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BOSTON CITY COUNCIL

Committee on Government Operations
Lydia Edwards, Chair

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REPORT OF COMMITTEE CHAIR

June 24, 2020

Dear Councillors:

Docket #0683, ordinance banning facial recognition technology in Boston, was sponsored by Councilor Michelle Wu and Councilor Ricardo Arroyo and referred to the Committee on May 6, 2020. The Committee held a hearing on June 9, 2020 where public comment was taken and a working session on June 19, 2020.

Docket #0683 would ban the use of face surveillance by the City of Boston or by any official in the City of Boston. The proposal also would prohibit entering into agreements to obtain face surveillance with third parties. Docket #0683 defines the terms “face surveillance” and “face surveillance system.” Docket #0683 lists exemptions to the prohibition of face surveillance use for the following purposes: evidence relating to the investigation of a specific crime; obtaining or possessing an electronic device for evidentiary purposes for user authentication; using face recognition on an electronic device for the sole purpose of user authentication; using communications software provided such use does not include the affirmative use of any face surveillance; using automated redaction software, provided such software does not have the capability of performing face surveillance; and complying with the National Child Search Assistance Act. Docket #0683 also contains enforcement provisions should a violation occur.

At the hearing, the Committee heard testimony from Boston Police Commissioner William Gross; members of the ACLU of Massachusetts; the Student Immigration Movement; the Boston Teachers Union; and, many other organizations and individuals. The Committee learned and discussed that the Boston Police Department does not use facial recognition technology because it is not reliable and does not meet the standards of the Boston Police Department. The Committee also discussed and heard testimony about the inaccuracies of facial recognition technology and discriminatory tendencies. At the working session Chair Edwards reviewed language changes offered by Councilor Ricardo Arroyo and the Electronic Frontier Foundation (“EFF”). The proposed changes include changing the title of the ordinance to provide clarity, adding the section of the City code where the ordinance would be placed in, adding language concerning information requested by the police department, adding fee shifting language, and adding language about private sector use when involving City permits. Representatives from the Boston Police Department participated in the working session. The representatives from the police department discussed the Brief Cam software and the upgrade of such software. The police department explained that the software license allows the department to shut off the facial recognition aspects and use the software and upgrade for object recognition and video summary which will save time, money, and resources. The police department explained that the language is vague in section (b)(2). The police department stated that it is important for the BPD to use

components of the brief cam software and wanted to ensure that the language of the ordinance allows them to do so for the purposes of object recognition and video summary..

Based upon information received at the hearing and working session, Docket #0683 is amended as follows:

Amendments to Docket #0683:

- changing the title of the docket from “Ordinance Banning Facial Recognition Technology in Boston” to “Ordinance Banning Face Surveillance Technology in Boston;”
- Removing the following language after the last whereas clause: “That the following shall take effect immediately upon passage” and replacing it with the following new provision: “That the City of Boston Code, Ordinances be amended in Chapter XVI by adding the following new section after 16-61, 16-62: ORDINANCE BANNING FACE SURVEILLANCE TECHNOLOGY IN BOSTON;
- adding a new subsection (e) that provides for the effective date immediately upon passage;
- adding the following provision in (b)(2)(a) after the words “face surveillance,” “so long as such evidence was not generated by or at the request of Boston or any Boston official;”
- provides fee shifting language that allows the court to provide reasonable attorneys fees to a plaintiff who is a prevailing party;
- language is added that would expand the ban to private sector use of surveillance conducted with a government permit; and,
- amends the severability clause to provide consistency with similar provisions in other City ordinances.

Docket #0683 will ban government use of face surveillance technology in the City of Boston. The docket in its amended form strengthens the language and protections to individuals by preventing surveillance at the request of the City, allowing the award of costs and reasonable attorney fees so that ordinary citizens are able to enforce their rights, and adding language that expands the ban to private sector use of surveillance conducted with a government permit. The exemptions provided in the legislation as initially filed will remain in place. The docket in its amended draft will protect individuals from the unreliable and discriminatory tendencies of face surveillance technology.

By the Chair of the Committee on Government Operations, to which the following was referred:

Docket #0683, ordinance banning facial recognition technology in Boston,

submits a report recommending that this docket ought to pass in an amended draft.

For the Chair:



Lydia Edwards, Chair
Committee on Government Operations



CITY OF BOSTON IN CITY COUNCIL

ORDINANCE BANNING FACE SURVEILLANCE 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 City of Boston Code, Ordinances be amended in Chapter XVI by adding the following after 16-61:

16-62: ORDINANCE BANNING FACE SURVEILLANCE TECHNOLOGY IN BOSTON

(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, on behalf of Boston or any Boston official, 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, so long as such evidence was not generated by or at the request of Boston or any Boston official; 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. A court shall award costs and reasonable attorneys' fees to a plaintiff who is the prevailing party in

such proceedings. 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 provision of this section shall be held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions, which shall remain in full force and effect.

(e) EFFECTIVE DATE

1. The provisions of this ordinance shall be effective immediately upon passage.

Filed in Council: June 24, 2020