

Submitted by: Assembly Members Sweet, Rivera,  
and Volland  
Prepared by: Assembly Counsel's Office  
For reading: March 21, 2023

**ANCHORAGE, ALASKA  
AO No. 2023-35**

1 **AN ORDINANCE OF THE ANCHORAGE ASSEMBLY AMENDING ANCHORAGE**  
2 **MUNICIPAL CODE CHAPTER 3.102, *MUNICIPAL USE OF SURVEILLANCE***  
3 ***TECHNOLOGIES*, TO BAN THE ACQUISITION, USE, OR ACCESSING OF**  
4 **FACIAL RECOGNITION TECHNOLOGY WITH LIMITED EXCEPTIONS, AND TO**  
5 **REORGANIZE THE CHAPTER.**

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6  
7 **WHEREAS**, Facial Recognition Technology has become increasingly common in  
8 society, despite the efficacy of its use still remaining largely unknown; and

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10 **WHEREAS**, there currently exist no federal or Alaska state law or administrative  
11 regulations governing the use of Facial Recognition Technology nor any clearly  
12 established guidelines or best practices; and

13  
14 **WHEREAS**, unlike established forensic scientific evidence techniques, Facial  
15 Recognition Technology uniquely lends itself to potential abuse or manipulation as  
16 its users can lower “confidence levels” until they get a positive result, leading to even  
17 lower accuracy for identification; and

18  
19 **WHEREAS**, multiple studies have determined that Facial Recognition Technology  
20 disproportionately misidentifies people of color most frequently of all demographics;  
21 and

22  
23 **WHEREAS**, in general the Facial Recognition Technologies establish a unique  
24 identifier for each person with the data collected, often without a person’s consent,  
25 and as biologically unique information it is inherently private to the individual; and

26  
27 **WHEREAS**, an individual’s right to privacy is protected by the Fourth Amendment  
28 of the U.S. Constitution and is explicitly immortalized in Alaska Constitution Art. 1,  
29 § 22, known as one of the strongest guarantees of privacy in the country; and

30  
31 **WHEREAS**, the Assembly desires to protect the right to privacy by codifying certain  
32 restrictions on the use of Facial Recognition Technologies by any municipal  
33 department or agency in a manner that’s improper, surreptitious, or oversteps an  
34 individual’s privacy rights; now, therefore,

35  
36 **THE ANCHORAGE ASSEMBLY ORDAINS:**

37  
38 **Section 1.** Anchorage Municipal Code section 3.102 Municipal Use of  
39 Surveillance Technologies hereby amended to read as follows (*the remainder of the*  
40 *section is not affected and therefore not set out*):

41  
42 **Chapter 3.102 - MUNICIPAL USE OF SURVEILLANCE TECHNOLOGIES**  
43

### **3.102.005. Definitions**

Facial Recognition means an automated or semi-automated process that assists in identifying or verifying an individual, or capturing information about an individual, based upon analysis of the individual's face.

Facial Recognition Technology means any computer software or application that performs facial recognition.

Surveillance or Surveil means to observe or analyze the movements, behavior, data, or actions of individuals. Individuals include those whose identity can be determined through use of information maintained by the department of motor vehicles either independently or when combined with any other record.

Surveillance Technology 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.

UAS/Unmanned aircraft systems means a system that includes the necessary equipment, network, and personnel to control an unmanned aircraft.

UA/Unmanned aircraft means an aircraft that is intended to navigate in the air without an on-board pilot. Also alternatively called a remotely piloted aircraft (RPA), remotely operated vehicle (ROV), or drone.

(AO No. 2018-5, § 1, 2-13-18)

### **3.102.010 - Restrictions on the use of unmanned aircraft systems by the municipality.**

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[B. NO LATER THAN JUNE 1 OF EACH YEAR, THE MAYOR OR A DESIGNEE SHALL TRANSMIT TO THE ASSEMBLY AND CAUSE TO BE PUBLICLY POSTED ON THE MUNICIPAL WEBSITE A REPORT WITH THE ALL FOLLOWING INFORMATION:

1. FOR EACH MUNICIPAL DEPARTMENT AND AGENCY THAT USED A UAS IN THE PRECEDING CALENDAR YEAR:
  - a. THE NUMBER OF INSTANCES IN WHICH A UAS WAS USED;
  - b. A GENERAL DESCRIPTION OF THE TYPE AND

PURPOSE OF EACH USE THAT SUFFICIENTLY EXPLAINS HOW THE USE WAS NOT PROHIBITED BY THIS SECTION, AND, IF APPLICABLE, WHETHER THE USE WAS PURSUANT TO A SEARCH WARRANT, A COURT ORDER, OR A JUDICIALLY RECOGNIZED EXCEPTION TO THE WARRANT REQUIREMENT; AND

c. ANY NEW POLICY, OR CHANGE IN DEPARTMENT OR AGENCY POLICY, RELATED TO THE USE OF UAS.

2. THE ANNUAL REPORT FROM THE ANCHORAGE POLICE DEPARTMENT SHALL ALSO INCLUDE:

a. THE NUMBER OF ARRESTS MADE WHERE UAS WAS UTILIZED IN A RELATED INCIDENT RESPONSE OR INVESTIGATION, REGARDLESS OF WHETHER THE INFORMATION GATHERED FROM THE UAS WAS USED TO ESTABLISH PROBABLE CAUSE.

C. DEFINITIONS.

1. UAS/UNMANNED AIRCRAFT SYSTEMS MEANS A SYSTEM THAT INCLUDES THE NECESSARY EQUIPMENT, NETWORK, AND PERSONNEL TO CONTROL AN UNMANNED AIRCRAFT.

2. UA/UNMANNED AIRCRAFT MEANS AN AIRCRAFT THAT IS INTENDED TO NAVIGATE IN THE AIR WITHOUT AN ON-BOARD PILOT. ALSO ALTERNATIVELY CALLED A REMOTELY PILOTED AIRCRAFT (RPA), REMOTELY OPERATED VEHICLE (ROV), OR DRONE.]

(AO No. 2018-5, § 1, 2-13-18)

**3.102.020. - Restrictions on the use of facial recognition technology.**

A. Notwithstanding any other provision of this chapter except for the exceptions provided in section 3.102.030, it shall be unlawful for the municipality or any municipal staff to obtain, retain, request, access, or use:

1. Facial Recognition Technology; or

2. Information obtained from Facial Recognition Technology.

B. Municipal staff's inadvertent or unintentional receipt, access of, or use of any information obtained from Facial Recognition Technology shall not be a violation of this section, provided that:

- 1           1.   Municipal staff did not request or solicit the receipt, access of,  
2           or use of such information: and
- 3
- 4           2.   Municipal staff logs such receipt, access, or use in its Annual  
5           Surveillance Report as referenced by Section 3.102.040. Such  
6           report shall not include any personally identifiable information  
7           or other information the release of which is prohibited by law.
- 8

### **3.102.030. Exceptions.**

#### **A.   Nothing in this chapter shall prevent the Municipality from:**

- 13           1.   Acquiring, obtaining, retaining, or accessing facial recognition  
14           technology on an electronic device intended for a single user,  
15           such as a mobile communication device, cellular phone or  
16           tablet, when the facial recognition technology is used solely for  
17           the purpose of the user;
- 18
- 19           2.   Acquiring, obtaining, retaining, or accessing social media or  
20           communications software or applications intended for  
21           communication with the general public that include facial  
22           recognition technology, as long as the municipality does not  
23           intentionally use the facial recognition technology;
- 24
- 25           3.   Having custody or control of electronic devices that include  
26           facial recognition technology when such electronic devices are  
27           held by the municipality solely for evidentiary purposes;
- 28
- 29           4.   Acquiring, obtaining, retaining, or accessing facial recognition  
30           technology solely for the purpose of using automated or  
31           semiautomated redaction software;
- 32
- 33           5.   Complying with the National Child Search Assistance Act, 34  
34           U.S.C. §§ 41307-413087, or other federal statutes requiring  
35           cooperation in the search for missing or exploited children; or
- 36
- 37           6.   Participate in, coordinate with, or otherwise be involved with  
38           multi-agency law enforcement investigations, working groups  
39           or task forces.
- 40

#### **B.   It shall not be a violation of this chapter for the municipality to acquire,** 42           obtain, or retain facial recognition technology when all the following 43           conditions exist:

- 45           1.   The facial recognition technology is an integrated, off the shelf  
46           capability, bundled with software or stored on a product or  
47           device;
- 48
- 49           2.   Other functions of the software, product, or device are  
50           necessary or beneficial to the performance of municipal  
51           functions;

3. The software, product, or device is not acquired for the purpose of performing facial recognition;
4. The facial recognition technology cannot be deleted from the software, product, or device;
5. The municipality does not use the facial recognition technology; and
6. The municipal department, agency or official seeking to acquire the software, product, or device discloses the integrated, off the shelf facial recognition technology that cannot be deleted to the Assembly when seeking to acquire the software, product, or device.

C. Recognizing that changes in technology and circumstances may require additional exceptions to the requirements of this section, the assembly may approve such additional exceptions by resolution, under the following conditions:

1. Any municipal department that requests an exception to the restrictions of section 3.102.020 shall include in its request to the assembly an explanation of the need for an exception, a description of how the technology or information will be used, and a plan for monitoring the technology or information to ensure that its use remains within the approved parameters.
2. The assembly may approve the proposed exception by resolution, with or without revisions and conditions, for a period of no longer than 90 days, if it finds that the exception is consistent with the stated goals of preventing discrimination and promoting privacy, transparency, and the public trust.
3. Upon conclusion of the period of temporary exception, the department shall submit a report of its uses of the technology or information to the assembly. The department may at that time or subsequently request the assembly make the exception permanent by ordinance adding it under section 3.102.030D.
4. A department that has obtained a permanent exception shall submit an annual summary of its uses of the technology or information as part of the Annual Surveillance Report under Section 3.102.040 to the assembly. This summary shall not include personally identifiable information.

D. Additional permanent exceptions.

1. Reserved.

**3.102.040. - Reports of municipal use of surveillance technologies**

**required.**

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2  
3 **A.** No later than June 1 of each year, the mayor or a designee shall  
4 transmit to the assembly and cause to be publicly posted on the  
5 municipal website an Annual Surveillance Report with all the following  
6 information:

7  
8 **1.** For each municipal department and agency that used a UAS in  
9 the preceding calendar year:

10  
11 **a.** The number of instances in which a UAS was used;

12  
13 **b.** A general description of the type and purpose of each  
14 instance that sufficiently explains how the use was not  
15 prohibited by this chapter, and, if applicable, whether the  
16 use was pursuant to a search warrant, a court order, or  
17 a judicially recognized exception to the warrant  
18 requirement, and the final disposition of evidence  
19 resulting from each instance; and

20  
21 **c.** Any new policy, or change in department or agency  
22 policy, related to the use of UAS or Facial Recognition  
23 Technology

24  
25 **2.** For each municipal department or agency using Facial  
26 Recognition Technology under an exception under section  
27 3.102.030:

28  
29 **a.** The number of instances in which Facial Recognition  
30 Technology was used or information derived from Facial  
31 Recognition Technology was received or used under  
32 exceptions in subsections 3.102.030A.4., A.5., A.6., C.  
33 and D.;

34  
35 **b.** A general description of the type and purpose of each  
36 instance that sufficiently explains how the use was not  
37 prohibited by this chapter, and, if applicable, whether the  
38 use was pursuant to a search warrant, a court order, or  
39 a judicially recognized exception to the warrant  
40 requirement, and the final disposition of evidence  
41 resulting from each instance; and

42  
43 **c.** Any new policy, or change in department or agency  
44 policy, related to the use of Facial Recognition  
45 Technology

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48 **3.** The annual report shall also include the following information:

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50 **a.** The number of arrests made by APD where UAS was  
51 utilized in a related incident response or investigation,

1 regardless of whether the information gathered from the  
2 UAS was used to establish probable cause.

- 3  
4 b. The detailed log of every unauthorized receipt, access,  
5 or use of Facial Recognition Technology or information  
6 derived from Facial Recognition Technology. The log  
7 shall denote how the unauthorized access occurred,  
8 what corrective steps have been taken, and the final  
9 disposition of any evidence or information improperly  
10 received.

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12 (AO No. 2018-5, § 1, 2-13-18)

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14 **3.102.050. Enforcement.**

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16 A. Any municipal employee who violates a provision of this chapter may  
17 be subject to discipline in accordance with the municipality's  
18 disciplinary policies and procedures and applicable collective  
19 bargaining agreements. Violation of this ordinance by any official or  
20 employee of the municipal is grounds for suspension or termination.  
21 The disciplinary action may require the violator to participate in  
22 retraining.

23  
24 B. Private cause of action.

25  
26 1. Any violation of this article constitutes an injury and any person  
27 so injured may institute proceedings in the Superior Court in a  
28 civil action seeking injunctive relief, declaratory relief,  
29 damages, and attorney's fees. Any action instituted under this  
30 paragraph shall be brought against the municipality. If  
31 applicable, such action may also be brought against any third  
32 party with whom the municipality contracted or entered into an  
33 agreement.

34  
35 2. Any person who has instituted proceedings under the previous  
36 paragraph and is found to have been subjected to face  
37 surveillance in violation of this article, or about whom data or  
38 information is found to have been obtained, retained, stored,  
39 possessed, accessed, used, or collected in violation of this  
40 article, shall be entitled to recover actual damages not less than  
41 the greater of:

42  
43 a. \$1,000 for each violation of this article; or

44  
45 b. \$10,000.

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47 3. Any prevailing plaintiff in any action brought under this  
48 subsection shall be entitled to the award of costs and  
49 reasonable attorney's fees.

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**Section 2.** This ordinance shall be effective immediately upon passage and approval by the Assembly.

PASSED AND APPROVED by the Anchorage Assembly this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

Chair \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Municipal Clerk