

OFFERED BY COUNCILORS MICHELLE WU AND RICARDO ARROYO



**CITY OF BOSTON
IN CITY COUNCIL**

**ORDINANCE BANNING FACIAL RECOGNITION
TECHNOLOGY IN BOSTON**

WHEREAS, Governments around the world are responding to the COVID-19 pandemic with an unprecedented use of surveillance tools, including face surveillance technology, despite public health and privacy experts agreeing that public trust is essential to an effective response to the pandemic; *and*

WHEREAS, Facial surveillance technology has been proven to be less accurate for African American and AAPI faces, and racial bias in facial surveillance has the potential to harm communities of color who are already facing increased levels of surveillance and harassment; *and*

WHEREAS, Several municipalities in Massachusetts, including Springfield, Somerville, Brookline, and Cambridge, have passed local legislation to ban face surveillance;
NOW THEREFORE BE IT ORDERED,

That the following shall take effect immediately upon passage:

(a) DEFINITIONS

1. “*Face surveillance*” shall mean an automated or semi-automated process that assists in identifying or verifying an individual, or in capturing information about an individual, based on the physical characteristics of an individual’s face.
2. “*Face surveillance system*” shall mean any computer software or application that performs face surveillance.
3. “*Boston*” shall mean any department, agency, bureau, and/or subordinate division of the City of Boston.
4. “*Boston official*” shall mean any person or entity acting on behalf of the City of Boston, including any officer, employee, agent, contractor, subcontractor, or vendor.

(b) BAN ON CITY USE OF FACE SURVEILLANCE

1. It shall be unlawful for Boston or any Boston official to:
 - a. obtain, retain, possess, access, or use (i) any face surveillance system, or (ii) information derived from a face surveillance system;
 - b. enter into an agreement with any third party for the purpose of obtaining, retaining, possessing, accessing, or using, by or on behalf of Boston or any Boston official any face surveillance system; or
 - c. issue any permit or enter into any other agreement that authorizes any third party to obtain, retain, possess, access, or use (i) any face surveillance system, or (ii) information derived from a face surveillance system

2. Nothing in (b)(1) shall prohibit Boston or any Boston official from:
 - a. using evidence relating to the investigation of a specific crime that may have been generated from a face surveillance system; or
 - b. obtaining or possessing (i) an electronic device, such as a cell phone or computer, for evidentiary purposes, or (ii) an electronic device, such as a cell phone or tablet, that performs face surveillance for the sole purpose of user authentication;
 - c. using face recognition on an electronic device, such as a cell phone or tablet, owned by Boston or by any Boston official, for the sole purpose of user authentication;
 - d. using social media or communications software or applications for communicating with the public, provided such use does not include the affirmative use of any face surveillance;
 - e. using automated redaction software, provided such software does not have the capability of performing face surveillance; or
 - f. complying with the National Child Search Assistance Act.

(c) ENFORCEMENT

1. Face surveillance data collected or derived in violation of this ordinance shall be considered unlawfully obtained and shall be deleted upon discovery, subject to applicable law.
2. No data collected or derived from any use of face surveillance in violation of this ordinance and no evidence derived therefrom may be received in evidence in any proceeding in or before any department, officer, agency, regulatory body, legislative committee, or authority subject to the jurisdiction of the City of Boston.
3. Any violation of this ordinance constitutes an injury and any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any

court of competent jurisdiction to enforce this ordinance. An action instituted under this paragraph shall be brought against the respective City department, and the City and, if necessary to effectuate compliance with this ordinance, any other governmental agency with possession, custody, or control of data subject to this ordinance.

4. Violations of this ordinance by a City employee shall result in consequences that may include retraining, suspension, or termination, subject to due process requirements and provisions of collective bargaining agreements.
5. Nothing in this section shall be construed to limit any individual's rights under state or federal law.

(d) SEVERABILITY

1. If any portion or provision of this ordinance is declared invalid or unenforceable by a court of competent jurisdiction or by the Office of the Attorney General, the remaining provisions shall continue in full force and effect.

Filed on: May 6, 2020