

February 25, 2021

## MEMORANDUM

**To:** Transportation and Utilities Committee  
**From:** Lise Kaye, Analyst  
**Subject:** Council Bill 120002: Seattle City Light Current Diversion Technologies<sup>1</sup>

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On Wednesday, March 3, 2021, the Transportation and Utilities Committee will discuss Council Bill (CB) 120002. The proposed bill is intended to meet the requirements of [Seattle Municipal Code Chapter 14.18](#), Acquisition and Use of Surveillance Technologies.<sup>2</sup> (Attachment 1 to this memo summarizes these requirements and process by which the Executive develops the required Surveillance Impact Reports.) The proposed bill would approve Seattle City Light's (SCL's) continued use of three existing Current Diversion tools and accept the Surveillance Impact Reports (SIR) for each technology and an Executive Overview of all three technologies. As required by [SMC 14.18.020](#)(3), the Executive conducted a public engagement process to receive public comments and/or concerns about this technology. In addition, the Community Surveillance Working Group ("Working Group") has completed a Privacy and Civil Liberties Impact Assessment ("Impact Assessment") of the technology, and the City's Chief Technology Officer (CTO) has provided his response ("Response") to the Impact Assessment.

This memo describes each technology and summarizes both the potential civil liberties and potential disparate impacts and the public engagement processes for each, as reported in the SIRs. It also summarizes key concerns and recommendations from the Working Group's Impact Assessment and the CTO's Response. Finally, the memo identifies policy considerations for possible Council action.

### Seattle City Light Current Diversion Technologies

CB 120002 would approve SCL's use of and accept SIRs for three technologies employed when the utility's Current Diversion Team investigates electricity that is being used but is unaccounted for by SCL's billing system (i.e., is not being paid for). CB 120002 would also accept an Executive Overview covering all three technologies, which documents the operational policy statements that represent the only allowable uses of the equipment and data collected by the Current Diversion technologies. Data collected by the technologies may be used by law enforcement authorities as evidence for recovering the value of the diverted energy. The SIR reports that, in 2017, SCL recovered \$1.6 million in stolen energy costs using these technologies.

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<sup>1</sup> This memo updates the February 25, 2021 memo on the same subject to reflect that this Council Bill would accept both SIR and the Executive Overview for Seattle City Light's Current Diversion technologies and removing related policy considerations.

<sup>2</sup> (Ord. [125679](#), § 1, 2018; Ord. [125376](#), § 2, 2017.)

Council passage of CB 120002 would approve SCL's use of the following three Current Diversion tools and accept the Surveillance Impact Reports (SIR) for each technology.

- Binoculars/Spotting Scope. The Current Diversion Team uses standard, commercial grade binoculars to examine meters where current diversion is suspected. The binoculars do not have any special enhancements requiring power (e.g. night vision, video-recording capabilities) and do not collect data. Staff take notes on data collected by means of binoculars which are stored in a secure folder on SCL's digital network drive. The data is only accessible by Current Diversion Team members and the Current Diversion Coordinator. SCL has clarified that, while the title of the SIR includes "Spotting Scope," SCL only uses the term as an "informal term" for binoculars.
- Check Meter Device. Officially called the "SensorLink Transformer Meter System," this device is housed in a small box temporarily attached to an electric pole. The Device measures electrical energy flowing through an electrical service wire over time. Members of the Current Diversion Team access the data remotely using a secure radio protocol and a specific, password-protected software program. The downloaded data are stored in a secure folder on SCL's digital network drive, accessible only by Current Diversion Team members and SCL management. Data stored in the Check Meter Device are deleted after its retrieval by the Current Diversion staff and/or upon its removal from the electrical pole. SCL retains the downloaded information in accordance with Washington State's Retention Schedule for Utility Service Providers, which calls for electricity diversion investigation records to be retained for six years after an investigation is closed and then destroyed.<sup>3</sup>
- SensorLink AmpFork, also referred to in the SIRs as the SensorLink Ampstik, is a handheld tool that provides an instantaneous reading of electrical energy flow through an electrical service wire. A member of the Current Diversion Team may then compare the information against the readings displayed on the electric meter, allowing staff to determine if current is presently being diverted. Only members of the Current Diversion Team and the Current Diversion Coordinator may access the data, which is stored on a private folder on SCL's digital file locations. The data may be shared with SCL's customer billing division or with police investigators or prosecutors who require evidence for further proceedings in complex or aggravated cases, as when large sums of energy have been diverted/stolen, or where there is a safety risk to the public.

#### Civil Liberties and Potential Disparate Impacts on Historically Marginalized Communities

Departments submitting SIRs are required to complete an adapted version of the Racial Equity Toolkit (RET) to inform the SIR public engagement process and to highlight and mitigate impacts on racial equity from the use of the technology. The RET for the Current Diversion Technologies states that SCL does not anticipate impacts on civil liberties from the technologies. However, the RET states that SCL is conducting an equity analysis of past enforcement locations to ensure that its policies and procedures are as equitable as possible. The equity analysis has not been

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<sup>3</sup> Per [UT55-05G-07](#)

completed as of the date of the drafting of this memo. The RET also reports that SCL had not yet finalized the metrics to be used as part of the CTO's annual equity assessments.<sup>4</sup>

### Public Engagement

The Executive accepted public comments on this technology from February 5 – March 5, 2019 and conducted one public meeting for multiple SIRs on February 27, 2019.<sup>5</sup> In addition, the Department of Neighborhoods conducted four focus group meetings in partnership with four organizations serving communities of color and other marginalized communities.<sup>6</sup> The SIR includes all notes from the focus groups (Appendix D); comments pertaining solely to these technologies received from members of the public (Appendix E), and letters from organizations or commissions (Appendix G). Nine of the 46 public comments (in Appendix E) relate to SCL's Current Diversion technologies; seven of those convey a range of opinions pertaining to binoculars including some support, questions about using outdated technology and concerns about invasion of privacy.

### Privacy and Civil Liberties Impact Assessment

The Impact Assessment identifies three "key concerns" concerns about the use of data and data retention associated with SCL's Current Diversion technologies and recommends that Council adopt three specific policies. The Impact Assessment also requests that SCL's equity analysis of past enforcement locations be provided for public review. As noted above, SCL has not yet completed the equity analysis; Executive staff report that, when finalized, the analysis will be available for public viewing. Tables 1 and 2 (on the next page) summarize the CTO's Response to the "key concerns" and describe whether and how the SIRs as drafted would address the Working Group's recommended policies.

*Key Concerns and the CTO's Response.* Table 1 summarizes the CTO's response to each of the Working Group's "Key Concerns." The Response concludes that SCL's policy, training and limitations from the technologies themselves provide adequate mitigation for the potential privacy and civil liberty concerns raised by the Working Group.

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<sup>4</sup> [SMC 14.18.050B](#) requires that the Chief Technology Officer produce and submit to the City Council a Surveillance Technology Community Equity Impact Assessment and Policy Guidance Report that addresses whether Chapter 14.18 of the SMC is effectively meeting the goals of the Race and Social Justice Initiative, any recommended adjustments to laws and policies to achieve a more equitable outcome, and any new approaches and considerations for the SIRs.

<sup>5</sup> The February 27, 2019 City Surveillance Technology Fair solicited comments on SCL's Current Diversion Technologies, SFD's Computer-Aided Dispatch technology, Seattle Department of Transportation's Acyclica travel time measurement technology, and three Seattle Police Department Technologies: 911 Call Logging Recorder, Computer-Aided Dispatch, and CopLogic.

<sup>6</sup> Appendix D contains notes from these focus group meetings, which were conducted as part of a "World Café" pilot project in collaboration with the Council on American-Islamic Relations, Entre Hermanos, Byrd Barr Place, and Friends of Little Saigon. Notes from Entre Hermanos are in Spanish; Executive staff are reviewing options to translate these notes into English.

*Table 1. CTO Response to Privacy and Civil Liberties Impact Assessment of SCL Current Diversion Technologies*

<b>Working Group Key Concern</b>	<b>CTO Response</b>
1. No explicit, written restrictions on use	The policy and operational documentation provide detail about how the technology is used and how any data collected is managed, and it is our assessment that the documentation provides adequate protections.
2. No specific data protection provisions	The data storage location and access controls are adequate for protecting information collected by these technologies during current diversion investigations.
3. Unjustifiably long data retention period	SCL follows legally required retention periods that ensure that only data that is necessary to complete an investigation is preserved after the investigation in case of any dispute.

*Recommended Policies.* The Impact Assessment recommends that Council ensure that SCL adopt “clear and enforceable policies that ensure, at a minimum, the following:

1. Define purpose of use for each technology and restrict its use to that purpose.
2. Ensure there are clear data protection policies to safeguard stored data.
3. Ensure the deletion of data collected by the technology immediately after the relevant current diversion investigation has closed.”

Table 2 below describes how the SIRs as drafted would address these three recommendations. Areas not fully addressed are included in the “Policy Considerations” section below.

*Table 2. Working Group Recommendations Addressed in the SIR*

<b>Working Group Recommendation</b>	<b>Whether/How Addressed in SIR</b>
1. Define the purpose of and use of each technology and restrict its use to that purpose.	<b>Executive Overview.</b> Operational Policies represent the only allowable uses of the equipment and data collected by this technology.
2. Ensure clear data protection policies to safeguard stored data.	<b>4.10.</b> Data for each device is stored in a private folder on City Light’s digital file locations, accessible only by Current Diversion Team members and the Current Diversion Coordinator.
3. Ensure that data is deleted after the relevant current diversion investigation has closed.	<b>4.10.</b> SCL complies with Washington State’s required retention period, which requires retention for six years after an investigation is closed. <sup>7</sup>

<sup>7</sup> See UT55-05G-07 Rev 0 of [Washington State’s Utility Services Records Retention Schedule](#)

## **Policy Considerations**

Central Staff has identified the following potential policy considerations relative to the Working Group's key concerns and recommendations:

1. Annual equity assessment metrics. SCL has not yet finalized metrics to be used in evaluating the Current Diversions technology as part of the CTO's annual equity assessments. These assessments are intended to play a key role in determining whether the City's surveillance legislation is meeting the goals of the Race and Social Justice Initiative. Council may wish to request a report on the proposed metrics by a date certain and/or defer approval of this SIR, pending completion of these metrics.
2. Correct title for Binoculars/Spotting Scope SIR. SCL has clarified that, while the title of the SIR includes "Spotting Scope," SCL only uses the term as an "informal term" for a binocular. However, in other contexts, a Spotting Scope is a significantly different piece of equipment than Binoculars.<sup>8</sup> Council may wish to amend the title of the SIR to refer only to "Binoculars."

## **Committee Action**

Options for Council action are as follows:

1. Pass CB 120002 as transmitted;
2. Request Central Staff to prepare amendments to the Council Bill and/or to one or more of the SIRs to address additional concerns or issues; or
3. Take no action.

## **Attachments:**

1. Background Summary and Surveillance Impact Report Process

cc: Dan Eder, Interim Director  
Aly Pennucci, Budget and Policy Manager

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<sup>8</sup> For example, this [article](#) published by the Audubon Society describes when a Spotting Scope can provide greater detail than Binoculars.

## Attachment 1 - Background Summary and Surveillance Impact Report Process

### Recent Legislative History

[Ordinance 125376](#), passed by Council on July 31, 2017, required City of Seattle departments intending to acquire surveillance technology to obtain advance Council approval, by ordinance, of the acquisition and of a surveillance impact report (SIR).<sup>1</sup> Departments must also submit a SIR for surveillance technology in use when Ordinance 125376 was adopted (referred to in the ordinance as “retroactive technologies”). The Executive originally included 28 “retroactive technologies,” on its [November 30, 2017 Master List](#) but revised that list to 26 in [December 2019](#). The Council has approved two SIRs and twice extended the initial March 3, 2020 deadline for completion of SIRs for all 26 technologies: first by six months to accommodate extended deliberation of the first two SIRs; and then by a second six months due to COVID-related delays. Either the Chief Technology Officer or the Council may determine whether a specific technology is “surveillance technology” and thus subject to the requirements of SMC 14.18. Each SIR must describe protocols for a “use and data management policy” as follows:

- How and when the surveillance technology will be deployed or used and by whom, including specific rules of use
- How surveillance data will be securely stored
- How surveillance data will be retained and deleted
- How surveillance data will be accessed
- Whether a department intends to share access to the technology or data with any other entity
- How the department will ensure that personnel who operate the technology and/or access its data can ensure compliance with the use and data management policy
- Any community engagement events and plans
- How the potential impact of the surveillance on civil rights and liberties and potential disparate impacts on communities of color and other marginalized communities have been taken into account; and a mitigation plan
- The fiscal impact of the surveillance technology

### Community Surveillance Working Group

On October 5, 2018, Council passed [Ordinance 125679](#), amending SMC 14.18, creating a “community surveillance working group” charged with creating a Privacy and Civil Liberties Impact Assessment for each SIR.<sup>2</sup> At least five of the seven members of the Working Group

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<sup>1</sup> As codified in SMC 14.18.030, Ordinance 125376 identified a number of exemptions and exceptions to the required Council approval, including information voluntarily provided, body-worn cameras and cameras installed in or on a police vehicle, cameras that record traffic violations, security cameras and technology that monitors City employees at work.

<sup>2</sup> Ordinance 125679 also established a March 31, 2020 deadline for submitting SIRs on technologies already in use (referred to as “retroactive technologies”) when Ordinance 125376 was passed, with provision to request a six-month extension.

## Attachment 1 - Background Summary and Surveillance Impact Report Process

must represent groups that have historically been subject to disproportionate surveillance, including Seattle’s diverse communities of color, immigrant communities, religious minorities, and groups concerned with privacy and protest.<sup>3</sup> Each Privacy and Civil Liberties Impact Assessment must describe the potential impact of the surveillance technology on civil rights and liberties and potential disparate impacts on communities of color and other marginalized communities and will be included in the SIR. Prior to submittal of a SIR to Council, the Chief Technology Officer may provide a written statement that addresses privacy rights, civil liberty or other concerns in the Working Group’s impact assessment.

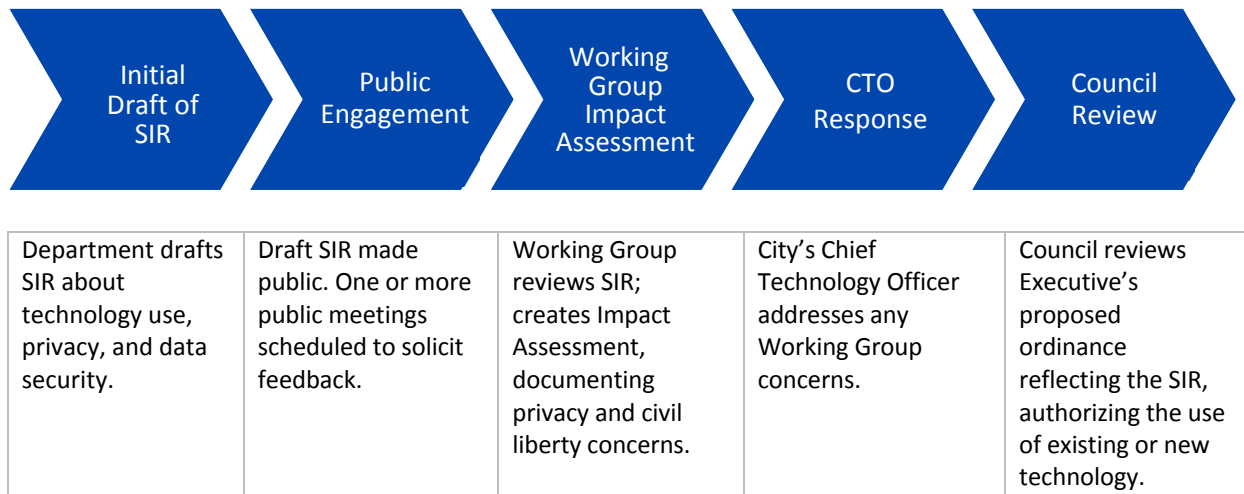
### Executive Overviews

In May 2019, members of the Governance, Equity, and Technology Committee requested that IT staff prepare a summary section for each of the two lengthy SIR documents under review at that time. The Committee then accepted the resultant “Condensed Surveillance Impact Reports (CSIRs) together with the complete SIRs. The Executive has continued this practice with subsequent SIRs but has renamed the documents “Executive Overviews.” The Operational Policy Statements in the Executive Overview represent the only allowable uses of the subject technology.

### SIR Process

Chart 1 is a visual of the SIR process from inception to Council Review:

*Chart 1. Surveillance Impact Report (SIR) Process*



<sup>3</sup> The Mayor appoints four members and Council appoints three members.