



# Title 34 Digital Justice

(Title added by Ordinance 190114, effective January 1, 2021.)

## Chapter 34.10 Prohibit the use of Face Recognition Technologies by Private Entities in Places of Public Accommodation in the City of Portland

### 34.10.010 Purpose.

The purpose of this Chapter is to prohibit the use of Face Recognition Technologies in Places of Public Accommodation by Private Entities within the boundaries of the City of Portland.

Face Recognition Technologies have been shown to falsely identify women and People of Color on a routine basis. While progress continues to be made in improving Face Recognition Technologies, wide ranges in accuracy and error rates that differ by race and gender have been found in vendor testing.

Community members have raised concerns on the impacts of Face Recognition Technologies on civil liberties and civil rights. In addition, the collection, trade, and use of face biometric information may compromise the privacy of individuals even in their private setting. While these claims are being assessed, the City is creating safeguards aiming to protect Portlanders' sensitive information until better infrastructure and policies are in place.

Portland's commitment to equity means that we prioritize the safety and well-being of communities of color and other marginalized and vulnerable community members.

### 34.10.020 Definitions.

As used in Sections 34.10.020 through 34.10.050, the following terms have the following meanings:

**A.** "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.

**B. “Face Recognition Technologies”** means automated or semi-automated processes using Face Recognition that assist in identifying, verifying, detecting, or characterizing facial features of an individual or capturing information about an individual based on an individual's face.

**C. “Government Agency”** means:

1. The United States Government; or
2. The State of Oregon including any office, department, agency, authority, institution, association, society, or other body of the state, including the legislature and the judiciary; or
3. Any political subdivision of the State of Oregon or any county, city, district, authority, public corporation, or public entity other than the City.

**D. “Places of Public Accommodation”**

1. means: Any place or service offering to the public accommodations, advantages, facilities, or privileges whether in the nature of goods, services, lodgings, amusements, transportation or otherwise.
2. does not include: An institution, bona fide club, private residence, or place of accommodation that is in its nature distinctly private.

**E. “Private Entity”** means any individual, sole proprietorship, partnership, corporation, limited liability company, association, or any other legal entity, however organized. A Private Entity does not include a Government Agency.

### **34.10.030 Prohibition.**

Except as provided in the Exceptions section below, a Private Entity shall not use Face Recognition Technologies in Places of Public Accommodation within the boundaries of the City of Portland.

### **34.10.040 Exceptions.**

The prohibition in this Chapter does not apply to use of Face Recognition Technologies:

- A.** To the extent necessary for a Private Entity to comply with federal, state, or local laws;
- B.** For user verification purposes by an individual to access the individual's own personal or employer issued communication and electronic devices; or
- C.** In automatic face detection services in social media applications.

### **34.10.050 Enforcement and Remedies.**

Violations of this Chapter are subject to the following remedies:

- A.** Any person injured by a material violation of this Chapter by a Private Entity has a cause of action against the Private Entity in any court of competent jurisdiction for damages sustained as a result of the violation or \$1,000 per day for each day of violation, whichever is greater and such other remedies as may be appropriate.
- B.** In an action brought to enforce this Chapter, a court may award to the plaintiff who prevails in such action, at trial and on appeal, a reasonable amount to be fixed by the court as attorney fees if the court finds that written demand for the payment of such claim was made on the defendant, and on the defendant's insurer, if known to the plaintiff, not less than 30 days before the commencement of the action or the filing of a formal complaint. However, no attorney fees shall be allowed to the plaintiff if the court finds that the defendant tendered to the plaintiff, prior to the commencement of the action or the filing of a formal complaint an amount not less than the damages awarded to the plaintiff, exclusive of any costs, interest, and prevailing party fees.