services Director will likely be referred to the committee in June.

8. Adjourn: At 7:27 pm Councilor Perry motioned to adjourn the Committee on City Services; Councilor LaBarge seconded the motion. The motion was approved on a roll call vote of 4 Yes (Gore, Foster, Perry, LaBarge), 0 No.

Attest:_____
Pamela L. Powers, City Clerk