



Testimony in Opposition to Special Appropriation #24-21
\$350,000 for MCPD Proposed Drone Pilot Program
October 17, 2023 Public Hearing

My name is Paul Holmes and I have lived in the Forest Knolls neighborhood of Silver Spring for 30 years. I am submitting this testimony on behalf of the Silver Spring Justice Coalition. The Silver Spring Justice Coalition (SSJC) is a coalition of community members, faith groups, and civil and human rights organizations from throughout Montgomery County committed to eliminating harm caused by police and empowering those communities most affected by policing.

SSJC opposes the Special Appropriation of \$350,000 for MCPD's Drone As First Responder Pilot Program. We submitted testimony in opposition to a similar funding request during the FY2024 budget hearings and were grateful to the Council for choosing not to include the funding in the FY24 Operating Budget. We continue to object to the use of drones and to any expansion of their use, and we ask the Council to impose as many safeguards as they can, including meaningful requirements for community and Council engagement and oversight.

When the Council denied MCPD's budget request, it instructed MCPD to engage in community outreach and education before bringing the request back to the Council. While MCPD participated in several community events in August and September of 2023, the updated MCPD Drone Policy, Function Code 460, went into effect on September 19, 2023: it was clearly written well in advance of these community outreach efforts. MCPD's disregard of the Council's request for community engagement underscores the fact that MCPD alone intends to create, operate, and oversee their electronic surveillance of our community.

This is unacceptable. We continue to believe that any funding for expanded drone use should be conditioned on the creation of a commission composed of community members, privacy experts, and criminal law practitioners, similar to what currently exists in [San Francisco](#). The commission should provide guidance to MCPD on its drone policy and recommend Method II regulations on MCPD's use of drones, to the extent permitted by state law. At the very least, the Council must require that Method II

regulations govern the use of drones by MCPD.

External oversight by the Council and the community is necessary for a number of reasons, many of which were voiced by community members during the public forums. The use of drones by law enforcement implicates significant privacy interests and can be used in a number of harmful ways, particularly against communities of color. For example, drones have been used to employ facial recognition technology, [which has been demonstrated to be racist and unreliable](#), carrying grave risks of misidentification, particularly among Black and brown community members. [Drones have also been used to surveil crowds and protesters](#). The very presence of police-controlled drones in the airspace has the potential to chill peaceful assembly and the exercise of our First Amendment rights.

The use of drones intended by MCPD's proposed pilot program is particularly concerning because it is likely to dramatically increase the policing of communities already overpoliced in our County. The MCPD drone policy, which will govern the Drone As First Responder program, permits MCPD to send out a technological dragnet, surveilling a significant geographical area. This approach will undoubtedly lead to the erroneous stopping, searching, and even arresting of people who fall within that area. In a County in which use of force rates against Black and brown community members are already outrageously disparate, it is unacceptable to subject these vulnerable community members to this additional risk of police violence.

While MCPD representatives promised certain safeguards would limit this type of over policing, those safeguards do not appear in the Department's Drone Policy. In fact, a close review of Function Code 460 reveals a number of problems that we urge the Council to address through Method II regulations:

1. Several key terms that empower MCPD to use drones in expansive and unchecked ways are undefined. These include "emergencies," "exigent circumstances," and "terrorist activities." These terms must be defined in order for the Council and the community to effectively oversee compliance.
2. Section II.A of the Policy - "Administration" - refers broadly to using drones for "calls for service." This broad grant of authority would permit MCPD to go well beyond the described scope of their Drone As First Responder program and should be subject to clearly stated parameters. While the remainder of that section lists eight different "objectives," of the use of drones, it is not at all clear whether that list is intended to limit drone use or is simply illustrative of when drones may be used. Moreover, the "objectives" related to "visual surveillance" and "scene documentation" are incredibly broad. They appear to permit drone surveillance for almost any reason, and suggest that any time there is a traffic

accident, a drone could be dispatched to survey the scene. This broad language is at odds with the more narrow program description provided to the community during MCPD's outreach events.

3. The data collection requirement (Section IV.B(6)) must be mandatory. In its current form, the policy describes data that "should" be collected. MCPD promised the community that certain data would be available on a publicly accessible website within a day of a drone deployment. This requirement of daily, public publishing of data should be required by regulation, and regulations must include mandatory language for the collection of data such as "shall" or "must" rather than "should."
4. The Restrictions on Operating the UAS section of the policy (IV.D) is inadequate:
 - a. The use of the word "solely" in restricting the use of drones and recordings by drones based "solely" on certain prohibited criteria like race, sexual orientation, and participation in protected First Amendment activities, weakens this purported protection because as long as there is *one* other purpose given for the use of drones, or review/retention of UAS-recorded data, their use will be permitted to identify people based on racial information, sexual orientation or First Amendment activities. The word "solely" must be removed.
 - b. The policy should expressly limit the use of drones or drone recordings to capture information about people who are not the subjects of the drone call in order to minimize the over-policing of already overpoliced members of our community. Any ability of MCPD to dispatch patrols in response to observations that are unrelated to the call for service must be expressly limited, for example, to observations of the commission of a crime of violence (with a statute-based definition included).
 - c. MCPD informed the community that the drone camera would be facing sky-ward while in transit; that requirement should be added to this section. There should also be a requirement that the drone not begin recording until it has reached the location of the call for service.
5. The Retention and Management section (V) should expressly apply the same standards governing the retention and management of body-worn camera recordings to the retention and management of drone recordings.
6. In the Records Request and Release of Recordings section (VI), we object to the requirement that recordings may not be the sole basis for the discipline of a bargaining unit employee. While we understand why the FOP would have

bargained for this protection, it makes no practical sense: if a recording shows evidence of misconduct, then why should that not form the basis of a disciplinary action? We are also concerned that this provision conflicts with the Maryland Police Accountability Act and our County's enabling legislation which prohibits collective bargaining over discipline covered by the Act. If a drone recording captures misconduct related to a member of the public, there appears to be no legal basis by which MCPD can prevent the Administrative Charging Committee from handing down a disciplinary recommendation. In addition, since there is no prohibition against using a drone recording as the sole basis for a criminal charge, there should not be a different standard for administrative disciplinary proceedings against a police officer.

7. We believe the Reporting and Transparency requirements (Section VII) are insufficient. As referenced above, MCPD told the community that they would maintain a website that shows each drone dispatch, with accompanying data that would be updated on a daily basis. That should include the information referenced in the Procedures for Use section of the policy (time, date, location of flight, description of the covered activities and outcomes). However, it should also include a clearly stated reason for the dispatch, as well as outcomes data including: how long the drone was recording, whether anyone was arrested, whether force was used, whether the drone made it unnecessary to dispatch police to the scene, and whether any unrelated calls for service were initiated as a result of observations made by the drone. Demographic data of individuals arrested and charged as a result of drone surveillance -- similar to what is required in our County's policing data bill -- should also be included.

We understand that the Council has considered getting involved in oversight of the use of drones and surveillance technology in the past. We believe it is not too late for the Council to take a more active role now, as technology has continued to advance and permits police to engage in more and more invasive forms of community surveillance. While we appreciate the opportunity to share this feedback via the public hearing process, we reiterate our demand that a formal process involving a range of experts, policy-makers, and community members be created to inform the County's use of electronic surveillance, including drones, and the Council must subject this use to a formal regulatory process, rather than relying on MCPD's internal policies. We urge the Council to reject MCPD's budget request and to use this opportunity to impose greater safeguards moving forward.