

ORDINANCE No.

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.

Passed by the Council:
Mayor Ted Wheeler
Commissioner Joann Hardesty

Mary Hull Caballero
Auditor of the City of Portland
By

Deputy

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

Exhibit A

TITLE 34 DIGITAL JUSTICE

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.