

# THE RUTHERFORD INSTITUTE

Post Office Box 7482  
Charlottesville, Virginia 22906-7482

JOHN W. WHITEHEAD  
Founder and President

TELEPHONE 434 / 978 - 3888  
FACSIMILE 434/ 978 - 1789  
[www.rutherford.org](http://www.rutherford.org)

April 26, 2010

The Honorable Dave Norris  
Charlottesville City Council  
Box 911, City Hall  
Charlottesville, VA 22902

Re: Surveillance cameras on the Downtown Mall

Dear Mayor Norris:

As a longtime member of this community, The Rutherford Institute has a vested interest in ensuring that Charlottesville remains a safe, welcoming environment for individuals and businesses alike, while staying true to the ideals of freedom advocated by its most esteemed resident, Thomas Jefferson. Thus, we feel compelled to share our concerns about recent reports that the City may revisit the idea of installing surveillance cameras on the Downtown Mall in an effort to attract visitors and boost business.<sup>1</sup>

Communities across the nation have long wrestled with how best to balance civil liberties concerns and security needs, and Charlottesville is certainly not the first community to tackle these weighty issues, nor will it be the last. However, as The Rutherford Institute cautioned when the idea of installing surveillance cameras on the Downtown Mall was first raised in 2007, the City Council should give serious consideration to the invasion of privacy that such cameras pose, as well as the threat to the constitutional rights of residents of the City of Charlottesville and Albemarle County. Indeed, the cameras may serve to discourage visitors and depress business by dampening the free-spirited, vibrant atmosphere of the Mall, which is enlivened by an eclectic assortment of performance artists, activists, tourists and community members.

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<sup>1</sup> Rachana Dixit, "Downtown Mall video cameras may get a go" (April 25, 2010), *Daily Progress*.

The Honorable Dave Norris  
Charlottesville City Council  
April 26, 2010  
Page 2

Although expecting privacy in public places may seem like an exercise in cognitive dissonance, most law-abiding people actually do expect a certain level of privacy and anonymity outside their homes. We do not expect to have our movements followed or filmed when we pick up prescriptions from the drug store or have an intimate conversation with a family member. We also expect that people can remain anonymous when they enter an Alcoholics Anonymous meeting, fertility clinic or psychiatrist's office.

However, any expectation of privacy in a public place evaporates when modern surveillance cameras can magnify items up to four hundred times, follow moving objects and even automatically identify specific faces. When local governments have the ability to track the time, date and location of each individual's movement, this has a substantial "chilling" effect on individuals seeking to exercise their cherished First Amendment rights. People may feel the need to watch what they say and with whom they associate. Individuals may be so intimidated by the omnipresent cameras that they choose to not express an unpopular opinion or meet with a controversial religious or political group. Indeed, existing technologies make it possible for a networked system of cameras to follow an individual's movements from doorstep to doorstep and create a searchable digital dossier of his or her activities.

We are well aware that the legal standards governing these surveillance systems are murky at best. In many respects, the law in this area has lagged behind technological developments. Yet the state of the law likely reflects the fact that, until recently, public video surveillance was not capable of eliminating the relative privacy provided by an isolated public space or the anonymity of a crowded street. Now that the technology available to law enforcement has advanced, legal guidelines should be implemented to preserve our constitutional values of privacy and free expression.

For example, when considering whether or not to install surveillance cameras, we suggest that you first consider the efficacy of public video surveillance systems. For example, a study by the Home Office in London – the British equivalent of our Department of Homeland Security – found that even though video surveillance accounts for nearly three-quarters of their crime prevention spending, the cameras have "no effect on violent crimes." In our own locale, history has taught that there is no substitute for the combination of good community policing, dogged investigations based upon probable cause and reasonable suspicion, and the cooperation of an informed populace.

There is anecdotal evidence that surveillance footage may be helpful in investigating criminal activity that has already occurred; similar evidence suggests that cameras may deter minor property crimes. If the City Council, after carefully evaluating

the circumstances, determines that a public video surveillance system will support their community goals, then that system should be well-regulated to protect the individual privacy of residents. However, such permanent systems should only be adopted through a process that is open and publicly accountable.

The Charlottesville City Council should also be actively involved in designing and approving the system; it should not be developed by the police department behind closed doors. Law enforcement officers should have clear written guidelines, codified in the law, directing how and when it is appropriate to watch community residents using the cameras and how the data may be reviewed and retained. You can minimize the likelihood of abuse by limiting access to the public video surveillance system. You should also have written procedures to govern personnel who have access to the system and how people access that footage. For example, rules should be developed that require officers to log when, where and why they access stored footage. Periodic audits of these detailed records will ensure that stored video footage is being used effectively and appropriately.

Protecting the identities of individuals incidentally captured on camera is another way to decrease intrusions into private lives. Law enforcement agencies can use digital masking to remove identifying features of individuals who are irrelevant to any criminal or terrorist investigation from collected footage. Similar technology is already used in photo-enforced traffic systems, which blur faces of passengers in issued citations. Although video surveillance systems are always susceptible to abuse, technology is readily available that can minimize intrusions into privacy.

It is tempting to believe that video surveillance will always keep us safe. Today's security cameras can see into the darkest corners on the darkest nights, and they don't need sleep or overtime pay. Responsible and limited use of video surveillance can effectively supplement traditional law enforcement practices. But if our reliance on cameras comes at the cost of personal privacy and American liberty, then we will have paid far too high a price indeed.

In light of these concerns, The Rutherford Institute urges the City Council to carefully evaluate whether a video surveillance system is truly the best way to boost business and deter crime on the Downtown Mall. However, should the City decide to adopt a video surveillance system, the Council should establish proper safeguards and written guidelines to ensure that the system protects residents' privacy rights and civil liberties.

The Honorable Dave Norris  
Charlottesville City Council  
April 26, 2010  
Page 4

Any surveillance system should also be designed narrowly to serve its specific law enforcement purpose and to minimize intrusions on civil and constitutional rights. To this end, a memorandum setting forth some suggested guidelines is enclosed.

While we would caution against installing cameras on the Mall, should the need arise, The Rutherford Institute is available to assist the City Council in drafting legal guidelines for the use and implementation of surveillance cameras in order to minimize the detrimental effects of the cameras and ensure that the constitutional rights of its residents are preserved.

Sincerely yours,

  
John W. Whitehead  
President

Enclosure: Guidelines for Use in Considering the Implementation of  
Surveillance Cameras in Charlottesville's Downtown Mall

cc: Holly Edwards, Vice Mayor, Charlottesville City Council  
David Brown, Charlottesville City Council  
Satyendra Huja, Charlottesville City Council  
Kristin Szakos, Charlottesville City Council  
Timothy J. Longo, Sr., Chief of Police, City of Charlottesville