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Title: Ordinance amending and supplementing the Pittsburgh Code of Ordinances at Title One: Administrative, Article III: Organization, Chapter 116: Department of Public Safety to regulate the use of facial recognition and predictive policing technology.

Sponsors: Corey O'Connor

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Date	Ver.	Action By	Action	Result
9/24/2020	4	Mayor	Signed by the Mayor	
9/22/2020	4	City Council	Passed Finally, As Amended	Pass
9/22/2020	4	City Council	AMENDED	Pass
9/16/2020	3	Standing Committee	AMENDED	Pass
9/16/2020	3	Standing Committee	Affirmatively Recommended as Amended	Pass
9/9/2020	2	Standing Committee	AMENDED	Pass
9/9/2020	2	Standing Committee	Held in Committee	Pass
9/2/2020	1	Standing Committee	Held in Committee	Pass
8/25/2020	1	City Council	Read and referred	

Ordinance amending and supplementing the Pittsburgh Code of Ordinances at Title One: Administrative, Article III: Organization, Chapter 116: Department of Public Safety to regulate the use of facial recognition and predictive policing technology.

WHEREAS, as part of the U.S. Department of Commerce, the National Institutes of Standards and Technology’s (NIST) mission is to promote U.S. innovation and industrial competitiveness by advancing measurement science, standards, and technology in ways that enhance economic security and improve quality of life; and,

WHEREAS, in 2019, NIST published a report on the performance of facial recognition algorithms across racial, age, and gender demographics finding that there were higher false positives rates in Native American, African American, and Asian populations. They also found false positives to be higher in women than men and elderly and children; and,

WHEREAS, other rigorous studies and real-life examples have shown that many facial recognition and predictive policing technologies are far from perfect, with numerous instances of racial bias and false arrests;

and,

WHEREAS, the unregulated use of facial recognition and predictive policing technologies based on algorithmic and computational machine learning and artificial intelligence in public safety risks the perpetuation of bias and a reliance on historically biased data, thereby presenting new possibilities of compounding harm; and

WHEREAS, some of these technologies have the potential to endanger the civil rights and civil liberties of innocent individuals, which means it is incumbent on governments to regulate, scrutinize, and vet these technologies before they can be implemented; and,

WHEREAS, the City of Pittsburgh seeks to provide regulations to safeguard the civil liberties and civil rights of the public prior to the acquisition or use of the technologies; and,

WHEREAS, the inclusion of these regulations to the City of Pittsburgh's Code of Ordinances shall not be construed as to prevent the City or Pittsburgh Bureau of Police from using traditional and generally accepted methods of data collection or investigation in the course of its work.

Be it resolved that the Council of the City of Pittsburgh hereby enacts as follows:

Section 1. Title One: Administrative, Article III: Organization, Chapter 116: Department of Public Safety is amended to add § 116.15: Select Surveillance Technology, which provides as follows:

A. Purpose

1. It is paramount that the City of Pittsburgh provides regulations for the acquisition, retention, access, or use of Facial Recognition and Predictive Policing Technologies to safeguard the right of individuals to privacy, balance the public's right to privacy with the need to promote and ensure safety and security, provide protocols for acquisition, retention, access, or use that include specific steps to mitigate potential impacts on the civil rights and liberties of any individuals, communities, or groups - including communities of color or other marginalized communities - in the City of Pittsburgh, to provide for transparency, oversight, and accountability, and to minimize the risks posed by use of Select Surveillance Technology in the City of Pittsburgh.

B. Definitions

1. Exigent Circumstances. An emergency situation about which the Director of the Department of Public Safety or the Chief of the Bureau of Police holds a good faith belief that imminent death, physical harm, or significant property damage or loss can only be prevented by or responded to with the immediate and temporary use of Select Surveillance Technology.

2. Facial Recognition Technology. Any computed-based software, program, system, or related facial biometric surveillance technology that, without a subject's knowledge or consent, and in an automated or semi-automated manner, analyzes images and the characteristics of human faces to, alone or in combination:

- a. Identify and track, or assist in the identifying and tracking of, individuals at a distance; or
- b. Log characteristics of an individual's face, head, or body to infer emotion, associations, activities, or location.

3. Predictive Policing Technology. Any fully or partially-automated computational application of programs, devices, hardware, or software based on machine learning or artificial intelligence that is, independent of a user, used to predict information or trends on crime or criminality that has or has yet to occur, including, but not limited to, the characteristics or profile of any individual(s) likely to commit a crime, the identity of any individuals likely to commit crime, the locations or frequency of crime, or the individuals affected by predicted crime or criminality.

4. Select Surveillance Technology. Any Facial Recognition Technology or Predictive Policing Technology as defined herein. For the purposes of this Ordinance, the following shall not be considered Select Surveillance Technology and the acquisition, retention, access, or use thereof shall be unaffected by the contents of this Ordinance so long as they are not used in conjunction with Facial Recognition Technology or Predictive Policing Technology in a manner not approved under the terms of § 116.15(C):

- a. Medical equipment used to diagnose, treat, or prevent injury or disease;
- b. Stationary security cameras affixed to City of Pittsburgh property or facilities, or subject to existing agreements;
- c. Cameras installed on City of Pittsburgh property for security purposes, including, but not limited to, closed circuit television cameras used to monitor entryways and outdoor areas of property owned, maintained, or operated by the City of Pittsburgh to control access, maintain the safety of its employees and visitors to its property, and protecting its property, or cameras installed for the sole purpose of maintaining the physical integrity of City of Pittsburgh infrastructure, and Department of Public Safety

cameras affixed to utility poles within public rights-of-way;

d. Body cameras issued by the Pittsburgh Bureau of Police;

e. Handheld digital cameras, audio recorders, and video records that are used to manually capture and download video and / or audio recordings, but not designed to surreptitiously surveil individuals or be worn;

f. Devices that are manually operated and not designed to surreptitiously surveil individuals, including, but not limited to, two-way radios, email systems, and City-issued cell phones, and will not be used as such;

g. Devices that do not record or transmit audio or video and / or cannot be remotely accessed, including, but not limited to, technology used in fire, rescue, and missing person operations;

h. Personal communication devices procured or subsidized by the City of Pittsburgh or personally owned used throughout the regular course of conducting City of Pittsburgh business that has not been modified beyond basic, stock manufacturer capabilities;

i. Cameras or recording devices installed pursuant to state law in or on any vehicle or along a public right-of-way for the purpose of recording traffic violations;

j. City databases and technology, unless they do or will contain information collected, captured, recorded, retained, processed, intercepted, analyzed, derived, or effected through the use of Facial Recognition Technology or Predictive Policing Technology;

k. Cybersecurity technologies, systems, and other capabilities used by the City of Pittsburgh to predict, monitor for, prevent, and protect its own technology infrastructure and systems from potential cybersecurity events and cyber-forensic based investigations of illegal computer-based activity;

l. Gunshot detection and location hardware, software, and services; **and**

~~m. Databases, programs, and technology regulated, operated, maintained, and published by another government entity, or otherwise available to the City of Pittsburgh through an intergovernmental joint purchasing agreement; and~~

nn. Small unmanned aerial systems utilized for situational awareness, search and rescue, visual

perspectives, scene documentation, critical incidents, and emergency situations.

C. Use of Select Surveillance Technology

1. The Department of Public Safety shall not obtain, retain, access, or use Facial Recognition Technology or Predictive Policing Technology, or make use of information collected, captured, recorded, retained, processed, intercepted, analyzed, derived, or effected through the use of Select Surveillance Technology by another entity without the approval of City Council, or unless permitted through the stipulations of this Ordinance.

~~2. City Council may approve the acquisition, retention, access, or use of Facial Recognition Technology or Predictive Policing Technology if it finds that said acquisition, retention, access, or use of such technology does not maintain or perpetuate bias, poses no risk to the civil rights and liberties of residents, and is in line with scientifically validated and peer-reviewed research on the stipulated purpose.~~

3. Approval by City Council shall take the form of a Resolution.

4. In seeking approval to obtain, retain, access, or use Select Surveillance Technology or make use of information collected, captured, recorded, retained, processed, intercepted, analyzed, derived, or effected through the use of Select Surveillance Technology by another entity, the Department of Public Safety shall communicate, to the greatest extent possible and permissible by law, the following to City Council:

a. The specific purposes for which the Select Surveillance Technology is sought, the objective(s) that its use would advance, and the duration of use for which approval is sought;

b. A general description of the information and data that would be collected;

c. The name and title of City of Pittsburgh employees who would be authorized to access and use the technology, a general description of any training they have received to use said technology, and how the Department of Public Safety will conduct oversight to prevent the unauthorized use or misuse of the technology;

d. How the information and data collected, captured, recorded, retained, processed, intercepted, analyzed, derived, or effected through the use of Select Surveillance Technology would be protected from unauthorized access;

e. A general description of the safeguards that protect against the use of the Select Surveillance Technology for purposes that would violate or infringe on civil rights and liberties, including, but not limited to, possible disparate or negative consequences for any communities or groups;

f. A proposed information, data, and record retention schedule associated with the use of the Select Surveillance Technology; and

g. A general description of the procedures that would be undertaken for the maintenance of the Select Surveillance Technology.

h. Nothing in this subsection is intended to conflict with or supersede the Criminal History Record Information Act, 18 Pa. C.S.A. § 9102, *et seq.*, or any other applicable state or federal statute.

5. Notwithstanding the provisions of this Ordinance, the Department of Public Safety may, in response only to Exigent Circumstances, temporarily make use of Select Surveillance Technology for a period of time not to exceed 90 days without being subject to the provisions of § 116.15(C)(1) through § 116.15(C)(4).

a. Should the Department of Public Safety temporarily make use of Select Surveillance Technology in response to Exigent Circumstances, the Director of the Department of Public Safety shall notify City Council within 30 days of the commencement of such action, provided that such information is not classified or privileged as a matter of law.

6. The contents of this Ordinance shall not affect activities related to databases, programs, and technology regulated, operated, maintained, and published by another government entity, or otherwise available to the City of Pittsburgh through an intergovernmental joint purchasing agreement.

67. The use of Select Surveillance Technology pursuant to a warrant prior to the effective date of this legislation is exempt from the requirements of this Ordinance in instances where the City of Pittsburgh is prohibited from publicly releasing information related to the surveillance under state or federal law, or pursuant to a court order.

D. Violation

~~1. Should an individual be subject to a violation of this Ordinance, that individual shall have a right of action against the City of Pittsburgh for damages proximately caused by said violations of § 116.15 that occur after the effective date of this Ordinance.~~

~~2. The unintentional or inadvertent receipt, retention of, access of, or use of any information obtained through the use of Select Surveillance Technology by City of Pittsburgh staff shall not constitute a violation of this Ordinance provided that:~~

~~a. City of Pittsburgh staff did not intentionally request, retain, or solicit the receipt, access of, or use of such information; and~~

~~b. City of Pittsburgh staff reports such receipt, access, or use to the Department of Public Safety within thirty (30) days.~~

E. Severability

1. If any one or more of the provisions of this Ordinance shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions of this Ordinance and this Ordinance shall be construed and enforced as if such illegal or invalid provisions had not been contained herein.