



September 9, 2020

SENT VIA EMAIL

Portland City Council
1221 SW 4th Ave
Portland, OR 972014

RE: The ACLU of Oregon supports the City's proposed privacy protection ordinances - both the public and private prohibition of the use of facial recognition technologies

Mayor Wheeler and Commissioners Fritz, Eudaly, and Hardesty:

The American Civil Liberties Union (ACLU) of Oregon is an advocacy organization dedicated to defending and advancing civil liberties and civil rights through work in the courts, in the legislature, and in our local communities. The ACLU of Oregon appreciates the opportunity to provide testimony on the city's proposed public and private prohibition of the use of facial recognition technologies ordinances.

Facial recognition technology is a significant threat to privacy. It can collect an invasive amount of biometric information that does not properly identify Black, Indigenous and People of Color and leads to disproportionate outcomes especially at the hand of law enforcement. At this moment in history, a ban on facial recognition technology is necessary and prudent to protect the interests, privacy, and safety of individuals and our communities.

We have seen the increasing use of facial recognition technology by governments and private entities to identify, track, and analyze faces. While there is no national law banning the use of facial recognition technology, we have seen local jurisdictions react to this growing threat to privacy with bans and regulation across the country. San Francisco banned facial recognition technology in 2019.¹ More recently, Boston² has joined four other Massachusetts cities to ban facial recognition technology.³

¹ <https://www.nytimes.com/2019/05/14/us/facial-recognition-ban-san-francisco.html>

² <https://www.wbur.org/news/2020/06/23/boston-facial-recognition-ban>

³ <https://www.thecrimson.com/article/2020/1/16/cambridge-city-council-bans-facial-recognition/#:~:text=The%20Cambridge%20City%20Council%20unanimously,use%20of%20facial%20recognition%20technology.>

The ACLU of Oregon has been part of the Bureau of Planning and Sustainability's digital privacy stakeholder working group and participated in the city council work session earlier this year in January to promote privacy best practices and policy development. **The ACLU of Oregon supports both the public and private prohibition of the use of facial recognition technologies in the city of Portland.**

The ACLU of Oregon fully supports the prohibition on the acquisition and use of facial recognition technology by City bureaus. Our government, especially law enforcement, should not use facial recognition technology on people. Facial recognition technology is biased and misidentifies women and people of color.⁴ We must ensure that we have the protections in place to protect the privacy of individuals in this city.

We are supportive of the intent of the ban on facial recognition technology by private entities in places of public accommodation in the City. Facial recognition poses a serious risk to privacy and disproportionately impacts women and people of color, and its use should be restricted in all settings when access to public accommodations may be limited by its use. The misuse of faulty data in private interactions will lead to discrimination. The ban on collection of data in private settings ensures that people are not subjected to the indiscriminate and invasive collection of biometric information as they purchase groceries, utilize public transportation to get to work, or as they tour a museum that could result in discrimination in the ability to freely use places of public accommodations. The ban on facial recognition technology as proposed in the City's ordinance for private entities provides necessary exemptions to both protect against discrimination while protecting other civil liberties, like the freedom of expression, for the ACLU of Oregon to be supportive of this ban. This policy could be made stronger by enacting additional requirements to ensure the protection of the data that is collected by private entities through the use of this technology.

In addition, section 34.10.040, C. is of concern because it exempts automatic face detection services in social media applications. Social media applications store and collect vast amounts of personal information, especially photos. This is a loophole that undercuts the intention to protect privacy this ordinance is intended to provide. To ensure Portlanders' privacy is protected and we are free from discrimination as a result of the disproportionate impacts of this technology we request this exemption be removed from the ordinance.

We understand that this proposed ordinance is a beginning of a longer policy discussion. Until we ensure that facial recognition technologies give individuals the ability to choose whether and how they are tracked and monitored and ensure that any information collected or generated by

⁴<https://www.washingtonpost.com/technology/2019/12/19/federal-study-confirms-racial-bias-many-facial-recognition-systems-casts-doubt-their-expanding-use/>

these technologies is adequately protected this ban is imperative. The ACLU of Oregon looks forward to being at the table for continued discussion on the use of facial recognition technology and data privacy. Thank you, City Council and the Bureau of Planning and Sustainability, for bringing these ordinances forward today. Thank you, Commissioner Hardesty, for your vision of how the City of Portland could better protect individuals and their privacy in an area rife with racial inequities.

Respectfully submitted by,

Jann Carson

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