

**City of Portland
Ordinance**

Prohibit the acquisition and use of Facial Recognition Technologies by the City of Portland (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. Facial 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.
7. 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 Facial Recognition Technologies.
8. The use of Facial Recognition Technologies raises general concerns around privacy, intrusiveness and lack of transparency. The use of flawed and/or biased Facial Recognition Technologies and the lack transparency and accountability -- particularly by law enforcement -- can create devastating impacts on individuals and families.
9. United States federal law does not currently regulate Facial 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 Facial Recognition Technologies applicable to the City of Portland.
10. 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 framework include clear decision making authority to regulate and oversee that the use of Surveillance Technologies, like Facial Recognition Technologies, do not harm civil rights and civil liberties.
11. Until such time as the City develops a more comprehensive Data Governance and Privacy and Information Protection framework, including a policy on the use of Surveillance Technologies, the City desires to adopt a ban on the City's acquisition and use of Facial 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 Facial 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.

- b. Bureaus shall not acquire, evaluate or use Facial Recognition Technologies, except as expressly provided below. This prohibition applies to Facial 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 Facial Recognition Technologies.
- c. Bureaus shall not use, access or retain any information derived from Facial Recognition Technologies or explicitly collect information to be used for Facial Recognition Technologies.
- d. Bureaus shall not direct a non-City entity to acquire or use Facial Recognition Technologies on the City's behalf unless such acquisition or use would be otherwise allowed for bureaus under this ordinance.
- e. Bureaus may use Facial Recognition Technologies for the following purposes:
 - 1. For verification purposes to access personal or City issued personal communication devices or computers. For example, bureau staff may use Facial Recognition Technologies to unlock mobile phones or tablets;
 - 2. In social media applications; and
 - 3. To detect faces in images and videos for purposes of obscuring faces.
- f. If a bureau inadvertently or unintentionally receives, accesses or uses information obtained from Facial Recognition Technologies, it will not be considered a violation of this ordinance provided the bureau follows the requirements of this section:
 - 1. The bureau ceases using the information as soon as it learns that the information was obtained from Facial 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) the date the information was received, accessed or used; (ii) the source of the information; (iii) a description or summary of the information; and (iv) whether the bureau accessed or used the information in the course of its operations. The impact report shall not include any personally identifiable information or other information the release of which is prohibited by law; and

4. The bureau retains the information no longer than the applicable retention period or as otherwise required by law.
- g. 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 particular technology constitutes Facial Recognition Technology and explore whether any changes are necessary to other existing 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.
- h. 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 Facial Recognition Technologies and the information derived from Facial 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.
- i. The Bureau of Planning and Sustainability and the Office of Equity and Human Rights shall work with the Mayor's Office, City Commissioners and City bureaus to propose City code provisions for regulating the private use of Facial Recognition Technologies in Public Places, as defined by City Code Chapter 14A.10, within the City of Portland. As part of this work, the Bureau of Planning and Sustainability and the Office of Equity and Human Rights shall investigate: (1) the feasibility of regulation of the private use of Facial Recognition Technologies, (2) the resources needed to develop, implement and enforce such a regulation; and (3) the development of community involvement to support public oversight and participation in future evolution of this Ordinance.
- j. 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 Facial

Recognition Technologies and the information derived from Facial Recognition Technologies.

- k. Any person alleging a violation of this ordinance may file a complaint with the City Ombudsman in accordance with City Code Chapter 3.77.
- l. Each bureau director is responsible for enforcing this policy within its bureau.
- m. This ordinance is binding City policy applicable to all bureaus and Council/elected offices.

Draft version.

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