



Medford City Council  
Medford, Massachusetts

**The Fourth Regular Meeting, February 14, 2023**

**City Council**

Isaac B. "Zac" Bears  
Richard F. Caraviello  
Kit Collins  
Adam Knight  
Nicole Morell  
George A. Scarpelli  
Justin Tseng

Broadcast Live: Channel 22 (Comcast) and Channel 43 (Verizon)

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President Nicole Morell called the Regular meeting of February 14, 2023 of the Medford City Council to order at 7:00 P.M. in the Howard F. Alden Memorial Auditorium, Medford City Hall.

**ROLL CALL**

Present: Councillor Bears; Councillor Caraviello; Councillor Collins; Councillor Knight; Councillor Morell; Councillor Scarpelli; Councillor Tseng. Inside the Rail: City Clerk Adam Hurtubise; City Messenger Lawrence Lepore.

**SALUTE TO THE FLAG**

**ANNOUNCEMENTS, ACCOLADES, REMEMBRANCES, REPORTS, AND RECORDS**

**23-033**-Offered by Councillor Knight

Be it so Resolved that the Medford City Council wish Jack McDevitt a happy 85th birthday.

Councillor Knight moved for approval (Councillor Caraviello second)—approved.

**23-034**-Offered by Councillor Caraviello

Be it Resolved that the Medford City Council send its deepest and sincere condolences to the family of Russ Rossetti on his recent passing. Russ was a long-time supporter and Board Member of Chevalier Auditorium. His presence in our community will be sorely missed.

Addressing the Council:

Andrew Castagnetti, 23 Cushing Street

Councillor Caraviello moved for approval, and further moved that tonight's meeting be dedicated in Mr. Rossetti's honor (Councillor Scarpelli second)—approved, and meeting dedicated in Mr. Rossetti's honor.

**23-035**-Offered by President Morell and Councillor Tseng

Be it Resolved that the City Council celebrate this month as Black History Month and recognize the significant contributions that Black Medford residents have made in shaping our city and history and enriching our community life.

Councillor Tseng moved for approval (Councillor Scarpelli second)—approved.

**23-036**-Offered by Councillor Caraviello

Be it so Resolved that the Medford City Council commend and congratulate the following firefighters on their respective promotions: Frank Giliberti to Deputy Chief; Michael Halloran to Captain; and Samuel McLain to Lieutenant.

Councillor Caraviello moved for approval (Councillor Tseng second)—approved.

**Records:**

The Tabled Records from January 17, 2023 were passed to Councillor Knight. Councillor Knight moved for approval (Councillor Tseng second)—approved.

The Records of the Meeting of January 31, 2023 were passed to Councillor Scarpelli. Councillor Scarpelli moved for approval (Councillor Tseng second)—approved.

**Reports of Committees:**

**22-581-** January 31, 2023 Committee of the Whole Report.

**22-581**

**COMMITTEE OF THE WHOLE**

**MEETING REPORT**

**TUESDAY, JANUARY 31, 2023 @ 6:30 P.M.**

This meeting will take place in the Howard F. Alden Memorial Chambers on the second floor of Medford City Hall, and via Zoom.

Join Zoom Meeting

<https://us06web.zoom.us/j/82890386279>

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To participate remotely outside of Zoom, please e-mail [AHurtubise@medford-ma.gov](mailto:AHurtubise@medford-ma.gov).

Attendees: Council President Nicole Morell; Council Vice President Isaac "Zac" Bears; Councillor Richard Caraviello; Councillor Kit Collins; Councillor Adam Knight; Councillor George Scarpelli; Councillor Justin Tseng; City Clerk Adam Hurtubise; Alicia Hunt, Director of Planning, Development and Sustainability; Viktor Schrader, Director of Business Development.

President Morell called the meeting to order on Tuesday, January 31, 2023, at 6:30 p.m. in the Medford City Council Chamber on the second floor of Medford City Hall, and via Zoom. The purpose of the meeting was to discuss a proposed fee schedule for the Planned Development District Proposals (Paper **22-581**).

President Morell thanked participants for attending. Vice President Bears said that this is about fees to be charged for planned development district proposals under the zoning code. There are two proposals. One implements fees as discussed in September and another implements portions of state law.

Director Schrader said Medford summarized the fee structure. The fee is \$.05 per square foot of development above 5,000 square feet. He said this is modeled on other cities' fee structures. The purpose is to cover fees for review of the application.

Vice President Bears said that this would likely be an appendix to the zoning code and might be a zoning change. He asked about some of the fees for the Planning Board.

Director Hunt said that various state laws make these fee structures possible. These structures allow the City to charge the applicant for the hiring of a consultant.

Director Schrader said that in addition to Planning and Development, zoning amendments might also fall under this structure.

Director Hunt said that this technique is new to the City of Medford but our Finance Director was already quite familiar with this. She said the CD Board has been looking at this and the Zoning Board is using it for the 40B project.

Director Hunt said the language she provided is not actually in the zoning code. This would be inserted into Appendix A, which is separate from zoning. She said her understanding is that this would be a standard amendment to our ordinances and not

zoning, in response to a question from Vice President Bears. Vice President Bears said section 9.2 authorizes the creation of a fee structure.

Vice President Bears moved to report out the language regarding the amendment to Appendix A under the paper number for this meeting (22-581) (Councillor Collins second)—approved.

Councillor Knight arrived at 6:49 p.m.

Councillor Scarpelli moved to adjourn at 6:51 p.m. (Vice President Bears second)—approved.

President Morell adjourned the meeting at 6:51 p.m.

[End of Committee of the Whole Report.]

Councillor Knight moved to approve the report (Councillor Tseng second)—approved.

**22-494-** February 7, 2023 Subcommittee on Ordinances and Rules Report.

**22-494**  
**SUBCOMMITTEE ON ORDINANCES AND RULES**  
**MEETING REPORT**  
**TUESDAY, FEBRUARY 7, 2023 @ 6:00 P.M.**

Join Zoom Meeting

<https://us06web.zoom.us/j/81736461988>

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To participate remotely outside of Zoom, please e-mail [AHurtubise@medford-ma.gov](mailto:AHurtubise@medford-ma.gov).

Attendees: Council Vice President Isaac “Zac” Bears, Subcommittee Chair; Councillor Kit Collins; City Clerk Adam Hurtubise; other participants as noted in the body of this report.

Chairman Bears called the meeting to order on Tuesday, February 7, 2023, at 6:00 p.m. in the Medford City Council Chamber on the second floor of Medford City Hall, and via Zoom. The purpose of the meeting was to discuss the creation of a Budget Needs Assessment Ordinance to provide accurate and actionable information on the City of Medford's operating and capital budget needs and the deficit between current revenues and needed expenditures (Paper **22-494**).

Chairman Bears thanked participants for attending. He said that his proposal would create an additional ordinance for processing and analyzing our needs as we prepare for and review the budget. He said the other piece is around the operating budget in which we have a number of vacant positions such as a code enforcement officer and an assessor. He said we need a formal process using actionable information. He said that we cannot just do one report, then wait five years and do another report. He said his thoughts were to get a list of thoughts and concepts about what we would like to see around the budget. He said these would need to be sorted by ordinance, state law, the charter, and other governing documents.

Councillor Collins said she is pleased that we are undergoing this process. She said that taking the vote at 2 a.m. on the last possible day is not the best way to vote on a budget. She said that our experience passing the last budget creates a process that we can look at and have a meaningful conversation about the next budget. She detailed processes that can make the entire budget season more robust.

Chairman Bears said that the 2023 budget was the worst one he was involved with, and he said that there is a minimum budget process required under state law. He asked what we can do beyond that process. He said that ideally the Council could meet with the Mayor and department heads earlier in the process. He said the Council is also pressing for regular quarterly updates. He said that this should be formalized into a schedule and a routine. He said he is also concerned about adversarial conversations that occur late in the budget process or after the budget is passed and additional funding requests are submitted. He said he would love to see some sort of participatory process.

Councillor Collins said we have not done too much with participatory budgeting. She said we should explore creating a new culture for how the budget works. She said she wants to collaborate with the Mayor and Department Heads to lead to more meaningful discussions and conversations. She said last year these meetings happened in late May and June. She said she would love to see budget meetings in January and February. She said that this is a way we could funnel all of the input we receive throughout the year to the appropriate Department Heads. She said there needs to be additional community engagement, earlier in the process. She said the goal is that by late March or early April, the Council has a great deal of information at its disposal.

Chairman Bears said that this timeline would be very helpful. He said there will be a meeting on February 21 that could be a model for this. He said that the Council asked for this last June. He said that this is about rebuilding trust and collaboration. He said a lot of people he has spoken with are very concerned about the upcoming budget. He said he didn't want to re-litigate past actions. He said we heard from Director Dickinson that our systems do not communicate with each other, and that there is a significant capital need here. He said if we are constantly cleaning up the past, we are not going to have the conversations we need to have. He said that there is a great deal of finance and accounting work to be done. He said we need hundreds of thousands of dollars invested here.

Councillor Collins said we would have to examine what we would need to change procedurally, what would be meaningful change. She said that questions through resolutions don't necessarily get us very far. She said we should have scheduled public meetings to discuss all these topics. She said the staffing level in the Finance Department is very critical in terms of creating the budget.

Chairman Bears said there were resolutions and discussions in multiple meetings regarding the information requested from the Finance Director, and there were a number of miscommunications or other issues to the point that the Finance Director didn't know what we were asking of him. He said that this pre-dated the Finance Director and resulted in a confrontation. He said the seven hours of dialogue with the

Administration were not the problem. He said the problem was that the dialogue began at 7:00 p.m. on the night the Council approved the budget.

Councillor Collins said that she hopes that if we institute more public meetings, earlier, that there is a lot more good that can come from these interactions. She said right now the budget process is unbelievably hasty.

Chairman Bears said we have a lot to start with here. He said that this is strong brainstorming. He said we all agree that there are issues that should be better than they are. He said this needs assessment would be a comprehensive understanding of capital needs and operational needs. He used our road conditions as an example. He said we need to define "need" in some way. He said there may be disagreement on that. He said that there is also a question of reporting details and frequency.

Councillor Collins said that there is a lot to think about here. She said overall, these are the questions we need to be asking. She said that this starts to demonstrate part of what we need.

Chairman Bears said a lot of this involves setting a strong budget process every year, so people know what to expect. He said that there are certain things that are high priorities. He said we discussed the water meter program. He said that none of us had objections to it. He suggested a budget dashboard on the City website, which would also inform our residents.

Councillor Collins said that even disseminating the information that we do have would go a long way. She said that the information we do have needs to have context.

Chairman Bears said that the budget narratives that go with the budget submissions are more like annual reports. He said we only get a small snapshot of department activities. He said that these delineations of needs could be spelled out in a more detailed fashion.

Councillor Collins said we also have to look at the needs of our constituents. She said we need more of their input into community needs.

Chairman Bears said we are spending a great deal of time treading water. He said that the current system is putting everyone in an adversarial position.

Councillor Collins said that some of this might create a burdensome situation for City staff. Chairman Bears said that the first time we do any of this, it is probably not going to be done perfectly. He said we need to differentiate between needs, and focus on what are urgent needs, and what are not urgent needs.

Chairman Bears said his quick thought is that there is clearly a power imbalance and that the Council doesn't have much authority to alter the budget. He said really that the Council's only power is to withhold its approval or to reject the budget. He said he knows that this is what people want to talk about with Charter Review. He said Charter Review would take years to implement. He said that the Council needs more authority to be a truly collaborative partner with the Administration.

Councillor Collins said one of the things she has learned is how little authority the Council has over the budget process. Chairman Bears said a more collaborative process produces better results. He said we could take some lessons from the way the School Committee approaches the budget process. He said it hasn't solved the problems because there are still huge funding issues.

Councillor Collins said that an opaque budget process provides cover in an unhelpful way. Vice President Bears said that given where we are, we have had a good 90-minute discussion.

Councillor Collins said next steps should be to put this information into categories. Chairman Bears said one thought would be to turn the notes and committee report for this meeting into two documents. One would be a framework memo on the budget process. That could be turned into a memo of what the ordinance could look like. Another document could be the budget improvements we'd like to see outside an ordinance.

Councillor Collins moved to keep the paper in committee (Chairman Bears second)—approved.

Chairman Bears moved to invite legal counsel and the Finance Department staff to a future meeting to discuss the two memoranda (Councillor Collins second)—approved.

Chairman Bears moved to create the two memoranda described above, using this committee report and meeting notes as the basis (Councillor Collins second)—approved.

Councillor Collins moved to adjourn at 7:36 p.m. (Chairman Bears second)—approved.

Chairman Bears adjourned the meeting at 7:36 p.m.

[End of Subcommittee on Ordinances and Rules Report.]

Vice President Bears moved to approve the report (Councillor Scarpelli second)—approved.

**22-514-** February 8, 2023 Committee of the Whole Report.

**22-514**  
**COMMITTEE OF THE WHOLE**  
**MEETING REPORT**  
**WEDNESDAY, FEBRUARY 8, 2023 @ 6:00 P.M.**

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Attendees: Council President Nicole Morell; Council Vice President Isaac "Zac" Bears; Councillor Richard Caraviello; Councillor Kit Collins; Councillor Adam Knight; Councillor George Scarpelli; Councillor Justin Tseng; City Clerk Adam Hurtubise; Alicia Hunt, Director of Planning, Development and Sustainability; Yvette Niwa, Office of Planning, Development, and Sustainability; other attendees as noted in the body of this report.

President Morell called the meeting to order on Wednesday, February 8, 2023, at 6:00 p.m. in the Medford City Council Chamber on the second floor of Medford City Hall, and via Zoom. The purpose of the meeting was to discuss proposed updates to the Outdoor Dining Ordinance within Medford (Paper 22-514).

President Morell thanked participants for attending. Councillor Scarpelli said that he understands we are trying to bring business forward, but he said he wanted to implore his colleagues to look at what we can put on the back burner until we have a City Solicitor so we are not paying KP Law. He said we cannot do our jobs without some kind of legal review. President Morell said any edits tonight were provided by PDS.

Councillor Knight said that he doesn't see a need to stand in the way of this ordinance. He said he recognizes Councillor Scarpelli's points. He said that this is a decent proposal before us. He said he is concerned with the lack of transparency and lack of fiscal restraint shown by the Administration. He said that our outside legal counsel represents the Mayor's Office, not the City. He said we are spending millions of dollars on outside legal fees.

Ms. Niwa presented an update. She highlighted the changes to the ordinance since the last meeting. She said that the changes have been incorporated, regarding locking furniture in place nightly and emptying trash nightly.

Vice President Bears said he had reviewed the draft ordinance and he said he thinks it meets the intent of the motions made at the last meeting. He said he would like to keep the severability section in place. He said he had questions about whether some of the provisions carried over between drafts.

Director Hunt said the intention is to be a strike and replace. She said that she included a conflicts section rather than a severability section. She said it is slightly different. She said that much of this is being discussed at the state level. She said her recommendation is to be as general as possible.

Councillor Caraviello said that existing restaurants were required to get extensions to their liquor licenses. Ms. Niwa said that pandemic-related executive orders allow these extensions.

Ms. Niwa said she has several options for bringing parklets up to curb level. She highlighted provisions of state and federal law that would govern. She said it wouldn't be sufficient just to provide seating at street level. It needs to be accessible. She said business owners can apply for waivers in certain situations.

Vice President Bears recommended a two-tiered registration fee system, with a higher registration fee when restaurants do not have a parklet structure.

Councillor Tseng asked if PDS leaned toward any option. Ms. Niwa said that community members said that these structures can cost \$5,000 and up and can also cost parking spaces.

Councillor Collins said she wants to make sure that all accessibility requirements are upheld. President Morell asked if Ms. Niwa had spoken with Commissioner Forte and Ms. Niwa said she had reviewed this with him and also with Director Schrader.

Councillor Collins said she wanted to address questions about having dogs at the outdoor dining venues. Ms. Niwa said that included in the license requirements, intended to be separate from the body of the ordinance, there is a provision that would allow restaurants to include provisions for leashed and licensed dogs at the restaurant's discretion, with additional rules. The rules would not apply to service animals.

Ms. Niwa said a clause was added, allowing the Building Commissioner to promulgate rules and regulations. Responding to a question from President Morell, she said the intent was to allow us to be more nimble. She said that KP Law requested changes

saying that the Building Commissioner has licensing authority. She said she also wanted to discuss requirements for insurance. She said that the City could require minimum coverage amounts.

Councillor Collins said that she would trust that the Building Commissioner would weigh in.

Ms. Niwa said that the last language change was an addition on conflicts and on regulatory authority. She said that there was discussion of licensing fees. She said that the feedback was that the \$200 fee was too low. She said legally fees must be proportionate to costs to the City staff to review. She said an option would be for a \$200 license fee for all and an additional \$200 per parking space. Owners could apply for waivers for parklet seating.

Vice President Bears asked if there is information on the costs for staff to review. Ms. Niwa said she could come back with that data. Vice President Bears said that these would only apply to sidewalk seating or parklets in the right of way. He said he would like to see a little more of a tiered structure. He said he wanted to encourage businesses to have the parklet structure.

Councillor Collins said this is a very good start. She said she supports tiers for the three scenarios.

Councillor Tseng said that this is a great opportunity. Vice President Bears asked about the possibility of additional fees or higher fees, in a tiered structure. Ms. Niwa said that if the costs are commensurate with the costs of City Staff time, she thinks they would pass muster. Vice President Bears said that the costs could be \$500, \$250, and \$125, particularly when parking spots are involved, and he said he could make this as a motion.

President Morell said that the additional spot impact costs make sense. She said she would be curious about the parking review. Vice President Bears said that since the Building Commissioner is empowered to license, there would be additional staff costs.

Councillor Knight said we should give the Building Commissioner the authority to set the fees since the ordinance would make him the licensing authority. President Morell said that this is a good point when fees are set by ordinance.

Councillor Tseng said he agrees with the sentiment and the idea and that this would make it more flexible, if it is allowed legally.

Councillor Knight said that ultimately the fee structure could be set by the Building Commissioner, approved by the Council, and amended from time to time. Vice President Bears said that he would add the fee for parklets with a structure would vary

Vice President Bears moved that sections 14-480 and 14-494 language be incorporated into the draft ordinance (Councillor Knight second)—approved on a roll call vote of seven in favor and zero opposed.

Councillor Knight moved to adopt the third option from PDS to have the Building Commissioner uphold the design and accessibility standards (Vice President Bears second)—approved on a roll call vote of seven in favor and zero opposed.

Vice President Bears moved to have the Building Commissioner set a fee structure with the following language: “The application fee for parklet seating with a parklet structure level with the sidewalk shall be one-half of the fee for parklet seating without a parklet structure. The application fee for sidewalk seating shall be one-quarter of the fee for parklet seating without a parklet structure.” (Councillor Knight second)—approved on a roll call vote of seven in favor and zero opposed.

Vice President Bears moved to report the paper out of committee for the Council agenda pending changes made through motions at this meeting (Councillor Collins second)—approved on a roll call vote of seven in favor and zero opposed.

Councillor Collins moved to adjourn at 7:03 p.m. (Councillor Tseng second)—approved.

President Morell adjourned the meeting at 7:03 p.m.

[End of Committee of the Whole Report.]

Vice President Bears moved to approve the report (Councillor Tseng second)—approved.

### **MOTIONS, ORDERS, AND RESOLUTIONS**

#### **23-025-Offered by Councillor Scarpelli**

Be it Resolved that the City Council invite a member of the City Administration, Neil Osborne, and a representative from the Medford Fire Department to discuss issues and concerns dealing with fire trucks and human resource questions.

Councillor Scarpelli moved to table until the next meeting (Vice President Bears second)—tabled until the next meeting.

At 7:15 p.m., Vice President Bears moved to suspend the rules to take Paper **22-043** (Councillor Tseng second)—approved.

### **COMMUNICATIONS FROM THE MAYOR**

#### **23-043-**

February 8, 2023

#### **Via Electronic Delivery**

To the Honorable President and  
Members of the Medford City Council  
City Hall  
Medford, MA 02155

#### **Re: Request to Establish a Revolving Fund for Stormwater**

Dear President Morell and Members of the City Council:

I respectfully request and recommend that the City Council approve the following amendment to Chapter 2, Article V, Division 4, of the City's Ordinances by adopting the following change:

The table in "Sec. 2-964. – Authorized revolving funds" shall be amended to include a  
Stormwater Revolving Fund as per the enclosed table.

Enclosed is a letter from City Engineer & Stormwater Board Chair Owen Wartella which outlines this request and provides supporting documentation. Finally, I am enclosing a memorandum by Finance Director/Auditor Bob Dickinson which provides the necessary certification pursuant to M.G.L. c. 44, § 53E ½ for establishing a revolving fund in the middle of a fiscal year.

City Engineer Owen Wartella will be available to speak to this request and answer any questions you may have.

Thank you for your kind attention to this matter.

Sincerely,



Breanna Lungo-Koehn  
Mayor  
(signature on file / paper)

Addressing the Council:

City Engineer Owen Wartella

Councillor Knight moved for approval for first reading (Councillor Scarpelli second)—approved for first reading on a roll call vote of six in favor, zero opposed, and Councillor Collins briefly absent from the Chamber.

At 7:19 p.m., while under suspension, Councillor Caraviello called for Paper **23-039** and Councillor Knight called for Paper **23-038**. Without objection, the Council considered the papers.

**23-038-** Offered by Councillor Knight

Be it so Resolved that the Medford City Council request the City Administration to deploy pothole crews to patch roadways with priority to emergency arteries in the City of Medford.

Addressing the Council:

City Engineer Owen Wartella  
Andrew Castagnetti, 23 Cushing Street

Councillor Knight moved for approval (Councillor Caraviello second)—approved.

**23-039-** Offered by Councillor Caraviello

Be it so Resolved that the Medford City Council have the City Engineer report back with the repaving schedule for Bower, Holton, Temple, and Tontine Streets this spring. Be it further resolved that the Public Utilities pave curb to curb similar to the same standards private contractors are held to do when they open the streets.

Addressing the Council:

City Engineer Owen Wartella

Councillor Caraviello moved for approval (Councillor Knight second)—approved.

The Council considered the following three papers while under suspension:

**23-042-**Offered by Councillor Caraviello

Be it Resolved that the Medford City Council reach out to our Federal delegation in regards to the continued problems at the Medford Post office.

Addressing the Council:

Andrew Castagnetti, 23 Cushing Street

Councillor Caraviello moved for approval (Councillor Knight second)—approved.

**23-040** - Offered by Councillor Caraviello:

Be it Resolved that the Medford City Council request that the Recreation Department look into putting a Porta Potty at the Pickle Ball Courts at Dugger Park.

Councillor Caraviello moved for approval (Councillor Scarpelli second)—approved.

**23-041** -Offered by Councilor Caraviello:

Be it Resolved that the Medford City Council request the DPW place a rubbish receptacle in front of Saint Joseph school.

Councillor Caraviello moved for approval (Councillor Scarpelli second)—approved.

At 7:37 p.m., Vice President Bears moved to revert to the regular order of business (Councillor Tseng second)—approved.

**23-037**- Offered by Vice President Bears

Be it Resolved by the Medford City Council that the City Administration take the following steps relative to the City Budget to ensure transparency, accuracy of information and reporting, and that all Boards and Commissions have the budget information they need to function:

1. That the City Administration produce a 2023 budget book in ClearGov before the budget hearings start.
2. That all Commissions have binders as part of the budget book.
3. That the City Administration reinstate annual reports to be published at the beginning of each calendar year. This will help the city prepare in advance for the budget process while providing a valuable source of transparent information about the city's budget and activities.
4. Develop a 1-sheet on financial processes/policies/budgeting for Boards and Commissions and share with all members of Boards and Commissions.

Be it Further Resolved that the Subcommittee on Ordinances and Rules incorporate these recommendations and/or any responses from the City Administration into the draft Budget Needs Assessment Ordinance currently being worked on by the subcommittee.

- a) Vice President Bears offered an amendment striking the year “2023” and replacing it with the year “2024”.

Vice President Bears moved for approval as amended (Councillor Scarpelli second)—approved as amended.

**22-058**—Offered by Vice President Bears and Councillor Collins

## **Section 50, Article III - An Ordinance To Promote Transparency and Protect Civil Rights and Civil Liberties With Respect to Surveillance Technology**

### **Section 50-70. - Purpose and Intentions.**

The purpose of this Ordinance is to provide for the regulation of Surveillance Technology acquisition or use by the City of Medford or the use of the Surveillance Data it provides, to:

- I safeguard the right of individuals to privacy;
- I balance the public's right to privacy with the need to promote and ensure safety and security;
- I provide protocols for use of Surveillance Technology or Surveillance Data that include specific steps to mitigate potential impacts on the civil rights and liberties of any individuals, communities or groups, including communities of color or other marginalized communities in the City;
- I balance any decision to use Surveillance Technology with an assessment of the costs and protection of privacy, civil liberties and civil rights;
- I allow for informed public discussion before deploying Surveillance Technology;
- I provide for transparency, oversight, and accountability;
- I and to minimize the risks posed by use of Surveillance Technology in the City.

Nothing in this ordinance should be interpreted as:

- I preventing compliance with warrants or court orders;
- I requiring disclosures or any other actions that would violate explicit confidentiality provisions contained within warrants or court orders;
- I preventing compliance with federal or state authorities' requests to use surveillance technology or share surveillance data where such use is authorized pursuant to this ordinance.
- I requiring disclosures that are so detailed and specific as to imperil ongoing police investigations or impinge upon the privacy of individual actors.

### **Section 50-71. - Definitions**

For the purposes of this Ordinance:

- (A) "Surveillance" shall mean the act of observing or analyzing the movements, behavior, or actions of Identifiable Individuals.
- (B) "Identifiable Individual" shall mean an individual whose identity can be revealed by data, including Surveillance Data, or revealed by data when it is analyzed and/or combined with any other type of record.
- (C) "Discriminatory" shall mean (1) disparate treatment of any individual(s) because of any real or perceived traits, characteristics, or status as to which discrimination is prohibited under the Constitution or any law of the United States, the constitution or any law of the Commonwealth of Massachusetts, or the City Charter or any law or ordinance of the City of Medford, or because of their association with such individual(s), or (2) disparate impact on any such individual(s) having traits, characteristics, or status as described in subsection (1).
- (D) "Disparate impact" shall mean an adverse effect that is disproportionately experienced by individual(s) having any traits, characteristics, or status as to which discrimination is

prohibited under the Constitution or any law of the United States, the constitution or any law of the Commonwealth of Massachusetts, or the City Charter or any law or ordinance of the City of Medford than by similarly situated individual(s) not having such traits, characteristics, or status.

(E) "Municipal entity" shall mean any municipal government, agency, department, bureau, division, or unit of this City.

(F) "Exigent circumstances" means the police commissioner or the police commissioner's designee's good faith and reasonable belief that an emergency involving danger of death, physical injury, or significant property damage or loss, similar to those that would render it impracticable to obtain a warrant, requires the use of the Surveillance Technology or the Surveillance Data it provides. The use of Surveillance Technology in Exigent Circumstances shall not infringe upon an individual's right to peacefully protest or exercise other lawful or protected constitutional rights.

(G) "Surveillance Data" shall mean any data collected, captured, recorded, retained, processed, intercepted, analyzed, or shared by Surveillance Technology.

(H) "Viewpoint-based" shall mean targeted at any community or group or its members because of their exercise of rights protected under the First Amendment of the United States Constitution.

(I) "Surveillance Technology" shall mean any electronic surveillance device, hardware, or software that is capable of collecting, capturing, recording, retaining, processing, intercepting, analyzing, monitoring, or sharing audio, visual, digital, location, thermal, biometric, behavioral, or similar information or communications specifically associated with, or capable of being associated with, any specific individual or group; or any system, device, or vehicle that is equipped with an electronic surveillance device, hardware, or software.

1. "Surveillance Technology" includes, but is not limited to: (a) international mobile subscriber identity (IMSI) catchers and other cell site simulators; (b) automatic license plate readers; (c) electronic toll readers; (d) closed-circuit television cameras; (e) biometric Surveillance Technology, including facial, voice, iris, and gait-recognition software and databases; (f) mobile DNA capture technology; (g) gunshot detection and location hardware and services; (h) x-ray vans; (i) video and audio monitoring and/or recording technology, such as surveillance cameras, wide-angle cameras, and wearable body cameras; (j) surveillance enabled or capable light-bulbs or light fixtures; (k) tools, including software and hardware, used to gain unauthorized access to a computer, computer service, or computer network; (l) social media monitoring software; (m) through-the-wall radar or similar imaging technology, (n) passive scanners of radio networks, (o) long-range Bluetooth and other wireless-scanning devices, (p)radio-frequency I.D. (RFID) scanners, and (q) software designed to integrate or analyze data from Surveillance Technology, including surveillance target tracking and predictive policing software.
2. For the purposes of this Ordinance, the following do not constitute Surveillance Data or Surveillance Technology, and the requirements of this Ordinance do not apply to them:

- a. Surveillance Data acquired where the individual knowingly and voluntarily consented to provide the information, such as submitting personal information for the receipt of City services;
- b. Surveillance Data acquired where the individual was presented with a clear and conspicuous opportunity to opt out of providing the information.

3. For the purposes of this Ordinance, “Surveillance Technology” does not include the following devices or hardware, unless they have been equipped with, or are modified to become or include, a Surveillance Technology as defined in this section:

- a. Office hardware, such as televisions, computers, smart phones or handheld devices, credit card machines, copy machines, telephones, and printers that are in widespread use by the City and are used for routine City business and transactions, and will be used only in service of code enforcement;
- b. City databases and enterprise systems that contain information kept in the ordinary course of City business, including, but not limited to, human resources, permits, licenses, and business records;
- c. City databases and enterprise systems that do not contain any data or other information collected, captured, recorded, retained, processed, intercepted, or analyzed by Surveillance Technology, including payroll, accounting, or other fiscal databases;
- d. Information technology security systems, including firewalls and other cybersecurity systems;
- e. Physical access control systems, employee identification management systems, inventory control systems, and other physical control systems;
- f. Infrastructure and mechanical control systems, including those that control or manage street lights, traffic lights, electrical, natural gas, or water or sewer functions;
- g. LiDAR technology and systems used for Geographic Information Systems imagery purposes;
- h. Global Positioning System technology used to collect field data or track City-owned vehicles that are stored on City property when not in use;
- i. Computers, software, hardware, or other devices used in monitoring the work and work-related activities involving City employees, contractors and volunteers or used in conducting internal investigations involving City employees, contractors and volunteers;
- j. Cameras installed on the exterior or the interior of City property solely for security purposes, such as to monitor entryways and outdoor areas of City-owned or controlled buildings and property for the purpose maintaining the safety of City employees and visitors to City buildings, protecting City property, or to protect the physical integrity of City infrastructure;
- k. Cameras, computers, software, hardware, or devices used for videoconferencing or to facilitate broadcast or recording if public meetings;
- l. Police department interview room, holding cell, and police department internal security audio/video recording systems;

- m. Police department computer-aided dispatch (CAD), records/case management, DCJIS, III, Live Scan, booking, Department of Motor Vehicles, 9-1-1, and related dispatch and operation or emergency services systems;
- n. Police department early warning systems;
- o. Parking Ticket Devices ("PTDs") and related databases;
- p. Manually-operated, handheld cameras, audio recorders, and video recorders whose functionality is limited to manually capturing and manually downloading video and/or audio recordings;
- q. Surveillance devices that cannot record or transmit audio or video or be remotely accessed, such as image stabilizing binoculars or night vision goggles;
- r. Manually-operated technological devices that are used primarily for internal City communications, such as radios, personal communications devices, and email systems; and
- s. Parking access and revenue control systems, including proximity card readers and transponder readers at City-owned or controlled parking garages.

4. For the purposes of this Ordinance, traffic monitoring technologies, as well as recording and streaming technologies used for the broadcast of live events, shall be exempted.

#### **Section 50–72. - City Council Approval Mandatory for Surveillance Technology Funding, Acquisition, or Use**

(A) A municipal entity must obtain City Council approval, subsequent to a mandatory, properly-noticed, germane, public City Council hearing at which the public is afforded a fair and adequate opportunity to provide online, written and oral testimony, prior to engaging in any of the following:

1. Seeking funds for new Surveillance Technology, including but not limited to soliciting or accepting state or federal funds or in-kind or other donations;
2. Acquiring or borrowing new Surveillance Technology, whether or not that acquisition is made through the exchange of monies or other consideration;
3. Using new or existing Surveillance Technology for a purpose or in a manner not previously approved by the City Council in accordance with this Ordinance, including the sharing of Surveillance Data therefrom; or
4. Soliciting proposals for or entering into an agreement with any other person or entity to acquire, share or otherwise use Surveillance Technology or Surveillance Data.
5. Further, the City may seek, but not accept, funds for Surveillance Technology without approval from the City Council, provided that the City shall notify the City Council of the funding application at the time it is submitted, and include in this notification (i) the deadline of the funding opportunity, and (ii) details regarding the nature of the Surveillance Technology for which funding is sought.

#### **Section 50–73. - Surveillance Impact Report and Surveillance Use Policy Submission**

(A) As a part of the process of seeking City Council approval, pursuant to Section 50-72(A), to fund, acquire, or use Surveillance Technology or to enter into an agreement concerning such funding, acquisition, or use, a municipal entity shall submit to the City Council and

make publicly available a **Surveillance Impact Report** and **Surveillance Use Policy** concerning the technology at issue.

1. No use of Surveillance Technology by a municipal entity pursuant to Section 50-72(A) shall be permitted without the City Council's express approval of the related Surveillance Impact Report and Surveillance Use Policy submitted by the municipal entity pursuant to Section 50-73(A).
2. Prior to approving or rejecting a Surveillance Impact Report or Surveillance Use Policy submitted pursuant to Section 50-73(A), the City Council may request revisions be made by the submitting municipal entity.

(B) **Surveillance Impact Report:** A Surveillance Impact Report submitted pursuant to Section 50-73(A) shall be a publicly-released, mandatory written report. This shall contain a description of the Surveillance Technology so as to provide the public and City Council with a general understanding of the Surveillance Technology's workings and the reasons for which it is sought for use in the city. Nothing in this section should be interpreted as requiring information that is substantially more detailed or technical than what is publicly available from the manufacturer of a surveillance technology, i.e. on a product website, unless the description of the capabilities to be used by the city are not publicly available. The Surveillance Impact Report shall include, at a minimum, the following:

1. Information describing the Surveillance Technology and how it works, including product descriptions from manufacturers;
2. Information on the proposed purpose(s) of the Surveillance Technology;
3. If the Surveillance Technology will not be uniformly deployed or targeted throughout the city, what factors will be used to determine where the technology is deployed or targeted;
4. The fiscal impact of the Surveillance Technology; and
5. An assessment identifying with specificity:
  - a. Any potential adverse impacts the Surveillance Technology, if deployed, might have on civil liberties and civil rights; and
  - b. What specific, affirmative measures will be implemented to safeguard the public from the potential adverse impacts identified pursuant to Section 50-73(B)(5)(a).

(C) **Surveillance Use Policy:** A Surveillance Use Policy submitted pursuant to Section 50-73(A) shall be a publicly-released, legally enforceable written policy governing the municipal entity's use of the Surveillance Technology that, at a minimum, includes and addresses the following:

1. Purpose: What specific purpose(s) the Surveillance Technology is intended to advance.
2. Authorized Use: For what specific capabilities and uses of the Surveillance Technology is authorization being sought, and
  - a. What legal and procedural rules will govern each authorized use;
  - b. What potential uses of the Surveillance Technology will be expressly prohibited, such as the warrantless surveillance of public events and gatherings; and
  - c. How and under what circumstances will Surveillance Data that was collected, captured, recorded, or intercepted by the Surveillance Technology be analyzed and reviewed.
3. Data Collection:
  - a. What types of Surveillance Data will be collected, captured, recorded, intercepted, or retained by the Surveillance Technology;

- b. What Surveillance Data may be inadvertently collected during the authorized uses of the Surveillance Technology, and what measures will be taken to minimize the inadvertent collection of data; and
- c. How inadvertently collected Surveillance Data will be expeditiously identified and deleted.

4. Data Protection: What safeguards will be used to protect Surveillance Data from unauthorized access, including encryption and access control mechanisms.

5. Data Retention: Insofar as the privacy of the public can be severely compromised by the long-term storage of mass Surveillance Data, what rules and procedures will govern the retention of Surveillance Data, including those governing:

- a. For what time period Surveillance Data will be retained. Such information shall include a statement explaining why the designated retention period is no greater than that which is absolutely necessary to achieve the specific purpose(s) enumerated in the Surveillance Use Policy;
- b. What specific conditions must be met to retain Surveillance Data beyond the retention period stated in Section 50-73(C)(5)(a);
- c. By what process Surveillance Data will be regularly deleted after the retention period stated in Section 50-73(C)(5)(a) elapses and what auditing procedures will be implemented to ensure data is not improperly retained;

6. Surveillance Data Sharing: If a municipal entity is seeking authorization to share access to Surveillance Technology or Surveillance Data with any other governmental agencies, departments, bureaus, divisions, or units, it shall detail:

- a. How it will require that the collection, retention, and storage of Surveillance Data be conducted;
- b. Which governmental agencies, departments, bureaus, divisions, or units will be approved for (i) Surveillance Technology sharing, and for (ii) Surveillance Data sharing;
- c. How such sharing is necessary for the stated purpose and use of the Surveillance Technology;
- d. How it will ensure any entity sharing access to the Surveillance Technology or Surveillance Data complies with the applicable Surveillance Use Policy and does not further disclose the Surveillance Data to unauthorized persons and entities; and
- e. What processes will be used to seek approval of future Surveillance Technology or Surveillance Data sharing agreements from the municipal entity and City Council.

7. Demands for Access to Surveillance Data: What legal standard must be met by government entities or third parties seeking or demanding access to Surveillance Data.

8. Auditing and Oversight: What mechanisms will be implemented to ensure the Surveillance Use Policy is followed, including what independent persons or entities will be given oversight authority, and what legally enforceable sanctions will be put in place for violations of the policy.

9. Complaints: What procedures will be put in place by which members of the public can register complaints or concerns or submit questions about the deployment or use of a specific Surveillance Technology, and how the municipal entity will ensure each question and complaint is responded to in a timely manner.

(D) Any Surveillance Technology Impact Report and Surveillance Use Policy submitted to the City Council under this Section may be redacted (a) to the extent required to comply with an order by a court of competent jurisdiction or (b) to exclude information that in the reasonable discretion of the Chief of Police, if disclosed, would materially jeopardize an ongoing investigation or otherwise represent a significant risk to public safety and security provided, however, that any information redacted pursuant to this paragraph will be

released in the next Annual Surveillance Report following the point at which the reason for such redaction no longer exists.

#### **Section 50–74. - Review of Preexisting Uses Mandatory**

No later than thirty (30) days following the effective date of this Ordinance, any municipal entity seeking to continue the use of any Surveillance Technology that was in use prior to the effective date of this Ordinance, or the sharing of Surveillance Data therefrom, must commence a City Council approval process in accordance with Section 50-72(A)(3). If the City Council has not approved the continuing use of the Surveillance Technology, including the Surveillance Impact Report and Surveillance Use Policy submitted pursuant to Section 50-73(A), within one hundred eighty (180) days of their submission to the City Council, the municipal entity shall cease its use of the Surveillance Technology and the sharing of Surveillance Data therefrom until such time as City Council approval is obtained in accordance with this Ordinance.

#### **Section 50–75. - Lead Entity Identification**

If more than one municipal entity will have access to the Surveillance Technology or Surveillance Data, a lead municipal entity shall be identified. The lead municipal entity shall be responsible for maintaining the Surveillance Technology and ensuring compliance with all related laws, regulations and protocols.

#### **Section 50–76. - Standard for Approval**

The City Council shall only approve a request to fund, acquire, or use a Surveillance Technology if it determines the benefits of the Surveillance Technology outweigh its costs, that the proposal will safeguard civil liberties and civil rights, and that the uses and deployments of the Surveillance Technology will not be based upon discriminatory or viewpoint-based factors or have a disparate impact on any community or group.

To assist the public in participating in such an analysis, all approved Surveillance Impacts Reports and Surveillance Use Policies shall be made available to the public, at a designated page on the relevant municipal entity's public website, and in hard-copy form for review and photocopying at City Hall and the Medford Public Library, for as long as the related Surveillance Technology remains in use. An approval for the funding, acquisition and/or use of a Surveillance Technology by the City Council, where the risk of potential adverse impacts on civil rights or civil liberties has been identified in the Surveillance Impact Report pursuant to Section 50-73(B)(5)(a), shall not be interpreted as an acquiescence to such impacts, but rather as an acknowledgement that a risk of such impacts exists and must be proactively avoided.

#### **Section 50–77. - Annual Surveillance Report**

(A) A municipal entity that obtains approval for the use of a Surveillance Technology must submit to the City Council, and make available on its public website and in hard-copy form at Medford City Hall and the Medford Public Library, an Annual Surveillance Report for each specific Surveillance Technology used by the municipal entity within twelve (12) months of City Council approval, and annually thereafter on or before March 15.

(B) Scope and Intentions: The Annual Surveillance Report is to provide a high-level and generalized summary of policies and usages concerning surveillance technology and surveillance data, and subsequent implications for civil liberties and civil rights. This ordinance should not be interpreted as requiring disclosures of personally identifying information. If a municipal entity seeking surveillance technology or data use approval brings

forth information in a request for approval that they feel would be detrimental to discuss in a public setting, the City Council may review that portion of their application in Executive Session. Further, nothing in this ordinance should be interpreted as:

- requiring disclosures that would violate the integrity of ongoing investigations, nor that would detail past, current or planned MPD investigations;
- requiring disclosures that would violate confidentiality in compliance with state and federal law and court orders, should they apply;
- requiring disclosures that would violate the Family Educational Rights and Privacy Act (FERPA) or other federal or state-level privacy protections;
- requiring disclosures that would in any way divulge or imperil sensitive information, i.e. information involving juveniles or medical records.

(C) The Annual Surveillance Report shall, at a minimum, include the following information for the previous calendar year:

1. A description of how Surveillance Technology has been used, including whether it captured images, sound, or information regarding members of the public who are not suspected of engaging in unlawful conduct;
2. Whether the Surveillance Technology has been effective at achieving its identified purpose;
3. Whether and how often collected Surveillance Data was shared with any external persons or entities, the name(s) of any recipient person or entity, the type(s) of data disclosed, under what legal standard(s) the information was disclosed, and the justification for the disclosure(s);
4. Where applicable, a breakdown of where the Surveillance Technology was deployed geographically, by individual census tract as defined in the relevant year by the United States Census Bureau. For each census tract, the municipal entity shall report how many individual days the Surveillance Technology was deployed and what percentage of those daily-reported deployments were subject to (A) a warrant, and (B) a non-warrant form of court authorization;
5. Where applicable, and with the greatest precision that is reasonably practicable, the amount of time the Surveillance Technology was used to monitor Internet activity, the number of people affected, and what percentage of the reported monitoring was subject to (A) a warrant, and (B) a non-warrant form of court authorization;
6. The number of public records requests received by the City seeking documents concerning Surveillance Technology approved during the previous year;
7. A summary of complaints or concerns that were received about the Surveillance Technology;
8. The results of any internal audits, any information about violations of the Surveillance Use Policy, and any actions taken in response other than to the extent that such inclusion would violate the privacy rights of an employee of the City;
9. An analysis of any discriminatory, disparate, and other adverse impacts the use of the technology may have had on the public's civil rights and civil liberties, including but not limited to those guaranteed by the First, Fourth, and Fourteenth Amendment to the United States Constitution, Articles X and XIV of Massachusetts Declaration of Rights; and
10. Whether the civil rights and liberties of any communities or groups, including communities of color or other marginalized communities in the City are disproportionately impacted by the deployment of the Surveillance Technology;
11. An estimate of the total annual costs for the Surveillance Technology, including personnel and other ongoing costs, and what source(s) of funding will fund the technology in the coming year, if known; and

12. A disclosure of any new agreements made in the past 12 months with non-City entities that may include acquiring, sharing, or otherwise using Surveillance Technology or the Surveillance Data it provides.

(D) Within thirty (30) days of submitting and publicly releasing an Annual Surveillance Report pursuant to Section 50-77(A), the Subcommittee on Public Health & Community Safety, or the current most relevant subcommittee, shall hold one or more well-publicized and conveniently located community engagement meetings at which the general public is invited to discuss and ask questions regarding the Annual Surveillance Report and the municipal agency's use of surveillance technologies.

(E) Based upon information provided in the Annual Surveillance Report, the City Council shall determine whether the benefits to the impacted municipal agency or City department(s) and the community of the Surveillance Technology identified in response to Section 50-77(A), as used by the report-submitting entity, outweigh the financial and operational costs; and whether reasonable safeguards exist to address reasonable concerns regarding privacy, civil liberties, and civil rights impacted by deployment of the Surveillance Technology; and if deployment/usage otherwise meets the standard for approval set forth in Section 50-76. If the benefits or reasonably anticipated benefits do not outweigh the financial and/or operational costs or civil liberties or civil rights are not reasonably safeguarded, the City Council may (1) recommend modifications to the Surveillance Use Policy that are designed to address the City Council's concerns; (2) request a report back from the Mayor or municipal agency regarding steps taken to address the City Council's concerns; and/or (3) direct the use of the Surveillance Technology be discontinued.

### **Section 50-78. - Annual Public Reporting**

Not later than April 15 of each year, the City Council or its appointed designee shall release an annual public report, in print and on its public website, containing the following information for the preceding calendar year:

(A) The number of requests for approval submitted to the City Council under this Ordinance for the funding, acquisition, or new use of Surveillance Technology;

(B) The number of times the City Council approved requests submitted under this Ordinance for the funding, acquisition, or new use of Surveillance Technology;

(C) The number of times the City Council rejected requests submitted under this Ordinance for the funding, acquisition, or new use of Surveillance Technology;

(D) The number of times the City Council requested modifications be made to Surveillance Impact Reports and Surveillance Use Policies before approving the funding, acquisition, or new use of Surveillance Technology; and

(E) All Annual Surveillance Reports submitted pursuant to Section 50-77. Printed copies of the public report may contain pinpoint references to online locations where the Annual Surveillance Reports are located, in lieu of reprinting the full reports.

### **Section 50-79. - Enforcement; Remedies; Penalties; Whistleblower Protections.**

(A) Enforcement: This ordinance shall be enforced by the Mayor's office or the Mayor's designee.

(B) Cause of action: Any violation of this Ordinance, including but not limited to funding, acquiring, or utilizing Surveillance Technology that has not been approved pursuant to this

Ordinance or utilizing Surveillance Technology in a manner or for a purpose that has not been approved pursuant to this Ordinance, constitutes an injury and any person may institute proceedings for injunctive relief, declaratory relief, writ of mandate, or evidence suppression in any court of competent jurisdiction to enforce this Ordinance.

- (C) The City will address alleged violations of this ordinance in accordance with its usual practices, applicable law, and contractual obligations. A court shall award costs and reasonable attorneys' fees to the plaintiff who is the prevailing party in an action brought to enforce this Ordinance.
- (D) Municipal employees or agents, except in the event of exigent circumstances, or in response to a declared municipal, state, or federal state of emergency, shall not use any Surveillance Technology except in a manner consistent with policies approved pursuant to the terms of this Ordinance, and may in no circumstances utilize Surveillance Technology in a manner which is discriminatory, viewpoint-based, or violates the City Charter, the Massachusetts Constitution, or United States Constitution.
- (E) Whistleblower protections. Subject to the limitations and requirements set forth in G. L. c. 149, §185 (the "Massachusetts Whistleblower Statute" or "Section 185") as it may be amended from time to time, any City employee as defined in Section 185 who reports an alleged violation of this Ordinance, shall be afforded protections against retaliation if applicable pursuant to Section 185, as set forth in and subject to the limitations and requirements of Section 185.
- (F) Nothing in this ordinance shall be construed to limit or affect any individual's rights under state or federal laws.

#### **Section 50-80. - Conflicting Contractual Agreements Prohibited**

It shall be unlawful for the city or any municipal entity to enter into any contract or other agreement that conflicts with the provisions of this Ordinance, and any conflicting provisions in such contracts or agreements, including but not limited to non-disclosure agreements, shall be deemed void and legally unenforceable. Conflicting provisions in contracts or agreements signed prior to the enactment of this Ordinance shall be deemed void and legally unenforceable to the extent permitted by law.

#### **Section 50-81. - Certain Public-Private Contracts Prohibited**

It shall be unlawful for the city or any municipal entity to enter into any contract or other agreement that facilitates the receipt of privately generated and owned Surveillance Data from, or provision of government generated and owned Surveillance Data to, any non-governmental entity in exchange for any monetary or any other form of consideration from any source, including the assessment of any additional fees, interest, or surcharges on unpaid fines or debts. Any contracts or agreements signed prior to the enactment of this Ordinance that violate this section shall be terminated as soon as is legally permissible.

#### **Section 50-82. - Severability**

The provisions in this Ordinance are severable. If any part or provision of this Ordinance, or the application of this Ordinance to any person or circumstance, is held invalid by a court of competent jurisdiction, the remainder of this Ordinance, including the application of such part or provisions to other persons or circumstances, shall not be affected by such holding and shall continue to have force and effect.

#### **Section 50-83. - Effective Date**

This ordinance shall take effect immediately after its adoption.

Vice President Bears moved to waive reading in lieu of a synopsis (Councillor Tseng second)—approved.

a) Vice President Bears offered the following amendments:

**Proposed Amendments to the Draft CCOPS Ordinance – 2/14/23**

1. Strike the following language from Section 50–70:
  - a. “provide protocols for use of Surveillance Technology or Surveillance Data that include specific steps to”
2. Strike and remove Section 50–71 (C) and (D) and update the section numbers.
3. Strike and remove the following language from Section 50–71 (F) and 50–71 (G) 3:
  - a. “, or significant property damage or loss”
  - b. “, and will be used only in service of code enforcement”
4. Add new subsection to Sec 50–72:
  - a. (B) Body Worn Cameras shall be exempt from Section 50–72 of this Ordinance until January 1, 2028.
5. Add new subsection to Sec 50–73:
  - a. (E) Body Worn Cameras shall be exempt from Section 50–73 of this Ordinance until January 1, 2028.
6. Amend Sec 50–74 to include subsections, amend the first sentence of the now-labelled subsection (A), and add a new subsection (B):
  - a. (A) “No later than ninety (90) days following the effective date of this Ordinance or prior to implementation of any new Surveillance Technology use covered by this Ordinance, any municipal entity”
  - b. (B) Body Worn Cameras shall be exempt from Section 50–74 of this Ordinance until January 1, 2028.
7. Strike the first sentence of Section 50–77(B) and replace with:
  - a. Scope and Intentions: The Annual Surveillance Report is to provide a written report on an annual basis that contains a high-level and generalized summary of policies and usages concerning surveillance technology used by any city department during the previous year and containing the information set forth in Section 50–77 of this ordinance.
8. Strike and remove Section 50–77 (C) 4, 5, and 9 and update the section numbers.
9. Strike Section 50–79(B) and replace with:
  - a. (B) Cause of action: Any violation of this Ordinance constitutes an injury and any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce this Ordinance. An action instituted under this paragraph shall be brought against the City and, if necessary to effectuate compliance with this ordinance, any other governmental agency with possession, custody, or control of data subject to this Ordinance.
10. Strike the following sentence from Section 50–79(C):
  - a. “A court shall award costs and reasonable attorneys’ fees to the plaintiff who is the prevailing party in an action brought to enforce this Ordinance.”
11. Strike and remove Section 50–80 and update the section numbers to reflect the struck section.
12. Strike Section 50–81 and replace with:
  - a. “It shall be unlawful for the City to enter into any contract for monetary value with a commercial entity that provides the City with the mass acquisition of privately generated and owned bulk Surveillance Data. Any contracts or agreements signed prior to the enactment of this Ordinance that violate this section shall not be renewed after the completion of the term of said contracts or agreements. Section 50–80 shall not apply to any contract or agreement executed for law enforcement operations or purposes.”

Addressing the Council:

Police Chief Jack Buckley

Julie Flynn, 32 Summit Road

David Harris, 151 Sharon Street

Munir Jirmanus, 3 Summit Road, Medford Human Rights Commission

Steve Schnapp, 36 Hillside Avenue  
Rev. Wendy Miller Olapade, 105 Brooks Street  
Andrew Castagnetti, 23 Cushing Street

Vice President Bears moved to approve the paper for first reading, as amended (Councillor Tseng second)—

Vice President Bears withdrew this motion.

Vice President Bears moved to amend the ordinance based on the 12 amendments presented earlier (Councillor Collins second)—approved on a roll call vote of seven in favor and zero opposed.

This version is the paper, as amended:

### **Section 50, Article III - An Ordinance To Promote Transparency and Protect Civil Rights and Civil Liberties With Respect to Surveillance Technology**

#### **Section 50–70. - Purpose and Intentions.**

The purpose of this Ordinance is to provide for the regulation of Surveillance Technology acquisition or use by the City of Medford or the use of the Surveillance Data it provides, to:

- safeguard the right of individuals to privacy;
- balance the public's right to privacy with the need to promote and ensure safety and security;
- mitigate potential impacts on the civil rights and liberties of any individuals, communities or groups, including communities of color or other marginalized communities in the City;
- balance any decision to use Surveillance Technology with an assessment of the costs and protection of privacy, civil liberties and civil rights;
- allow for informed public discussion before deploying Surveillance Technology;
- provide for transparency, oversight, and accountability;
- and to minimize the risks posed by use of Surveillance Technology in the City.

Nothing in this ordinance should be interpreted as:

- preventing compliance with warrants or court orders;
- requiring disclosures or any other actions that would violate explicit confidentiality provisions contained within warrants or court orders;
- preventing compliance with federal or state authorities' requests to use surveillance technology or share surveillance data where such use is authorized pursuant to this ordinance.
- requiring disclosures that are so detailed and specific as to imperil ongoing police investigations or impinge upon the privacy of individual actors.

#### **Section 50–71. - Definitions**

For the purposes of this Ordinance:

(A) "Surveillance" shall mean the act of observing or analyzing the movements, behavior, or actions of Identifiable Individuals.

(B) "Identifiable Individual" shall mean an individual whose identity can be revealed by data, including Surveillance Data, or revealed by data when it is analyzed and/or combined with any other type of record.

(C) "Municipal entity" shall mean any municipal government, agency, department, bureau, division, or unit of this City.

(D) "Exigent circumstances" means the police commissioner or the police commissioner's designee's good faith and reasonable belief that an emergency involving danger of death, physical injury, similar to those that would render it impracticable to obtain a warrant, requires the use of the Surveillance Technology or the Surveillance Data it provides. The use of Surveillance Technology in Exigent Circumstances shall not infringe upon an individual's right to peacefully protest or exercise other lawful or protected constitutional rights.

(E) "Surveillance Data" shall mean any data collected, captured, recorded, retained, processed, intercepted, analyzed, or shared by Surveillance Technology.

(F) "Viewpoint-based" shall mean targeted at any community or group or its members because of their exercise of rights protected under the First Amendment of the United States Constitution.

(G) "Surveillance Technology" shall mean any electronic surveillance device, hardware, or software that is capable of collecting, capturing, recording, retaining, processing, intercepting, analyzing, monitoring, or sharing audio, visual, digital, location, thermal, biometric, behavioral, or similar information or communications specifically associated with, or capable of being associated with, any specific individual or group; or any system, device, or vehicle that is equipped with an electronic surveillance device, hardware, or software.

1. "Surveillance Technology" includes, but is not limited to: (a) international mobile subscriber identity (IMSI) catchers and other cell site simulators; (b) automatic license plate readers; (c) electronic toll readers; (d) closed-circuit television cameras; (e) biometric Surveillance Technology, including facial, voice, iris, and gait-recognition software and databases; (f) mobile DNA capture technology; (g) gunshot detection and location hardware and services; (h) x-ray vans; (i) video and audio monitoring and/or recording technology, such as surveillance cameras, wide-angle cameras, and wearable body cameras; (j) surveillance enabled or capable light-bulbs or light fixtures; (k) tools, including software and hardware, used to gain unauthorized access to a computer, computer service, or computer network; (l) social media monitoring software; (m) through-the-wall radar or similar imaging technology, (n) passive scanners of radio networks, (o) long-range Bluetooth and other wireless-scanning devices, (p)radio-frequency I.D. (RFID) scanners, and (q) software designed to integrate or analyze data from Surveillance Technology, including surveillance target tracking and predictive policing software.
2. For the purposes of this Ordinance, the following do not constitute Surveillance Data or Surveillance Technology, and the requirements of this Ordinance do not apply to them:
  - a. Surveillance Data acquired where the individual knowingly and voluntarily consented to provide the information, such as submitting personal information for the receipt of City services;

**b.** Surveillance Data acquired where the individual was presented with a clear and conspicuous opportunity to opt out of providing the information.

3. For the purposes of this Ordinance, “Surveillance Technology” does not include the following devices or hardware, unless they have been equipped with, or are modified to become or include, a Surveillance Technology as defined in this section:

- a. Office hardware, such as televisions, computers, smart phones or handheld devices, credit card machines, copy machines, telephones, and printers that are in widespread use by the City and are used for routine City business and transactions;
- b. City databases and enterprise systems that contain information kept in the ordinary course of City business, including, but not limited to, human resources, permits, licenses, and business records;
- c. City databases and enterprise systems that do not contain any data or other information collected, captured, recorded, retained, processed, intercepted, or analyzed by Surveillance Technology, including payroll, accounting, or other fiscal databases;
- d. Information technology security systems, including firewalls and other cybersecurity systems;
- e. Physical access control systems, employee identification management systems, inventory control systems, and other physical control systems;
- f. Infrastructure and mechanical control systems, including those that control or manage street lights, traffic lights, electrical, natural gas, or water or sewer functions;
- g. LiDAR technology and systems used for Geographic Information Systems imagery purposes;
- h. Global Positioning System technology used to collect field data or track City-owned vehicles that are stored on City property when not in use;
- i. Computers, software, hardware, or other devices used in monitoring the work and work-related activities involving City employees, contractors and volunteers or used in conducting internal investigations involving City employees, contractors and volunteers;
- j. Cameras installed on the exterior or the interior of City property solely for security purposes, such as to monitor entryways and outdoor areas of City-owned or controlled buildings and property for the purpose maintaining the safety of City employees and visitors to City buildings, protecting City property, or to protect the physical integrity of City infrastructure;
- k. Cameras, computers, software, hardware, or devices used for videoconferencing or to facilitate broadcast or recording of public meetings;
- l. Police department interview room, holding cell, and police department internal security audio/video recording systems;
- m. Police department computer-aided dispatch (CAD), records/case management, DCJIS, III, Live Scan, booking, Department of Motor Vehicles, 9-1-1, and related dispatch and operation or emergency services systems;
- n. Police department early warning systems;
- o. Parking Ticket Devices (“PTDs”) and related databases;

- p. Manually-operated, handheld cameras, audio recorders, and video recorders whose functionality is limited to manually capturing and manually downloading video and/or audio recordings;
- q. Surveillance devices that cannot record or transmit audio or video or be remotely accessed, such as image stabilizing binoculars or night vision goggles;
- r. Manually-operated technological devices that are used primarily for internal City communications, such as radios, personal communications devices, and email systems; and
- s. Parking access and revenue control systems, including proximity card readers and transponder readers at City-owned or controlled parking garages.

4. For the purposes of this Ordinance, traffic monitoring technologies, as well as recording and streaming technologies used for the broadcast of live events, shall be exempted.

### **Section 50–72. - City Council Approval Mandatory for Surveillance Technology Funding, Acquisition, or Use**

(A) A municipal entity must obtain City Council approval, subsequent to a mandatory, properly-noticed, germane, public City Council hearing at which the public is afforded a fair and adequate opportunity to provide online, written and oral testimony, prior to engaging in any of the following:

1. Seeking funds for new Surveillance Technology, including but not limited to soliciting or accepting state or federal funds or in-kind or other donations;
2. Acquiring or borrowing new Surveillance Technology, whether or not that acquisition is made through the exchange of monies or other consideration;
3. Using new or existing Surveillance Technology for a purpose or in a manner not previously approved by the City Council in accordance with this Ordinance, including the sharing of Surveillance Data therefrom; or
4. Soliciting proposals for or entering into an agreement with any other person or entity to acquire, share or otherwise use Surveillance Technology or Surveillance Data.
5. Further, the City may seek, but not accept, funds for Surveillance Technology without approval from the City Council, provided that the City shall notify the City Council of the funding application at the time it is submitted, and include in this notification (i) the deadline of the funding opportunity, and (ii) details regarding the nature of the Surveillance Technology for which funding is sought.

(B) Body Worn Cameras shall be exempt from Section 50–72 of this Ordinance until January 1, 2028.

### **Section 50–73. - Surveillance Impact Report and Surveillance Use Policy Submission**

(A) As a part of the process of seeking City Council approval, pursuant to Section 50-72(A), to fund, acquire, or use Surveillance Technology or to enter into an agreement concerning such funding, acquisition, or use, a municipal entity shall submit to the City Council and make publicly available a **Surveillance Impact Report** and **Surveillance Use Policy** concerning the technology at issue.

1. No use of Surveillance Technology by a municipal entity pursuant to Section 50-72(A) shall be permitted without the City Council's express approval of the related Surveillance Impact Report and Surveillance Use Policy submitted by the municipal entity pursuant to Section 50-73(A).

2. Prior to approving or rejecting a Surveillance Impact Report or Surveillance Use Policy submitted pursuant to Section 50-73(A), the City Council may request revisions be made by the submitting municipal entity.

(B) **Surveillance Impact Report:** A Surveillance Impact Report submitted pursuant to Section 50-73(A) shall be a publicly-released, mandatory written report. This shall contain a description of the Surveillance Technology so as to provide the public and City Council with a general understanding of the Surveillance Technology's **workings and the reasons for which it is sought for use in the city**. Nothing in this section should be interpreted as requiring information that is substantially more detailed or technical than what is publicly available from the manufacturer of a surveillance technology, i.e. on a product website, unless the description of the capabilities to be used by the city are not publicly available. The Surveillance Impact Report shall include, at a minimum, the following:

1. Information describing the Surveillance Technology and how it works, including product descriptions from manufacturers;
2. Information on the proposed purpose(s) of the Surveillance Technology;
3. If the Surveillance Technology will not be uniformly deployed or targeted throughout the city, what factors will be used to determine where the technology is deployed or targeted;
4. The fiscal impact of the Surveillance Technology; and
5. An assessment identifying with specificity:
  - a. Any potential adverse impacts the Surveillance Technology, if deployed, might have on civil liberties and civil rights; and
  - b. What specific, affirmative measures will be implemented to safeguard the public from the potential adverse impacts identified pursuant to Section 50-73(B)(5)(a).

(C) **Surveillance Use Policy:** A Surveillance Use Policy submitted pursuant to Section 50-73(A) shall be a publicly-released, legally enforceable written policy governing the municipal entity's use of the Surveillance Technology that, at a minimum, includes and addresses the following:

1. Purpose: What specific purpose(s) the Surveillance Technology is intended to advance.
2. Authorized Use: For what specific capabilities and uses of the Surveillance Technology is authorization being sought, and
  - a. What legal and procedural rules will govern each authorized use;
  - b. What potential uses of the Surveillance Technology will be expressly prohibited, such as the warrantless surveillance of public events and gatherings; and
  - c. How and under what circumstances will Surveillance Data that was collected, captured, recorded, or intercepted by the Surveillance Technology be analyzed and reviewed.
3. Data Collection:
  - a. What types of Surveillance Data will be collected, captured, recorded, intercepted, or retained by the Surveillance Technology;

- b. What Surveillance Data may be inadvertently collected during the authorized uses of the Surveillance Technology, and what measures will be taken to minimize the inadvertent collection of data; and
  - c. How inadvertently collected Surveillance Data will be expeditiously identified and deleted.
4. Data Protection: What safeguards will be used to protect Surveillance Data from unauthorized access, including encryption and access control mechanisms.
5. Data Retention: Insofar as the privacy of the public can be severely compromised by the long-term storage of mass Surveillance Data, what rules and procedures will govern the retention of Surveillance Data, including those governing:
  - a. For what time period Surveillance Data will be retained. Such information shall include a statement explaining why the designated retention period is no greater than that which is absolutely necessary to achieve the specific purpose(s) enumerated in the Surveillance Use Policy;
  - b. What specific conditions must be met to retain Surveillance Data beyond the retention period stated in Section 50-73(C)(5)(a);
  - c. By what process Surveillance Data will be regularly deleted after the retention period stated in Section 50-73(C)(5)(a) elapses and what auditing procedures will be implemented to ensure data is not improperly retained;
6. Surveillance Data Sharing: If a municipal entity is seeking authorization to share access to Surveillance Technology or Surveillance Data with any other governmental agencies, departments, bureaus, divisions, or units, it shall detail:
  - a. How it will require that the collection, retention, and storage of Surveillance Data be conducted;
  - b. Which governmental agencies, departments, bureaus, divisions, or units will be approved for (i) Surveillance Technology sharing, and for (ii) Surveillance Data sharing;
  - c. How such sharing is necessary for the stated purpose and use of the Surveillance Technology;
  - d. How it will ensure any entity sharing access to the Surveillance Technology or Surveillance Data complies with the applicable Surveillance Use Policy and does not further disclose the Surveillance Data to unauthorized persons and entities; and
  - e. What processes will be used to seek approval of future Surveillance Technology or Surveillance Data sharing agreements from the municipal entity and City Council.
7. Demands for Access to Surveillance Data: What legal standard must be met by government entities or third parties seeking or demanding access to Surveillance Data.
8. Auditing and Oversight: What mechanisms will be implemented to ensure the Surveillance Use Policy is followed, including what independent persons or entities will be given oversight authority, and what legally enforceable sanctions will be put in place for violations of the policy.
9. Complaints: What procedures will be put in place by which members of the public can register complaints or concerns or submit questions about the deployment or use of a specific Surveillance Technology, and how the municipal entity will ensure each question and complaint is responded to in a timely manner.

(D) Any Surveillance Technology Impact Report and Surveillance Use Policy submitted to the City Council under this Section may be redacted (a) to the extent required to comply with an order by a court of competent jurisdiction or (b) to exclude information that in the reasonable discretion of the Chief of Police, if disclosed, would materially jeopardize an ongoing investigation or otherwise represent a significant risk to public safety and security provided, however, that any information redacted pursuant to this paragraph will be

released in the next Annual Surveillance Report following the point at which the reason for such redaction no longer exists.

(E) Body Worn Cameras shall be exempt from Section 50-73 of this Ordinance until January 1, 2028.

#### **Section 50-74. - Review of Preexisting Uses Mandatory**

(A) No later than ninety (90) days following the effective date of this Ordinance or prior to implementation of any new Surveillance Technology use covered by this Ordinance, any municipal entity seeking to continue the use of any Surveillance Technology that was in use prior to the effective date of this Ordinance, or the sharing of Surveillance Data therefrom, must commence a City Council approval process in accordance with Section 50-72(A)(3). If the City Council has not approved the continuing use of the Surveillance Technology, including the Surveillance Impact Report and Surveillance Use Policy submitted pursuant to Section 50-73(A), within one hundred eighty (180) days of their submission to the City Council, the municipal entity shall cease its use of the Surveillance Technology and the sharing of Surveillance Data therefrom until such time as City Council approval is obtained in accordance with this Ordinance.

(B) Body Worn Cameras shall be exempt from Section 50-74 of this Ordinance until January 1, 2028.

#### **Section 50-75. - Lead Entity Identification**

If more than one municipal entity will have access to the Surveillance Technology or Surveillance Data, a lead municipal entity shall be identified. The lead municipal entity shall be responsible for maintaining the Surveillance Technology and ensuring compliance with all related laws, regulations and protocols.

#### **Section 50-76. - Standard for Approval**

The City Council shall only approve a request to fund, acquire, or use a Surveillance Technology if it determines the benefits of the Surveillance Technology outweigh its costs, that the proposal will safeguard civil liberties and civil rights, and that the uses and deployments of the Surveillance Technology will not be based upon discriminatory or viewpoint-based factors or have a disparate impact on any community or group.

To assist the public in participating in such an analysis, all approved Surveillance Impacts Reports and Surveillance Use Policies shall be made available to the public, at a designated page on the relevant municipal entity's public website, and in hard-copy form for review and photocopying at City Hall and the Medford Public Library, for as long as the related Surveillance Technology remains in use. An approval for the funding, acquisition and/or use of a Surveillance Technology by the City Council, where the risk of potential adverse impacts on civil rights or civil liberties has been identified in the Surveillance Impact Report pursuant to Section 50-73(B)(5)(a), shall not be interpreted as an acquiescence to such impacts, but rather as an acknowledgement that a risk of such impacts exists and must be proactively avoided.

#### **Section 50-77. - Annual Surveillance Report**

(A) A municipal entity that obtains approval for the use of a Surveillance Technology must submit to the City Council, and make available on its public website and in hard-copy form at Medford City Hall and the Medford Public Library, an Annual Surveillance Report for each specific Surveillance Technology used by the municipal entity within twelve (12) months of City Council approval, and annually thereafter on or before March 15.

(B) Scope and Intentions: The Annual Surveillance Report is to provide a written report on an annual basis that contains a high-level and generalized summary of policies and usages concerning surveillance technology used by any city department during the previous year and containing the information set forth in Section 50-77 of this ordinance. This ordinance should not be interpreted as requiring disclosures of personally identifying information. If a municipal entity seeking surveillance technology or data use approval brings forth information in a request for approval that they feel would be detrimental to discuss in a public setting, the City Council may review that portion of their application in Executive Session. Further, nothing in this ordinance should be interpreted as:

- requiring disclosures that would violate the integrity of ongoing investigations, nor that would detail past, current or planned MPD investigations;
- requiring disclosures that would violate confidentiality in compliance with state and federal law and court orders, should they apply;
- requiring disclosures that would violate the Family Educational Rights and Privacy Act (FERPA) or other federal or state-level privacy protections;
- requiring disclosures that would in any way divulge or imperil sensitive information, i.e. information involving juveniles or medical records.

(C) The Annual Surveillance Report shall, at a minimum, include the following information for the previous calendar year:

1. A description of how Surveillance Technology has been used, including whether it captured images, sound, or information regarding members of the public who are not suspected of engaging in unlawful conduct;
2. Whether the Surveillance Technology has been effective at achieving its identified purpose;
3. Whether and how often collected Surveillance Data was shared with any external persons or entities, the name(s) of any recipient person or entity, the type(s) of data disclosed, under what legal standard(s) the information was disclosed, and the justification for the disclosure(s);
4. The number of public records requests received by the City seeking documents concerning Surveillance Technology approved during the previous year;
5. A summary of complaints or concerns that were received about the Surveillance Technology;
6. The results of any internal audits, any information about violations of the Surveillance Use Policy, and any actions taken in response other than to the extent that such inclusion would violate the privacy rights of an employee of the City;
7. Whether the civil rights and liberties of any communities or groups, including communities of color or other marginalized communities in the City are disproportionately impacted by the deployment of the Surveillance Technology;
8. An estimate of the total annual costs for the Surveillance Technology, including personnel and other ongoing costs, and what source(s) of funding will fund the technology in the coming year, if known; and
9. A disclosure of any new agreements made in the past 12 months with non-City entities that may include acquiring, sharing, or otherwise using Surveillance Technology or the Surveillance Data it provides.

- (D) Within thirty (30) days of submitting and publicly releasing an Annual Surveillance Report pursuant to Section 50-77(A), the Subcommittee on Public Health & Community Safety, or the current most relevant subcommittee, shall hold one or more well-publicized and conveniently located community engagement meetings at which the general public is invited to discuss and ask questions regarding the Annual Surveillance Report and the municipal agency's use of surveillance technologies.
- (E) Based upon information provided in the Annual Surveillance Report, the City Council shall determine whether the benefits to the impacted municipal agency or City department(s) and the community of the Surveillance Technology identified in response to Section 50-77(A), as used by the report-submitting entity, outweigh the financial and operational costs; and whether reasonable safeguards exist to address reasonable concerns regarding privacy, civil liberties, and civil rights impacted by deployment of the Surveillance Technology; and if deployment/usage otherwise meets the standard for approval set forth in Section 50-76. If the benefits or reasonably anticipated benefits do not outweigh the financial and/or operational costs or civil liberties or civil rights are not reasonably safeguarded, the City Council may (1) recommend modifications to the Surveillance Use Policy that are designed to address the City Council's concerns; (2) request a report back from the Mayor or municipal agency regarding steps taken to address the City Council's concerns; and/or (3) direct the use of the Surveillance Technology be discontinued.

#### **Section 50-78. - Annual Public Reporting**

Not later than April 15 of each year, the City Council or its appointed designee shall release an annual public report, in print and on its public website, containing the following information for the preceding calendar year:

- (A) The number of requests for approval submitted to the City Council under this Ordinance for the funding, acquisition, or new use of Surveillance Technology;
- (B) The number of times the City Council approved requests submitted under this Ordinance for the funding, acquisition, or new use of Surveillance Technology;
- (C) The number of times the City Council rejected requests submitted under this Ordinance for the funding, acquisition, or new use of Surveillance Technology;
- (D) The number of times the City Council requested modifications be made to Surveillance Impact Reports and Surveillance Use Policies before approving the funding, acquisition, or new use of Surveillance Technology; and
- (E) All Annual Surveillance Reports submitted pursuant to Section 50-77. Printed copies of the public report may contain pinpoint references to online locations where the Annual Surveillance Reports are located, in lieu of reprinting the full reports.

#### **Section 50-79. - Enforcement; Remedies; Penalties; Whistleblower Protections.**

- (A) Enforcement: This ordinance shall be enforced by the Mayor's office or the Mayor's designee.
- (B) Cause of action: Any violation of this Ordinance constitutes an injury and any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandamus in any court of competent jurisdiction to enforce this Ordinance. An action instituted under this paragraph shall be brought against the City and, if necessary to effectuate compliance with

this ordinance, any other governmental agency with possession, custody, or control of data subject to this Ordinance.

- (C) The City will address alleged violations of this ordinance in accordance with its usual practices, applicable law, and contractual obligations.
- (D) Municipal employees or agents, except in the event of exigent circumstances, or in response to a declared municipal, state, or federal state of emergency, shall not use any Surveillance Technology except in a manner consistent with policies approved pursuant to the terms of this Ordinance, and may in no circumstances utilize Surveillance Technology in a manner which is discriminatory, viewpoint-based, or violates the City Charter, the Massachusetts Constitution, or United States Constitution.
- (E) Whistleblower protections. Subject to the limitations and requirements set forth in G. L. c. 149, §185 (the “Massachusetts Whistleblower Statute” or “Section 185”) as it may be amended from time to time, any City employee as defined in Section 185 who reports an alleged violation of this Ordinance, shall be afforded protections against retaliation if applicable pursuant to Section 185, as set forth in and subject to the limitations and requirements of Section 185.
- (F) Nothing in this ordinance shall be construed to limit or affect any individual’s rights under state or federal laws.

#### **Section 50–80. - Certain Public-Private Contracts Prohibited**

It shall be unlawful for the City to enter into any contract for monetary value with a commercial entity that provides the City with the mass acquisition of privately generated and owned bulk Surveillance Data. Any contracts or agreements signed prior to the enactment of this Ordinance that violate this section shall not be renewed after the completion of the term of said contracts or agreements. Section 50-80 shall not apply to any contract or agreement executed for law enforcement operations or purposes.

#### **Section 50–81. - Severability**

The provisions in this Ordinance are severable. If any part or provision of this Ordinance, or the application of this Ordinance to any person or circumstance, is held invalid by a court of competent jurisdiction, the remainder of this Ordinance, including the application of such part or provisions to other persons or circumstances, shall not be affected by such holding and shall continue to have force and effect.

#### **Section 50–82. - Effective Date**

This Ordinance shall take effect immediately after its adoption.

Vice President Bears moved to approve the paper, as amended, for first reading (Councillor Tseng second)—approved for first reading, as amended, on a roll call vote of four in favor (Vice President Bears, Councillor Collins, Councillor Tseng, President Morell) and three opposed (Councillor Caraviello, Councillor Knight, and Councillor Scarpelli).

**21-053-** Offered by Councillor Collins

**Housing Stability Notification Ordinance**

Chapter 49 - Housing

Article I. - IN GENERAL

Secs. 49-1—49-30. - Reserved.

**Article II. - HOUSING STABILITY NOTIFICATION ORDINANCE**

Sec. 49-31. - Purpose.

The purpose of this Ordinance is to promote the housing stability of Medford residents.

Sec. 49-32. - Definitions.

"Applicable laws" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders that have the effect of law, as well as all applicable final, non-appealable judicial opinions.

"Entity" means a business organization, or any other kind of organization, including without limitation a corporation, partnership, trust, limited liability corporation, limited liability partnership, joint venture, sole proprietorship, development or project, or any other category of organization, and any employee, agent, servant or other representative of such entity.

"Former Homeowner" means any natural person or group of natural persons who, prior to foreclosure of a housing accommodation, had been the title owner or owners of such housing accommodation, or who has a legal or beneficial interest in the housing accommodation by dissolution of marriage, separation agreement, survivorship, devise, or intestate succession, and who at the time of foreclosure actually occupied such housing accommodation as a resident or residents.

"Foreclosing Owner" means any natural person or entity that holds title in any capacity, directly or indirectly without limitation, whether in its own name, as trustee or as beneficiary, to a housing accommodation that has been foreclosed upon and either (1) held or owned a mortgage or other security interest in the housing accommodation at any point prior to the foreclosure of the housing accommodation, or is the subsidiary, parent, trustee, or agent thereof; or (2) is an institutional mortgagee that acquires or holds title to the housing accommodation; or (3) is the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

"Landlord" means owner of record, or lessor or sublessor of an owner of record, or any other person, project, housing development, or other entity entitled either to receive rent for the use and occupancy of any rental unit or to maintain an action for possession of a rental unit, or an agent, representative, successor, or assignee of any of the foregoing.

"Lease non-renewal or expiration" means a provision in a written rental agreement for a housing accommodation or rental unit that the lease will expire either as of a fixed date, or at the election of the owner for the failure of the tenant to take certain affirmative action.

"Notice to quit" means any written notice sent by a landlord or a foreclosing owner to a tenant or former homeowner of a residential rental unit or housing accommodation seeking to terminate the tenant's tenancy or the former homeowner's occupancy of such rental unit or housing accommodation.

"Owner" means any person or entity that holds title to one or more dwelling units in any manner including but not limited to a partnership, corporation or trust. For purposes of this ordinance the term "owner" shall include one who manages, controls, or customarily accepts rent on behalf of the owner.

"Rental Unit" means a non-owner occupied room or group of related rooms within a dwelling used or intended for use by one family or household for living, sleeping, cooking and eating.

"Skilled Nursing Facility" means a health facility or a distinct part of a hospital that provides, at a minimum, skilled nursing care and supportive care to patients whose primary medical need is the availability of skilled nursing care on an extended basis. Such facility must provide 24 hour inpatient care, an activity program, and medical, nursing, dietary, and pharmaceutical services. Additionally, the facility must provide effective arrangements, confirmed in writing, through which services required by the patients but not regularly provided within the facility can be obtained promptly when needed.

"Tenancy" means occupation or use of a dwelling unit under an express or implied rental agreement.

"Tenant" means any person who inhabits or is entitled to inhabit a dwelling unit under a rental agreement.

Sec. 49-33. - Applicability.

(a) The provisions of this ordinance shall apply to all rental units and housing accommodations in the City of Medford, in whole or in part, where:

1. a landlord and tenant have entered into a new tenancy as described in Section 49-34(a) below; or
2. a notice to quit or other notice of lease nonrenewal or expiration has been served, or should have been served, on the tenant or former homeowner of any such rental unit or housing accommodation as of the effective date of this ordinance, but where any such rental unit or housing accommodation has not yet been vacated or a final order of judgment for possession has not entered as of the effective date of this ordinance.

(b) The provisions of this ordinance shall not apply to the following types of units:

3. Rental units in any hospital, skilled nursing facility or health facility.
4. Rental units in a nonprofit facility that has the primary purpose of providing short term treatment, assistance or therapy for alcohol, drug or other substance abuse. Short term treatment is treatment meant to last thirty or less days where such housing is incidental to the recovery program and where the client has been informed in writing of the short term, temporary or transitional nature of the housing at its inception.

Sec. 49-34. - Required Notices.

(a) Inception of the tenancy: At the inception of a tenancy or whenever a landlord enters into a new tenancy with a tenant under written lease, written tenancy-at-will or oral tenancy-at-will, regardless of length, the landlord shall, on or before the fifth day of the tenancy, provide to the tenant a notice of basic housing rights and resources, which shall also include citations where additional information about such rights and resources can be obtained online or in person; and also including a list of organizations available to assist tenants and/or former homeowners, with these organizations' contact information. The notice shall be in a form or forms prepared by the City of Medford which shall be attached thereto and obtainable on its website. Such notice shall be provided in-hand or by certified mail, in addition to by email if one is available. This notice shall include translated instructions for how to readily access the included information and resources in languages other than English.

(b) Termination of tenancy: When a landlord or foreclosing owner serves the tenant or former homeowners any notice to quit or notice of lease nonrenewal or expiration, such landlord or foreclosing owner shall, at the same time, also provide the tenant or former homeowner with a notice of basic housing rights and resources, which shall also include citations where additional information about such rights and resources can be obtained online or in person; and also including a list of organizations available to assist tenants and/or former homeowners with these organizations' contact information, on a form or forms prepared by the City of Medford which shall be attached thereto and obtainable on its website. Where a landlord or foreclosing owner is exercising a right of lease nonrenewal or expiration, the owner shall give such written notice prepared by the City of Medford at least thirty days prior to commencing any summary process action against the tenant or former homeowner. Such notice shall be provided in-hand or by certified mail. This notice shall include translated instructions for how to readily access the included information and resources in languages other than English.

(c) The Board of Health Director or their designee shall consult the Office of Diversity, Equity and Inclusion, Office of Planning, Development and Sustainability, and Office of Prevention and Outreach on the creation of the required notices.

(d) The required notices shall be updated annually and shall provide information regarding online access to additional resources and language translation of information included within the required notices.

#### Sec. 49-35. - Non-Waiveability.

The provisions of this Ordinance may not be waived, and any term of any lease, contract or other agreement which purports to waive or limit a tenant's or former homeowner's substantive or procedural rights under this ordinance is contrary to public policy, unenforceable, and void.

#### Sec. 49-36. - Severability.

Each separate provision of this article shall be deemed independent of all other provisions herein. If a court of competent jurisdiction declares that any provision of this article is invalid, then the remaining provisions of this article shall remain valid and enforceable of this article.

#### Sec. 49-37. - Enforcement.

The provisions of this Ordinance shall be enforced by the Board of Health Director or their designee, by a noncriminal disposition pursuant to Massachusetts General Laws Chapter 40, Section 21D. Each failure to comply with the requirements set forth in this Act with respect to an individual tenant or occupant entitled to notice hereunder shall be deemed a separate offense triggering a separate warning or fine. The penalty for the first violation of this ordinance shall be a written warning and the penalty for each subsequent violation shall be a fine of \$300.

#### Sec. 49-38. - Effective date.

This Ordinance shall become effective 90 days after passage by the City Council.

Vice President Bears moved to waive reading of the paper in lieu of a synopsis (Councillor Caraviello second)—approved.

- a) Councillor Knight offered an amendment striking “a fine of \$300” and replacing it with “a fine of \$50” (Vice President Bears second)—approved on a roll call vote of four in favor (Vice President Bears, Councillor Caraviello, Councillor Knight, Councillor Scarpelli) and three opposed (Councillor Collins, Councillor Tseng, President Morell).
- b) Councillor Knight offered an amendment exempting Tufts-owned on-campus housing (Councillor Caraviello second)—failed on a roll call vote of three in favor (Councillor Caraviello, Councillor Knight, Councillor Scarpelli) and four opposed (Vice President Bears, Councillor Collins, Councillor Tseng, President Morell).

Councillor Knight moved for approval, as amended, for first reading (Vice President Bears second)—approved on a roll call vote of six in favor and Councillor Scarpelli opposed.

### **PUBLIC PARTICIPATION**

To participate remotely outside of Zoom, please email [AHurtubise@medford-ma.gov](mailto:AHurtubise@medford-ma.gov).

Addressing the Council:

Steve Schnapp, 36 Hillside Avenue

### **UNFINISHED BUSINESS**

<b><u>20-600</u></b>	National Grid Grant of Location Riverside Ave.		
	IN CITY COUNCIL	DECEMBER 8, 2020	TABLED
<b><u>21-422</u></b>	Grant of Location Citizens Bank ADA Upgrades		
	IN CITY COUNCIL	AUGUST 17, 2021	TABLED
<b><u>21-631</u></b>	Personnel Ordinance – Amendments K, N, O and parts of Amendments L & M		
	IN CITY COUNCIL ADVERTISED (Eligible for 3 <sup>rd</sup> Reading)	DECEMBER 21, 2021 JANUARY 20, 2022 FEBRUARY 1, 2022	1 <sup>ST</sup> Reading Medford Transcript
<b><u>21-631</u></b>	Personnel Ordinance – Amendments F, I, J and parts of Amendments L & M		
	IN CITY COUNCIL ADVERTISED (Eligible for 3 <sup>rd</sup> Reading)	JANUARY 4, 2022 JANUARY 20, 2022 FEBRUARY 1, 2022	1 <sup>st</sup> Reading Medford Transcript
<b><u>22-023</u></b>	Amendments to Revised Ordinances – Personnel – Amendments A & B		
	IN CITY COUNCIL ADVERTISED (Eligible for 3 <sup>rd</sup> Reading)	JANUARY 4, 2022 JANUARY 20, 2022 FEBRUARY 1, 2022	1 <sup>st</sup> Reading Medford Transcript
<b><u>22-400</u></b>	The Well Coffee House		
	IN CITY COUNCIL	JUNE 21, 2022	TABLED
<b><u>22-547</u></b>	Council Enact Spending Moratorium (Main Paper)		
	IN CITY COUNCIL	OCTOBER 25, 2022	For 90 Days
<b><u>22-610</u></b>	Appropriation Request Traffic & Transportation Director		
	IN CITY COUNCIL	DECEMBER 20, 2022	TABLED
<b><u>22-611</u></b>	Establish the Traffic & Transportation Director Position City Classification and Compensation Plan		
	IN CITY COUNCIL	DECEMBER 20, 2022	TABLED

**22-519**

Amendment to Community Preservation Act Ordinance

IN CITY COUNCIL JANUARY 31, 2023

1<sup>ST</sup> Reading

**Reports Due/ Deadlines:**

**16-574** – University Accountability Spring 2017-Report (Next Report Due in March 2022)

**17-606** – Evangelical Haitian Church 400 High St. 90 Day Review on Illumination- January 9, 2018 (Tabled)

**20-086** –90-Day Review Report on El Tacuba Cocina and Tequila Bar for a petition for a Special Permit – Hours (granted by the Council, as amended to require 90-day report period to begin on opening of restaurant)

**22-007** – 90 Day Report from Administration to present 5-year plan to address gas leaks (Report due in April 2022)

**22-009** – 90 Day Report from School Administration to identify opportunities to connect classroom learning to career applications (Report due in April of 2022)

**22-026** – Quarterly Presentation on City's Financial Health by Chief Financial Officer/Auditor

**22-027** – Monthly copy of Warrant Articles from Chief Financial Officer/Auditor

**22-039** – Report due in 30 days on draft ordinances requested by the Council during the 2020-2021 term.

**23-026** - Elections Manager and Elections Commission provide an update on the status of the 2022 Elections After-Action Report requested by the City Council last fall.

**Adjournment:**

Councillor Knight moved to adjourn at 9:11 p.m. (Councillor Tseng second)—approved.

President Morell adjourned the meeting at 9:11 p.m.

A true copy, Attest

Adam L. Hurtubise  
City Clerk