

## **ORDINANCE No. 190113**

\*Prohibit the acquisition and use of Face Recognition Technologies by City bureaus (Ordinance).

The City of Portland ordains:

Section 1. The Council finds:

1. On May 3, 2017, City Council Ordinance 188356 established an Open Data Policy and Program committed to the publication, accessibility, and equitable sharing of data collected by the City of Portland and partners and directed the development of a team to provide data governance guidance for Open Data Program. Through development and implementation of this work, the team identified the need for privacy assessment and comprehensive structure to address tensions with transparency.
2. On June 21, 2018, City Council Resolution 37371 created the Smart City PDX Priorities Framework to prioritize addressing inequities and disparities when using data and investing in technologies that improve people's lives, with a specific focus on communities of color and communities with disabilities.
3. On June 19, 2019, City Council Resolution 37437 established Privacy and Information Protection Principles to serve as guidance for how the City of Portland collects, uses, manages and disposes of data and information, and directed staff at the Bureau of Planning and Sustainability and Office of Equity and Human Rights to identify and develop policies and procedures that promote these Principles.
4. The Privacy and Information Protection Principles center equity and human rights in privacy strategy development and acknowledge that underserved communities are most at risk in the digital age. Human rights principles such as privacy and freedom of expression must guide the use of the City of Portland's data and digital services.
5. Surveillance Technologies are defined as any software, electronic device, system utilizing an electronic device, or similar used, designed, or primarily intended to collect, retain, analyze, process, or share audio, electronic, visual, location, thermal, olfactory, biometric, or similar information specifically associated with, or capable of being associated with, any individual or group.

6. Face Recognition means the automated searching for a reference image in an image repository by comparing the facial features of a probe image with the features of images contained in an image repository (one-to-many search). A Face Recognition search will typically result in one or more most likely candidates—or candidate images—ranked by computer-evaluated similarity or will return a negative result.
7. Face Recognition Technology means an automated or semi-automated process using Face Recognition that assists in identifying, verifying, detecting, or characterizing facial features of an individual or capturing information about an individual based on an individual's face.
8. It is essential to have an informed public discussion about decisions related to the City of Portland's acquisition and use of Surveillance Technologies including Face Recognition Technologies.
9. The use of Face Recognition Technologies raises general concerns around privacy, intrusiveness, and lack of transparency. The lack of transparency and accountability, in addition to biased technologies -- particularly in the context of false positives in law enforcement -- can create devastating impacts on individuals and families.
10. United States federal law does not currently regulate Face Recognition Technologies, and Oregon state law only prohibits its use by law-enforcement agencies to analyze recordings obtained through the use of body-worn cameras (see ORS 133.741(1)(b)(D)). There are no other laws addressing Face Recognition Technologies applicable to the City of Portland.
11. Existing methodologies assessing bias in Face Recognition Technologies show progress on their performance. However, there is still not a formal certification process available to cities that includes the full lifecycle of sensitive information collected from individuals.
12. Smart City PDX is currently developing a scope for a comprehensive Data Governance and Privacy and Information Protection framework for the City of Portland. It is essential that such frameworks include impacted communities and transparent decision making authority to regulate and oversee that the use of Surveillance Technologies and sensitive information from Portlanders and visitors, like Face Recognition Technologies, do not harm civil rights and civil liberties.

13. The City recognizes the rapid evolution of technologies demand more frequent revisions of existing technology related policies, in order to make sure policies still fulfill their purpose.
14. The City has received public comments of drafts publicly released through the development of this policy. These comments have enriched this ordinance and are attached in Exhibit A.
15. The City desires to adopt a ban on the City's acquisition and use of Face Recognition Technologies and information derived from such technologies.

NOW, THEREFORE, the City Council directs:

- a. Each bureau director shall require bureau staff to review and assess whether bureau staff are using Face Recognition Technologies. Each bureau will complete this assessment and provide it to the Bureau of Planning and Sustainability's Smart City PDX Open Data Coordinator within 90 business days after the effective date of this ordinance. This report will be made publicly accessible.
- b. Bureaus shall not acquire, evaluate or use Face Recognition Technologies, except as expressly provided in Section (f). This prohibition applies to Face Recognition Technologies that are procured by any means with or without the exchange of monies or other consideration. For purposes of clarity, this means bureaus shall not purchase, lease or accept a donation or gift of Face Recognition Technologies.
- c. Bureaus shall not knowingly acquire, request, use, access or retain any information (unless required by public record retention rules) derived from Face Recognition Technologies or intentionally collect information to be used for Face Recognition Technologies, except as expressly provided in Section (f).
- d. Bureaus shall not direct a non-City entity to acquire or use Face Recognition Technologies on the City's behalf unless such acquisition or use would be otherwise allowed for bureaus under this ordinance.
- e. Bureaus shall not knowingly allow a non-City entity to use Face Recognition Technologies on City owned property unless such use would be otherwise allowed for bureaus under this ordinance.
- f. Bureaus may only use Face Recognition Technologies for the following purposes:

1. For verification purposes for bureau staff to access their own personal or City issued personal communication and electronic devices. For example, bureau staff may use Face Recognition Technologies to unlock their own or assigned mobile phones or tablets;
  2. In automatic face detection services in social media applications. Bureau staff activity in social media is regulated by the policy HRAR 4.08A; and
  3. In detecting faces for the sole purpose of redacting a recording for release or disclosure outside the City to protect the privacy of a subject depicted in the recording.
- g. If a bureau inadvertently or unintentionally receives, accesses or uses information obtained from Face Recognition Technologies, it shall not be a violation of this ordinance provided the bureau follows the requirements of this section:
1. The bureau immediately ceases using the information as soon as it learns that the information was obtained from Face Recognition Technologies;
  2. The bureau documents its receipt, access or use of the information in an impact report;
  3. The impact report contains the following information: (i) date the information was received, accessed, or used; (ii) source of the information; (iii) a description or summary of the incident; (iv) whether the bureau accessed or used the information in the course of its operations; and (v) corrective measures taken by the bureau to prevent the further transmission or use of any information inadvertently or unintentionally obtained through the use of Face Recognition Technologies. The impact report shall not include the information involved in the incident or any personally identifiable information or other information prohibited by law;
  4. The impact statement is submitted to the City Council at a regularly noticed public hearing, within 60 days of the discovery; and
  5. The bureau retains the information no longer than the applicable retention period or as otherwise required by law.
- h. The Bureau of Planning and Sustainability's Smart City PDX Open Data Coordinator will convene a temporary group to serve as a resource to all bureaus to assess whether a technology constitutes Face Recognition Technologies and explore whether any changes are necessary to other existing City policies or administrative rules. This temporary group will include representatives from bureaus, including but not limited to, the Bureau of Planning and Sustainability; the

Bureau of Technology Services; the Portland Police Bureau; the Bureau of Human Resources; the City Attorney's Office; and the Office of Equity and Human Rights.

- i. As part of the work directed by City Council Resolution 37437, the Bureau of Planning and Sustainability is directed to explore the adoption of a comprehensive Data Governance and Privacy and Information Protection framework that addresses the appropriate use or prohibition of Surveillance Technologies, including Face Recognition Technologies and the information derived from Face Recognition Technologies. This includes assessing staff and budget resources needed to: establish new Citywide privacy policies and procedures; develop effective privacy assessment tools; create guidelines for acquiring, using or sharing information derived from Surveillance Technologies; design and implement public engagement processes, with a focus on underserved communities; and create decision-making structures for managing City data.
- j. The Bureau of Planning and Sustainability and the Office of Equity and Human Rights shall address public use of Face Recognition Technologies in coordination with other local jurisdictions such as TriMet, Multnomah County, and Portland Public Schools, to ensure that community members do not develop a false sense of security because of the limitations of this ordinance.
- k. The prohibitions stated in this ordinance shall remain in effect until the City adopts or revises a comprehensive Data Governance and Privacy and Information Protection framework that addresses the appropriate use or prohibition of Face Recognition Technologies and the information derived from Face Recognition Technologies.
- l. Violations of this ordinance are subject to the following remedies:
  1. A person injured by a material violation of this ordinance may institute proceedings against the City in a court of competent jurisdiction for injunctive relief, declaratory relief, or writ of mandate to enforce this ordinance.
  2. Prior to the initiation of any legal proceeding under subsection (1), the City must be given written notice via the City Attorney's Office of the violation(s), and the bureau who is alleged to have violated the ordinance will have 30 days from receipt of the notice to correct such violation(s).
  3. If the alleged violation(s) is substantiated and subsequently corrected, a notice shall be posted in a conspicuous space on the City's website that describes the corrective measure(s) taken to address the violation(s).

- m. Each bureau director is responsible for enforcing this policy within its bureau.
- n. This ordinance is binding City policy applicable to all bureaus and Council/elected offices.

Section 2. The Council declares that an emergency exists because of the need to respond to the immediate concerns of Black, Indigenous and People of Color (BIPOC) and to center the safety and well-being of BIPOC communities. Therefore, this ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council: September 9, 2020  
Mayor Ted Wheeler  
Commissioner Joann Hardesty

**Mary Hull Caballero**  
Auditor of the City of Portland By  
*Keslan McClymont* Deputy

Prepared by: Hector Dominguez  
Date Prepared: 08-03-2020

Agenda No.  
**ORDINANCE NO. 190113**

Title

\*Prohibit the acquisition and use of Face Recognition Technologies by City bureaus (Ordinance)

<p style="text-align: center;"><b>INTRODUCED BY</b> Commissioner/Auditor: <b>Mayor Wheeler</b></p>	<p>CLERK USE: DATE FILED <u>9/1/20</u></p>
<p style="text-align: center;"><b>COMMISSIONER APPROVAL</b></p>	<p style="text-align: center;">Mary Hull Caballero Auditor of the City of Portland</p> <p>Digitally signed by Mustafa Washington Date: 2020.09.01 12:19:03 -07'00'</p>
<p>Mayor—Finance &amp; Administration - Wheeler</p>	
<p>Position 1/Utilities - Fritz</p>	
<p>Position 2/Works - Vacant</p>	
<p>Position 3/Affairs - Hardesty</p>	
<p>Position 4/Safety - Eudaly</p>	<p>By: <u>Keelan McClymont</u> Deputy</p> <p>Digitally signed by Keelan McClymont Date: 2020.09.01 15:34:25 -07'00'</p> <p><b>ACTION TAKEN:</b></p>
<p style="text-align: center;"><b>BUREAU APPROVAL</b></p>	
<p>Bureau: <b>Planning and Sustainability</b> Bureau Head: <b>Andrea Durbin</b></p> <p>Digitally signed by Andrea Durbin Date: 2020.08.20 17:42:04 -07'00'</p>	
<p>Prepared by: <b>Hector Dominguez Aguirre</b> Date Prepared: <b>7/30/20</b></p>	
<p>Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/></p>	
<p>Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>	
<p><b>City Auditor Office Approval:</b> required for Code Ordinances</p>	
<p><b>City Attorney Approval:</b> <b>Esin Onart</b> required for contract, code, easement, franchise, comp plan, charter</p> <p>Digitally signed by Esin Onart Date: 2020.08.19 11:30:36 -07'00'</p>	
<p>Council Meeting Date <b>9/9/20</b></p>	

<b>AGENDA</b>
<p><b>TIME CERTAIN</b> <input checked="" type="checkbox"/> Start time: <u>2:00 PM</u> Total amount of time needed: <u>2 hours</u> (for presentation, testimony and discussion)</p>
<p><b>CONSENT</b> <input type="checkbox"/></p>
<p><b>REGULAR</b> <input type="checkbox"/> Total amount of time needed: _____ (for presentation, testimony and discussion)</p>

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
	YEAS	NAYS
1. Fritz	✓	
2. Vacant		
3. Hardesty	✓	
4. Eudaly	✓	
Wheeler	✓	