MUNICIPALITY OF ANCHORAGE
ASSEMBLY MEMORANDUM

No. AM 195-2023

Meeting Date: March 21, 2023

From: **Assembly Members Joey Sweet, Felix Rivera and Daniel Volland**

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

Facial recognition surveillance technology is gaining popularity across the country and its use becoming more and more pervasive with law enforcement. Unfortunately, oversight on the federal and state levels is lagging as no real regulatory framework has been developed to address the harmful effects of the technology. The Municipality of Anchorage does not yet possess or use any facial recognition technology, other than the common features on mobile devices for unlocking by the user, nor does it currently have any policies regarding the technology, making now the best time to be proactive and adopt responsible, comprehensive legislation like this proposed ordinance.

This ordinance accomplishes two main objectives: (1) it prohibits the Municipality from acquiring and using facial recognition technology, with narrow exceptions; and (2) it creates an enforcement mechanism that allows for discipline against municipal employees found violating the ordinance and assesses liability against the municipality for such misuse. This latter tool is by creation of a private cause of action allowing persons subjected to facial recognition surveillance to seek relief in Superior Court and establishes presumptive amounts for damages.

Facial recognition surveillance technology works by mapping individual faces gathered through surveillance technology and compares faces to available databases such as driver's licenses, mug shots, etc. However, the technology is notoriously unreliable as it does not always accurately recognize faces, and use of the technology is an area ripe for abuse.[1] In particular, it has the lowest ability to recognize the faces of people of color and women. According to a report by the National Institute of Standards and Technology following its testing of face recognition algorithms used by developers around the globe, the technology disproportionately affects people of color by mis-identifying people of color most frequently out of all demographics.[2] Even more jarring, technology users can lower

[1] *See* DeGeurin, Mack, "The FBI Tested Facial Recognition Software on Americans for Years, New Documents Show," Gizmodo, March 7, 2023 (https://gizmodo.com/fbi-facial-recognition-janus-horus-1850198100 accessed March 9, 2023).

[2] Bushwick, Sophie, "How NIST Tested Facial Recognition Algorithms for Racial Bias," Scientific American, December 27, 2019 (https://www.scientificamerican.com/article/how-nist-tested-facial-

confidence levels if they do not get matches at higher confidence levels, leading to even lower accuracy for identification.

The lack of regulation and oversight ensures a lack of transparency from facial recognition companies and providers. The approach of this ordinance is to prohibit municipal departments from contracting with such companies or purchasing their products for use, unless it's an exception approved by the Assembly and codified, or temporarily by resolution, and require transparency by the reporting of these municipal uses.

Moreover, the technology brings with it pernicious data privacy concerns. Unlike other forms of data, faces cannot be encrypted. Thus, any data breach involving facial recognition data would increase potential for identity theft, stalking, and harassment. While users subjected to other data breaches can change passwords and financial data, people cannot change their faces and unequivocally would not consent to such invasion of their likeness. Beyond the individual desire to maintain personal privacy, the potential for abuse of this technology is limitless and would open the Municipality up to liability if responsible regulation is not implemented now.

This ordinance is simple, yet comprehensive. It draws from examples of similar local bans enacted by the cities of Portland, Oregon, Oakland, California, and Portland, Maine. It bans the Municipality from acquiring the technology or conducting business with facial recognition companies; it also considers the nature of public safety and has some narrow, limited exceptions for law enforcement such as for partnership with other agencies and use of facial recognition on personal devices. Any exception must be codified, or if time is of essence approved temporarily by resolution.

We request your support for the ordinance.

Reviewed by: Assembly Counsel's Office

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recognition-algorithms-for-racial-bias/ accessed March 9, 2023).