

Ordinance: Banning the usage of facial technology surveillance in Somerville

WHEREAS, the broad application of face surveillance in public spaces is the functional equivalent of requiring every person to carry and display a personal photo identification card at all times.

WHEREAS, face surveillance technology has been shown to be far less accurate in identifying the faces of women, young people, and people of color, and that such inaccuracies place certain persons at an elevated risk of harmful “false positive” identifications.

WHEREAS many of the databases to which face surveillance technology is applied are plagued by racial and other biases, which generate copycat biases in face surveillance data.

WHEREAS, the public use of face surveillance can chill the exercise of constitutionally protected free speech.

WHEREAS, the broad application of face surveillance in public spaces is the functional equivalent of requiring every person to carry and display a personal photo identification card at all times.

WHEREAS, the benefits of using face surveillance, which are few and speculative, are greatly outweighed by its harms, which are substantial.

THEREFORE, BE IT RESOLVED, THAT THE SOMERVILLE CITY COUNCIL ADOPTS THE FOLLOWING:

Section 1. Definitions.

- (A) “Face surveillance” shall mean an automated or semi-automated process that assists in identifying an individual, capturing information about an individual, based on the physical characteristics of an individual’s face.
- (B) “Face surveillance system” shall mean any computer software or application that performs face surveillance.
- (C) “Somerville” shall mean any department, agency, bureau, and/or subordinate division of the City of Somerville.

(D)“Somerville official” shall mean any person or entity acting on behalf of the Somerville, including any officer, employee, agent, contractor, subcontractor, or vendor.

SECTION 2. Ban on Government Use of Face Surveillance.

(A) It shall be unlawful for Somerville or any Somerville official to obtain, retain, access, or use:

(1) Any face surveillance system; or

(2) Any information obtained from a face surveillance system.

SECTION 3. Enforcement.

(A) Suppression. 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 trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority subject to the jurisdiction of the City of Somerville. Face surveillance data collected or derived in violation of this Ordinance shall be considered unlawfully obtained, and shall be deleted upon discovery.

(B) Cause of Action. 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.

(C) Statutory Damages. Any person who has been subjected to face recognition in violation of this Ordinance, or about whom information has been obtained, retained, accessed, or used in violation of this Ordinance, may institute proceedings in any court of competent jurisdiction against the City and shall be entitled to recover actual damages, but not less than liquidated damages of \$1,000 or \$100 for each violation, whichever is greater.

(D) Fees. A court shall award costs and reasonable attorneys' fees to a plaintiff who is the prevailing party in an action brought under Section 3(B) or (C).

(E) Training. Violations of this Ordinance by a City employee shall result in consequences that may include retraining, suspension, or termination, subject to due process requirements.