

ORDINANCE No. 190114 As Amended

*Prohibit the use of Face Recognition Technologies by private entities in places of public accommodation in the City (Ordinance; add Title 34).

The City of Portland ordains:

Section 1. The Council finds:

1. Portland residents and visitors should enjoy access to public spaces with a reasonable assumption of anonymity and personal privacy. This is true for particularly those who have been historically over surveilled and experience surveillance technologies differently.
2. The City of Portland must be a welcoming city, a sanctuary city, and an inclusive city for all, including residents and visitors, according to the City Council Resolution 37277.
3. City Code Chapter 23.01 on Civil Rights decrees the elimination of discrimination, that every individual shall have an equal opportunity to participate fully in the life of the City and that discriminatory barriers to equal participation be removed.
4. 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.
5. 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.
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 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. Black, Indigenous and People of Color communities have been subject to over surveillance and disparate and detrimental impact of the misuse of surveillance.
9. Face Recognition Technologies have been documented to have an unacceptable gender and racial bias. The City needs to take precautionary actions until these technologies are certified and safe to use and civil liberties issues are resolved.
10. At the moment, the City does not have the infrastructure to evaluate Face Recognition Technologies. Indiscriminate use of these technologies will degrade civil liberties and enable spaces or services that may be unfair to Black, Indigenous and People of Color. These existing issues would result in barriers to access services or public spaces where Face Recognition Technologies are required.
11. Surveillance Technologies means 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.
12. Surveillance Technologies, including Face Recognition, must be transparent, accountable, and designed in ways that protect personal and collective privacy, particularly information from children and vulnerable and marginalized groups.
13. 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.
14. While uses of Face Recognition Technologies may have benefits, the risk for misidentification and misuse is always present. Safe use of these technologies requires adequate due process, transparency, and oversight measures to be trusted. Implementing this infrastructure needs investment in development of rules and structures that allow appropriate uses of Face Recognition Technologies.

15. Public participation in policy making, particularly frontline perspectives and bringing diverse life perspectives, enhance our City values of equity and anti-discrimination, keeping processes open, inclusive, and engaging.
16. 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 B.

NOW, THEREFORE, the City Council directs:

- a. Code Title 34 Digital Justice is added effective January 1, 2021 as shown in Exhibit A.
- b. From the ordinance effective date until the implementation date of January 1, 2021, the Bureau of Planning and Sustainability, the Office of Equity and Human Rights, and the City Attorney's Office in collaboration with other City bureaus will develop a plan for creating public awareness on impacts and uses of Face Recognition Technologies particularly around children, Black, Indigenous and People of Color, people with disabilities, immigrants and refugees, and other marginalized communities and local businesses.
- c. The Bureau of Planning and Sustainability and the Office of Equity and Human Rights will coordinate communications with other jurisdictions and convene an effort to support and promote digital rights, including privacy and information protection regarding the collection of information by Face Recognition Technologies.
- d. The Bureau of Planning and Sustainability and the Office of Equity and Human Rights will coordinate effective and meaningful public participation after the code provisions are approved. This effort should represent a diverse set of voices, expertise, and life experiences on issues around Face Recognition and other surveillance technologies, including the development of a comprehensive surveillance technologies policy.
- e. The prohibitions stated in Chapter 34.10 shall remain in effect until the City adopts or revises an appropriate model for the regulation of Face Recognition Technologies.

Section 2: The Council declares an emergency exists because of the need to take simultaneous action on both the public sector and private sector prohibitions on facial recognition technology, which will give the public immediate certainty regarding the City's policies and allow for immediate planning to comply with the ordinance. Therefore, this ordinance shall be in full force and effect from and after its passage by Council.

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

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

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

704
 Agenda No.
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 Title

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INTRODUCED BY Commissioner/Auditor: Mayor Wheeler	CLERK USE: DATE FILED <u>9/1/20</u>
COMMISSIONER APPROVAL Mayor—Finance & Administration - Wheeler	Digitally signed by Mustafa Washington Date: 2020.09.01 12:21:36 -07'00'
Position 1/Utilities - Fritz	Mary Hull Caballero Auditor of the City of Portland
Position 2/Works - Vacant	Digitally signed by Keelan McClymont Date: 2020.09.02 11:26:10 -07'00'
Position 3/Affairs - Hardesty	By: <u>Keelan McClymont</u> Deputy
Position 4/Safety - Eudaly	ACTION TAKEN:
BUREAU APPROVAL Bureau: Planning and Sustainability Bureau Head: Andrea Durbin	Digitally signed by Andrea Durbin Date: 2020.08.20 17:43:05 -07'00'
Prepared by: Hector Dominguez Aguirre Date Prepared: 7/30/20	
Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/>	
Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
City Auditor Office Approval: DB required for Code Ordinances	
City Attorney Approval: Esin Onart required for contract, code, easement, franchise, comp plan, charter	Digitally signed by Esin Onart Date: 2020.08.19 11:29:36 -07'00'
Council Meeting Date <u>9/9/20</u>	

AGENDA
TIME CERTAIN <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)
CONSENT <input type="checkbox"/>
REGULAR <input type="checkbox"/> Total amount of time needed: _____ (for presentation, testimony and discussion)

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