



# PUBLIC SAFETY COMMITTEE

## COMMITTEE MEETING

~ AGENDA ~

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Tuesday, December 3, 2019

12:00 PM

Sullivan Chamber

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### Call to Order

The Public Safety Committee will meet to discuss the following policy order: An amendment to Chapter 2.128 Surveillance Ordinance.

1. That the Amendment to Chapter 2.128 Surveillance Ordinance Technology be forwarded to the Public Safety Committee for a hearing.
2. A communication was received from Emilian Falcon of the American Civil Liberties Union of Massachusetts regarding the Face Surveillance Ban

Amend Chapter 2.128 Surveillance Technology Ordinance by adding in “2.128.020 Definitions” a new definition:

(K) “Face Recognition Technology” means an automated or semi-automated process that assists in identifying an individual and/or capturing information about an individual, based on the physical characteristics of an individual’s face.

Also, by adding a new Section 2.128.075 Prohibition on City’s Acquisition and/or Use of Face Recognition Technology:

**2.128.075 Prohibition on City’s Acquisition and/or Use of Face Recognition Technology**

- A. Notwithstanding any other provision of this Chapter 2.128, it shall be unlawful for the City or any City staff to obtain, retain, request, access, or use:
- 1) Face Recognition Technology; or
  - 2) Information obtained from Face Recognition Technology.
- B. City staff’s inadvertent or unintentional receipt, access of, or use of any information obtained from Face Recognition Technology shall not be a violation of this Section 2.128.075 provided that:
- 1) City staff did not request or solicit the receipt, access of, or use of such information; and
  - 2) City staff logs such receipt, access, or use in its Annual Surveillance Report as referenced by Section 2.128.075. Such report shall not include any personally identifiable information or other information the release of which is prohibited by law.



December 3, 2019

### Testimony in Support of Face Surveillance Ban

My name is Emiliano Falcon. I am the Policy Counsel for the Technology for Liberty Program at the ACLU of Massachusetts. On behalf of the ACLU and our more than 15,000 members and supporters in Cambridge, I submit this testimony in strong support of the ordinance introduced by Mayor Marc McGovern and Councilors Craig Kelley and Sumbul Siddiqui to place a ban on the municipal government's use of face surveillance technology.

#### **Face surveillance poses unprecedented risks to basic human rights**

Face surveillance technology poses unprecedented threats to civil rights, civil liberties, and open, democratic society. Numerous studies have shown the technology is inherently racially biased. The technology poses particularly severe threats to the rights and liberties of immigrants and communities of color. Unchecked, this technology can be used by government agencies to conduct the mass tracking of people in public spaces.

Instead of accepting that technologies like face surveillance will determine the boundaries of our rights, we must chart an intentional course into the 21<sup>st</sup> century, maintaining firm democratic control over our society and our lives. To protect residents now and into the future, the City of Cambridge should join San Francisco, Oakland, Berkeley, and Somerville in taking action to prohibit the use of face surveillance technology by the local government.

#### **Face surveillance: What is it, and how can it be used?**

Face surveillance technology uses algorithms designed to analyze images of human faces. In one of its forms, a computer program analyzes an image of a person's face, taking measurements of their facial features to create a unique "faceprint." Face surveillance algorithms then use these faceprints, in combination with databases like the driver's license system at the Registry of Motor Vehicles and surveillance camera networks, to identify and track people en masse, usually without their knowledge or consent.

Some companies are also selling so-called "emotion detection" systems, which they claim can determine whether someone is happy, sad, honest, or deceitful. Research from experts at Northeastern University has demonstrated it is not possible to discern how someone is feeling by looking at their face.<sup>1</sup> But companies are nonetheless selling these tools across the world.

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<sup>1</sup> Khalida Sarwari, You Think You Can Read Facial Expressions? You're Wrong, Northeastern University, July 2019. <https://news.northeastern.edu/2019/07/19/northeastern-university-professor-says-we-cant-gauge-emotions-from-facial-expressions-alone/>

## Face surveillance: Unregulated, biased, and harmful to immigrants, people of color, and privacy

- **Face surveillance is entirely unregulated in Massachusetts.** Nonetheless, the spread of this technology is occurring in the dark, absent public debate or democratic oversight. Government agencies are adopting it despite the absence of privacy regulations, the technology's inaccuracy, and the threats it poses to free and open societies.
- **Face surveillance is racially biased.** Among other issues, facial recognition technology is not always accurate—despite what you may have seen on television shows like CSI. And these inaccuracies are more likely to unfairly harm people of color and other oppressed groups. For example, MIT researchers here in Cambridge found that face recognition software sold by prominent technology companies misclassified Black women up to 35 percent of the time.<sup>2</sup> Another study found that so-called “emotion detection” software inaccurately classified Black men’s faces as more angry and contemptuous than white faces, even in pictures where all the men are smiling.<sup>3</sup> No Cambridge municipal department should use technology that is inherently racially biased.
- **Face surveillance technology harms immigrant families.** The Trump administration’s vicious attacks on immigrant communities have made immigrants fearful of engagement with public institutions, including schools and local police. The use of face surveillance systems would further chill immigrant participation in public life because the technology can be used to track where people go, and when, in real-time and retroactively. A ban on the use of face surveillance will ensure immigrants in Cambridge are not tracked or catalogued as they move through public space or public institutions.
- **Face surveillance is a threat to Cambridge residents’ civil rights and civil liberties.** Especially concerning is how this technology affects First Amendment rights and freedoms. If the government can track everyone who goes to a place of worship, a political rally, or seeks reproductive medical care or substance use treatment, we lose our freedom to speak our minds, freely criticize the government, pray to the god we want, and access healthcare in private. The authoritarian government in China is deploying face surveillance in that country to control and oppress people; indeed, as academics have observed, face surveillance technology is the perfect tool for social control.<sup>4</sup> Cambridge must chart the opposite course, to protect and defend privacy, civil rights, and open society today and for future generations.

<sup>2</sup> Joy Buolamwini et al, “Gender Shades,” MIT Media Lab. <https://www.media.mit.edu/projects/gender-shades/overview/>.

<sup>3</sup> Lauren Rhue, “Emotion-reading tech fails the racial bias test,” Phys.org. <https://phys.org/news/2019-01-emotion-reading-tech-racial-bias.html>.

<sup>4</sup> Paul Mozur, “One Month, 500,000 Face Scans: How China is Using A.I. to Profile a Minority,” NYT. <https://www.nytimes.com/2019/04/14/technology/china-surveillance-artificial-intelligence-racial-profiling.html>.

## Cambridge has a historic opportunity to protect its residents

Today, Cambridge has a critical opportunity: Your City can pump the brakes on the spread of this dangerous technology, *before* it is adopted and used to track Cambridge residents and visitors. The Ordinance presented by Mayor Marc McGovern and Councilors Kelley and Siddiqui will protect the people of Cambridge and free and open society and, at the same time, protect City employees.

First, the Ordinance before you amends the City's surveillance ordinance to ban the City of Cambridge from obtaining, retaining, requesting, accessing, or using either face surveillance technology or information obtained from it. Second, it provides that the inadvertent or unintentional receipt, access of, or use of any information obtained from face surveillance technology will not be a violation of this ban if (i) the receipt, access of, or use of such information was not requested or solicited; and (2) such receipt, access, or use is logged into the Annual Surveillance Report. This language strikes the right balance between protecting Cambridge residents and allowing Cambridge City departments, including the Police Department, to conduct normal business without unnecessary interference.

Ultimately, faced with the question of whether Cambridge should pass this ban, Councilors ought to consider what kind of community they want to foster into the 21<sup>st</sup> century.

Constant surveillance doesn't just harm our collective rights and freedoms— it also has adverse effects on health, well-being, and community trust. Surveillance increases not only our fears and uncertainty but also personal anxiety.<sup>5</sup> Privacy advocates have long warned about the psychological consequences of being watched and observed by unaccountable, faceless entities.<sup>6</sup> Face surveillance magnifies these concerns and extends them into a truly new and frightening territory by totalizing the surveillance of our movements in public space.

Cambridge is the most innovative city in Massachusetts. Approving this ordinance will send a message to the rest of the state, country, and world that civil rights and civil liberties are a priority in the digital 21<sup>st</sup> century, and show that Cambridge is leading the way.

We strongly urge you to support this critical and commonsense proposal. The ACLU looks forward to serving as a resource to the City and the Council throughout this process, so please don't hesitate to contact me or Kade Crockford if you have any questions or seek further information.

Thank you very much.

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<sup>5</sup> Kaleigh Rogers, What Constant Surveillance Does To Your Brain, Vice, Nov. 2018, available at [https://www.vice.com/en\\_us/article/pa5d9g/what-constant-surveillance-does-to-your-brain](https://www.vice.com/en_us/article/pa5d9g/what-constant-surveillance-does-to-your-brain)

<sup>6</sup> John Borland, Maybe Surveillance Is Bad, After All, August 2007, available at <https://www.wired.com/2007/08/maybe-surveilla/>

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Attachment: Cambridge city council testimony 11-29 final (10928 : A communication was received from Emiliano Falcon of the ACLU)