



City Council

Special Meeting

~ Agenda ~

36 Court Street
Springfield, MA 01103
<http://www.springfieldcityhall.com>

Tasheena Davis
4137876589

Thursday, February 27, 2020

5:30 PM

City Hall -- Room 200

I. Ordinances

1. Ordinance 2020-1

Ban on Facial Recognition Surveillance Technology

ATTACHMENTS:

- Draft 1-Ban on Facial Recognition-10.01.19 (DOCX)
- Amended Facial Recog Tech-01.13.20 (DOCX)
- Amended Facial Recog Tech Ordinance-02.03.20-COPY (DOCX)



City Council
36 Court Street
Springfield, MA 01103

Meeting: 02/27/20 05:30 PM
Department: City Clerk
Category: General
Prepared By: Tasheena Davis
Initiator: Tasheena Davis
Sponsors: Ward 1 Councilor Gomez, Vice President - Ward 8 Councilor Ramos
DOC ID: 5366

ADOPTED

ORDINANCE 2020-1

Ban on Facial Recognition Surveillance Technology

THE REVISED ORDINANCES OF THE CITY OF SPRINGFIELD, 1986, AS AMENDED IS HEREBY FURTHER AMENDED BY ADDING CHAPTER 173 THERETO: FACIAL RECOGNITION SURVEILLANCE TECHNOLOGY

Be it ordained by the City Council the Code of Ordinances of the City of Springfield is hereby amended by adding Chapter 173 thereto to read as follows:

CHAPTER 173 FACIAL RECOGNITION SURVEILLANCE TECHNOLOGY

Section 1. Definitions.

Facial surveillance shall mean an automated or semi-automated process that assists in identifying or verifying an individual, based on the physical characteristics of an individual's face.

Facial surveillance system shall mean any computer software or application that performs face surveillance.

Springfield shall mean any department, agency, bureau, and/or subordinate division of the City of Springfield.

Springfield official shall mean any person or entity acting on behalf of the City of Springfield, including any officer, employee, agent, contractor, subcontractor, or vendor.

Section 2. Moratorium on Government Use of Facial Recognition Surveillance.

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

- (1) Any face surveillance system; or
- (2) Any information obtained from a facial surveillance system.

(B) Sunset Clause: Five years from the month of enactment, this ordinance shall be placed on the agenda of the City Council for such amendments as Councilors may propose and the City Council may adopt.

(C) Nothing in this ordinance shall prohibit the City from using automated redaction software as it has been using it as of the date of passage of this ordinance.

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 proceeding in or before any department, officer, agency, regulatory body, legislative committee, or other authority subject to the jurisdiction of the City of Springfield.

(B) *Violations*: Any violation of this Ordinance shall be subject to enforcement by a court of competent jurisdiction and/or a fine of Three Hundred (\$300.00) Dollars per violation.

(C) The City will address alleged violations of this ordinance in accordance with its usual practices, applicable law and contractual obligations.

(D) Nothing in this section shall be construed to limit any individual's rights under State or Federal law.

Approved as to form*:

Associate City Solicitor

HISTORY:

10/07/19 City Council REFERRED TO COMMITTEE

Councilor Ramos spoke in favor of the ordinance. He stated that this type of technology is not reliable yet. He stated four of five people were misidentified using the technology and people have a right to feel safe. Councilor Ramos stated he would not be against sending the item to committee for further discussion.

Councilor Gomez spoke in favor of the ordinance. He explained an ACLU study showed there is only a 35% success rate with this technology. He explained larger municipalities have passed local laws just like this.

Councilor Edwards asked if this is a ban or moratorium.

Councilor Ramos stated it is a ban for now because a moratorium requires an end date and advancement of the technology is uncertain.

Councilor Ryan spoke against the ordinance.

Councilor Williams stated using this technology is not in the City's best interest and he would support the ban with more discussion and information.

Councilor Allen stated he would like it to go to committee so the Council can learn more.

Councilor Whitfield spoke in favor of the ordinance. She explained there are enough implicit biases and we do not need anything else targeting black women.

Councilor Ramos made a motion to send the item to committee, seconded by Councilor Gomez. All being in favor, the item was sent to committee.

10/16/19 City Council

City Council is looking to ban this Technology. Police commissioner advised that the department isn't looking into this technology at this time. Advised the council that she would have to bring this to them for approval.

10/21/19 City Council COMMITTEE

Councilor Ramos explained the item would remain in committee.

11/18/19 City Council RECEIVED REPORT

Councilor Ramos asked that the item remain in Committee.

12/16/19 City Council**RECEIVED REPORT**

Councilor Ramos asked that the item remain in committee.

01/13/20 City Council**FIRST STEP**

Councilor Ramos stated this ordinance was introduced in October of 2019 and he is reintroducing it in a new form. He explained that this should be viewed more like a moratorium and there are many reasons to take action. He stated that many other communities have recognized how dangerous this could be with the lack of regulations in place. They have tested this technology on football and basketball players and 28 of them were misidentified. This impacts all, not just women and people of color. If the data is ignored, lawsuits will follow from use of the technology. Councilor Ramos explained that women of color were misidentified 35% more than white males. He wants regulations before the technology is used and he thanked the ACLU of MA. Similar legislation has been adopted in Northampton, Somerville, and Cambridge. He thanked his colleagues for support and stated that according to an ACLU poll there were 79% of people that support the moratorium and that 91% felt the state should regulate use of the technology.

Councilor Whitfield stated she is speaking from a selfish place based on her hue and that she is a woman. She stated that women of color are 35% more likely to be misidentified and black and brown people already face enough challenges. She explained they have tools to catch the bad guys and people of color have been the bad guys for far too long. She wants to protect her son, her daughter and her family and when SPD uses this technology, there needs to be protections in place. Councilor Whitfield asked about information received during the subcommittee meeting. She said she thought there could not be a moratorium without an end date.

Councilor Ramos stated that is why he has an amendment to the ordinance for a sunset clause that ends in five years. He explained if the technology is more accurate within three years, the Council can revisit the ordinance.

Councilor Walsh stated that five years in technology is an eternity. She explained that there are many moving pieces and she is wondering how public safety feels about this.

Councilor Ramos stated that if the amendment for the five year sunrise clause it is a moratorium. He explained that no timetable placed in the ordinance creates a ban, which is not allowed. He stated with regards to SPD, during the meetings in October and November they stated they do not use this technology and have no plans to use it but the problem is they can use it whenever they like without legislation leaving nothing to prevent abuse of the technology by the SPD.

Councilor Walsh stated that five years is too long.

Councilor Ramos stated he has amendments that were sent to Atty. Pikula of the Law Department 3 weeks ago.

Councilor Gomez stated he is in support of the ordinance as written for first step and he is a co-sponsor. He stated that with body cameras, the majority of responses received were companies out of Texas and they asked if SPD planned to use Facial Recognition Technology. SPD stated they did not plan on using the technology but public safety is the #1 priority. He explained he cannot count how many times he has been pulled over by the police without the technology. He went on to explain the E3 program was created and had to be stopped as people of color were being misidentified. He asked about the LGBT community and people that have changed genders and the impact this technology would

have on them. He stated the Council needs to have the support of the SPD but also needs to protect people of color while the City remains fiscally sound. He wants to pass first step and discuss in committee.

Councilor Fenton stated this is a tough decision as he is aware of racial bias in the criminal justice system but there is a greater question. He stated that this can be used as a tool to further policing and he would be in favor of limiting the technology so it is not used in certain arenas such as at protests and as a database to keep track of people. However, he can think of plenty of instances where this technology would be helpful. Commissioner Clapprood of SPD is opposed to this ordinance and sees where this could be useful. The largest error is human error. He stated that Commissioner Clapprood said she will not use his technology until there are rules in place.

Councilor Davila thanked Councilor Ramos for his efforts but stated that he has more questions. He feels that the Council may be moving too quickly. He would like to know if there would be any overlap with State or Federal law and he wanted to know if the picture database used would be the RMV. He stated that Councilor Ramos indicated it would be a moratorium and if it were changed to a 2 year sunset clause, he would agree with Councilor Walsh that technology moves too quickly to have the clause last longer than that.

Councilor Ramos thanked his colleagues for their valuable input and he would like to address Councilor Fenton's concerns. He agrees with the need for regulations being in place but there are no regulations for the technology being discussed. He stated the purpose of the moratorium is to press pause on a new industry or technology. He stated that the Council created a moratorium for casinos and marijuana and Springfield has always been ahead of the curve, just as the City increased the minimum age for tobacco sales before the state, as well as the plastic bag ban.

Councilor Brown stated that he commends Councilor Ramos and stands in support of the moratorium. He explained there has been issues at the state level with the hands-free bill where people will be pulled over for talking on cell phones. The bill was wanted to combat racial profiling but they are worried about an increase of brown people being arrested.

Councilor Williams stated he is not allowed to not support this ordinance. He explained he has looked at the data and it is telling a story that this technology will not be utilized in his favor. He stated this will exacerbate problems.

Councilor Lederman stated he had an opportunity to attend the subcommittee meeting and there does not seem to be a disagreement that fault exists. He proposes that the moratorium remain in place until such a time as regulations exist and are approved by the Council. He stated that would be a fair proposal.

Councilor Davila stated that if the ordinance passes first step, it can still be discussed during committee meetings.

Councilor Ramos stated he will schedule as many as possible.

Councilor Whitfield stated she has something to say and it may not be as eloquent as Councilor Williams but she would like to discuss white privilege. She explained that white privilege is when something benefits white people over others. She stated that this technology is not a benefit to her 35% as this would be a tool used by the Springfield Police Department to target people of color. She stated that human error is the greatest error because we aren't using this technology yet.

Councilor Gomez stated that this technology does not stop the City from recording. For example, there are cameras all over the City including on Court Street. He stated that this technology doesn't work. He explained the purpose of this is to press pause and he wants the bad guys to get caught but they are just requesting a good faith first step.

Councilor Ramos made a motion to add the 5 year language as a sunset clause, seconded by Councilor Williams.

Councilor Fenton stated that the language added does not mean there is a sunset clause but that if the Council is paying attention, the ordinance will be placed onto the agenda in five (5) years.

Councilors Davila, Fenton, Curran and Walsh voted against the amendment proposed by Councilor Ramos. Councilors Gomez, Whitfield, Ramos, Williams, Lederman, Edwards, Brown and Hurst voted in favor of the amendment proposed by Councilor Ramos. Councilor Allen was absent.

Councilor Ramos stated that he wants to ensure the SPD can keep using technology they have been using.

Councilors Fenton, Curran and Walsh voted against first step, Councilors Gomez, Whitfield, Davila, Ramos, Williams, Lederman, Edwards, Brown and Hurst voted in favor of first step. Councilor Allen was absent.

02/03/20 City Council

LAY ONTABLE

Next: 02/24/20

Councilor Ramos explained the proposed ordinance for a moratorium on the use of facial recognition technology is on the agenda for second and third step. He stated that at the last meeting he had three major reasons for proposing this. He stated the amount of data received shows this technology is inaccurate. It would be irresponsible to employ this type of technology leading to millions in taxpayer lawsuits. He stated his second reason for this proposal is based on protection of women and people of color. He stated black women are 35% more likely to be misidentified by the technology. He explained there was a study done by the ACLU which used Red Sox and Patriots players to show the technology is unreliable. 28 of the players were misidentified, mostly being darker skinned individuals. The third reason he has proposed this moratorium is to protect citizens from mass surveillance. An article was printed in MassLive that went into great detail regarding the technology and Councilor Ramos wanted to highlight the article for its great journalism. The article included quotes and information from those that have utilized and studied the technology. One thing he noted was that the technology is moving much faster than the Law. Councilor Ramos stated he needs a policy in place prior to the technology being used.

Councilor Allen asked if he could ask Commissioner Clapprood and the police Department could speak.

President Hurst stated that without objection he will allow them to speak if Councilors have questions.

Councilor Ramos objected.

President Hurst stated he is not certain Councilor Ramos is aware of what he is objecting to.

Councilor Allen asked if they could come up and speak.

President Hurst made it clear that he will allow Councilors to ask specific questions and not to allow any opponents or proponents to speak freely and give a presentation.

Councilor Allen stated he hears the concerns and he went to Commissioner Clapprood and asked to speak to detectives of the SPD. He met with Sgt. McCoy and Detective McCain. Councilor Allen stated it is important to discuss if SPD plans to use it, how they plan to use it and when they plan to use it. He stated after speaking with them, there is no plan to use the technology. He explained he has no concern about suspect identification. He asked Commissioner Clapprood about the use of the technology.

President Hurst explained he will only allow Commissioner Clapprood to speak on behalf of SPD.

Commissioner Clapprood stated she has not looked into this technology what so ever. She stated a good product, good policy and good training are what is necessary for proper implementation and to prevent misuse. She explained it has taken 16 months for body cameras. She stated she may look at it later as it improves but has no intention of using it at this time.

Councilor Brown asked if she would be willing to meet with the Council prior to use of the technology.

Commissioner Clapprood stated she would definitely be open to meeting.

Councilor Brown stated we should use the technology as soon as it is available. His heros don't wear capes, they wear badges. However, the technology should be presented to the Council but no time limit should be placed on use. He asked Councilor Ramos if there is a way for the information to be presented to the Council.

Councilor Ramos stated he does not disagree. The technology may evolve into something useful for effective policing. Councilor Lederman has ideas so the timeframe of the moratorium be the end all, be all.

Councilor Fenton stated that he doesn't oppose a moratorium and there is good cause to be cautious. He stated a five year ban with the current sunset clause isn't a tempered approach. His opposition is the timeframe presented and the what happens when the date comes. He read the current ordinance and it does not have a true sunset clause. He stated what is clear to him is that there may be many risks, including big brother and racial bias, but there are positives also. The positives include exonerating people and using it for missing persons.

Councilor Gomez stated they are willing to discuss and negotiate the time frame. He stated there are other ways people have been exonerated but the system is not geared towards exoneration. He stated the issue is the accuracy of the technology. He stated when marijuana was introduced and when the casino came, the City had a moratorium prior to them being allowed in the City. Misidentification is large problem. He stated the administration used that young girls name to oppose this moratorium. He explained the community helped to find that little girl, not this type of technology. Using her story was disrespectful to her and her family. He has family in the police force but this is a politicized attempt to pi the Council against the good guys, the SPD. This was not introduced to go against the SPD. The moratorium does not stop any private actors from using the technology. Of course we want to find missing people, but the technology is not accurate and dependable. He stated divisive rhetoric is used when something is introduced to protect people of color to play down what the pros are. There is no policy or procedure in place. Press releases are used to fool the people rather than allowing everyone to come together and figure everything out.

Councilor Edwards stated he will respect the vote of everyone and he wants all to vote their conscience. He stated he is looking forward to the amendments and they will determine his vote. He stated he has not heard anyone speak on hiring a consultant. He explained maybe the group should suggest that a consultant would be a good expenditure to guide all through the process.

Councilor Davila stated he wants to know how the technology can hurt or benefit the residents of Springfield. The technology is for the benefit of the people and not the SPD. Everyone agrees there needs to be checks and balances. He stated he would like to ask Detective McCain to ask questions of an expert regarding use of the technology for missing persons.

President Hurst stated he will only allow questions be asked of Commissioner Clapprood.

Councilor Davila stated that Detective McCain is the expert and in charge of missing persons.

President Hurst stated without objection, he will allow Detective McCain to respond.

Councilor Ramos stated he objects.

President Hurst stated he will allow questions come through Commissioner Clapprood.

Councilor Fenton stated he is not familiar with the President having such a unilateral power.

President Hurst asked City Solicitor, Edward Pikula, to respond on his authority.

City Solicitor, Edward Pikula, stated that the president is the parliamentarian of the Council and his ruling will stand. He explained the Council can take a vote but the president's ruling will stand.

President Hurst requested a roll call vote to see if Detective McCain would be allowed to speak.

The majority of the Council voted to allow Detective McCain to speak with Councilors Gomez, Curran, Ramos, Williams, Edwards and Hurst voting against allowing him to vote and the remaining seven Councilors voting in the affirmative.

Councilor Davila asked Detective Gregory McCain how long he's been an officer and what he specializes in. He asked if that includes missing persons. He asked how many missing persons the City had in 2019. Councilor Davila asked about the dangers to a missing person.

Detective McCain stated he works with the arson and bomb squad and he works with elderly affairs and that includes missing persons. He explained 42 people over 60 went missing last year. Detective McCain stated the dangers are time and weather.

President Hurst asked Councilor Davila to get to the poignant question. He only allowed Councilor Allen to ask one question.

Councilor Davila asked how facial recognition will assist SPD.

Detective McCain stated that hopefully the picture used from the family of the missing person and however the technology works, it will let the SPD know they have found the missing person.

Councilor Davila stated he will be making an amendment to allow the technology to be used for missing persons.

Councilor Whitfield stated the detective is not an expert in facial recognition technology. The detective stated "hopefully", "maybe" and "possibly". Councilor Whitfield stated the Mayoral press release addressing this issue mentioned a war on crime. She explained in her experience a war on anything, crime or drugs, it has been a war against black people. She stated 35% of the time, women of darker hues have been misidentified and that is me. She stated she is not sure the technology will be used for exoneration as Councilor Fenton has proposed. She stated Councilor Davila stated there should be an amendment to allow the technology to be used for missing persons when Commissioner Clapprood stated she will not be using the technology at all. Councilor Whitfield stated she has facial recognition on her phone and she is wrongly identified constantly. She stated the technology can do good in the future but regulations and accuracy need to be certain. She asked all to think about what if they were part of that 35% being misidentified.

Councilor Williams stated this sound like stop and frisk that was introduced by Mayor Bloomberg where the policy is implemented and then the repercussions to people of color are discussed later. He stated there just is not enough evidence based research on this and there is no regulation on either a state or federal level. He explained a moratorium would allow to see if this may occur. Re-visiting an ordinance is not an issue for the Council as it is done all the time. He stated the Council wants to be certain an RFP is not put out and the Council has no recourse.

Councilor Lederman stated he respects that it can be used for missing person, but he is not certain that can even be the case yet. He stated at the appropriate time, he will introduce amendments for the possibility of regulations being introduced prior to the expiration of the moratorium and for the expiration of the ordinance. He explained that the technology needs to become more accurate.

Councilor Walsh spoke in favor of the technology. She stated she wishes no one was being vilified for their opposing viewpoints on the issue. She asked Commissioner Clapprood if she does have any plans to use the technology.

Commissioner Clapprood stated she does not have plans but if a company comes to her for use for missing persons, she will do the research and implement the proper way. She stated misidentification may not be such a large issue as it depends on the database it is being used for such as finding elderly missing persons and children.

Councilor Walsh asked if Commissioner Clapprood would have to come back before the Council before implementation.

Commissioner Clapprood stated she would come back before the Council regarding finances as it may cost millions of dollars.

Councilor Ramos asked Detective McCain questions. He asked if he was an expert or had any training on facial recognition technology.

Detective McCain stated he is not an expert and does not know how long training would take.

President Hurst asked Councilor Ramos to ask poignant questions. He stated he does not want the Council deposing officers of SPD publicly.

Councilor Ramos asked of Detective McCain would be amenable to working with the Council to develop a policy.

Detective McCain stated he is amenable.

Councilor Ramos asked that any amendment by Councilor Davila include a caveat that use of technology for missing persons requires approval of any policies by the Council first.

Councilor Davila stated he is shocked and surprised by the racial tension. The technology should be used to find missing persons.

Councilor Fenton created amendments to the ordinance. He stated those amendments will be to subsection b of section 2.

President Hurst stated the amendments would take the amendments together.

Councilor Ramos asked the amendments be taken separately.

Councilor Fenton stated Councilor Ramos has been allowed to speak three times and he will not separate the amendments, but he is fine with breaking them into two amendments.

Councilor Fenton made a motion to accept the proposed amendments, seconded by Councilor Walsh.

The first amendment was to amend the definition of facial recognition technology to exclude missing persons, seconded by Councilor Davila.

The second amendment was to amend the timeframe of the moratorium to be six months, seconded by Councilor Walsh.

Councilors Gomez, Curran, Ramos, Walsh, Hurst voted against the amendment to the definition. The amendment passed.

Councilors Gomez, Whitfield, Curran, Ramos, Williams, Lederman, Edwards and Hurst voted against the second amendment for the 6 month moratorium. The amendment failed.

Councilor Whitfield stated that name calling is taking place. She explained if immigrants or Puerto Ricans are discussed in the chambers, there is no discussion of people being vilified. She stated she is speaking from the black experience, as that is her experience.

Councilor Allen stated it has been two hours on the first agenda item, so something needs to happen now.

Councilor Allen made a motion to send the item to committee, seconded by Councilor Davila.

Councilor Ramos was against the item going to committee.

President Hurst stated he is willing to have a special meeting with this item only on the agenda.

In response to this, Councilor Allen withdrew his motion to committee, and made a motion to continue the item, seconded by Councilor Edwards.

The Council voted to continue the item.

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Springfield official shall mean any person or entity acting on behalf of the City of Springfield, including any officer, employee, agent, contractor, subcontractor, or vendor.

Section 2. Ban on Government Use of Facial Recognition Surveillance.

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

- (1) Any face surveillance system; or
- (2) Any information obtained from a facial 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 proceeding in or before any department, officer, agency, regulatory body, legislative committee, or other authority subject to the jurisdiction of the City of Springfield.

(B) *Violations*: Any violation of this Ordinance shall be subject to enforcement by a court of competent jurisdiction and/or a fine of Three Hundred (\$300.00) Dollars per violation.

(C) The City will address alleged violations of this ordinance in accordance with its usual practices, applicable law and contractual obligations.

(D) Nothing in this section shall be construed to limit any individual's rights under State or Federal law.

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Section 2. ~~Moratorium Ban~~ on Government Use of Facial Recognition Surveillance.

Comment [DT1]: Motion to amend by I

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

- (1) Any face surveillance system; or
- (2) Any information obtained from a facial surveillance system.

~~(B) Sunset Clause: Five years from the month of enactment, this ordinance shall be placed on the agenda of the City Council for such amendments as Councilors may propose and the City Council may adopt.~~

Comment [DT2]: Motion to amend by I

~~(C) Nothing in this ordinance shall prohibit the City from using automated redaction software as it has been using it as of the date of passage of this ordinance.~~

Section 3. Enforcement.

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

- (1) Any face surveillance system; or
- (2) Any information obtained from a facial surveillance system.

(B) Sunset Clause: Five-Six months years from the month-day of enactment, this ordinance shall be lapse and no longer be in effect. Notwithstanding the forgoing, the placed on the agenda of the City Council shall work diligently with the Police Department to create regulations for the proper use of a facial surveillance system which shall eliminate the need for this Chapter 173. If regulations concerning the proper use of facial surveillance systems are not implemented by the above described sunset date, the City Council shall consider renewing the moratorium described in this Chapter 173 for an additional period of time to be determined by the City Council. for such amendments as Councilors may propose and the City Council may adopt.

(C) Nothing in this ordinance shall prohibit the City from using automated redaction software as it has been using it as of the date of passage of this ordinance.

Section 3. Enforcement.

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Comment [DT1]: Motion to amend by Councilor Fenton, seconded by Councilor Davila.

The motion passed and this amendment is the current draft.

Comment [DT2]: Motion to amend made by Councilor Fenton, seconded by Councilor V

The motion to amend failed and this amendment is not a part of the current draft.

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