

NO. _____

ORDINANCE

An Ordinance amending and supplementing the Administrative Code of Allegheny County through the creation of a new Chapter 820, entitled “Technology Acquisition and Use,” in order to provide budgetary and other safeguards for the civil and other rights of County residents.

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

WHEREAS, the use of passive and ubiquitous technologies used for surveillance and data collection inherently lack transparency and lead to collection of large and unregulated data that citizens have not consented to having collected;

WHEREAS, any surveillance technology that collects data that persists for any length of time creates an undesirable incentive to aggregate, bundle, and otherwise sell data to third parties while limited access to data by citizens of the County;

The Council of the County of Allegheny hereby enacts as follows:

SECTION 1. Incorporation of the Preamble.

The preamble to this Ordinance is hereby incorporated in its entirety herein.

SECTION 2. Amendment of the Code.

The Administrative Code of Allegheny County is hereby amended through the creation of a new Chapter 820, entitled "Technology Acquisition and Use," and comprised as follows:

**Chapter 820
Technology Acquisition and Use**

§5-820.1. Definitions.

For the purposes of this Chapter, the following words and phrases shall have the delineated meanings, unless context and usage clearly indicate to the contrary:

- A. "Allegheny County" means Allegheny County and/or any department, division, or office thereof, including the Office of the Chief Executive, Office of the County Manager, Office of County Council, or the office of any independently elected County official, as defined in §5-201.03 of this Administrative Code.
- B. "County Official" means the Allegheny County Chief Executive, any member of Allegheny County Council, and/or any independently elected County official, as defined in §5-201.03 of this Administrative Code.
- C. "Surveillance Technology" is any kind of device or technology that is used to collect information about individuals and groups privately, without explicit prior consent, that can be used to track, record, or make inferences about members of the population to be used in a punitive manner. Surveillance Technology includes any electronic device, system utilizing an electronic device, or similar technological tool used, designed, or primarily intended to collect audio, electronic, visual, location, thermal, olfactory, biometric, or similar information specifically associated with, or capable of being associated with, any individual or group. Examples of covered Surveillance Technology include, but are not limited to: cell site simulators (Stingrays); automatic license plate readers; body worn cameras; gunshot detectors (ShotSpotter); Facial Recognition software; thermal imaging systems, except as allowed under Subsections C.1. through C.10.; social media analytics software; gait analysis software; and video cameras that record audio or video and can remotely transmit or can be remotely accessed.

"Surveillance Technology" does not include the following devices or hardware, unless they have been equipped with, or are modified to become or include, a Surveillance Technology as defined in this Subsection:

1. Routine office hardware, such as televisions, computers and printers, that is in widespread public use and will not be used for any surveillance functions;
2. Handheld Parking Citation Devices, that do not automatically read license plates;
3. Manually-operated, portable digital cameras, audio recorders, and video recorders that are not to be used remotely and whose functionality is limited to manually capturing, viewing, editing and downloading video and/or audio recordings, but not including body worn cameras;
4. Devices that cannot record or transmit audio or video or electronic information or be remotely accessed, such as image stabilizing binoculars or night vision goggles or thermal imaging cameras used for fire operations, search and rescue operations and missing person searches, and equipment used in active searches for wanted suspects;
5. Manually-operated technological devices that are not designed and will not be used to surreptitiously collect surveillance data, such as two-way radios, email systems and County-issued cell phones;
6. Municipal agency databases that do not and will not contain any data or other information collected, captured, recorded, retained, processed, intercepted, or analyzed by surveillance technology;
7. Medical equipment used to diagnose, treat, or prevent disease or injury, including electrocardiogram machines;
8. Cybersecurity capabilities, technologies and systems used by the County of Allegheny Department of Information Technology to predict, monitor for, prevent, and protect technology infrastructure and systems owned and operated by the County of Allegheny from potential cybersecurity events and cyber-forensic based investigations and prosecutions of illegal computer-based activity;
9. Stationary security cameras affixed to County property or facilities, that are not equipped with biometric surveillance technology, such as Facial Recognition technology or gait-recognition technology.

10. Personal communication device, which means a cellular telephone, a personal digital assistant, a wireless capable tablet or similar wireless two-way communications and/or portable Internet accessing device, that has not been modified beyond stock manufacturer capabilities, whether procured or subsidized by a County entity or personally owned, that is used in the regular course of conducting County business and will not be used for any surveillance functions.

D. "Surveillance Technology Report" means an annual written report by the Allegheny County Manager, prepared in conjunction with all County Officials, delineating all of the Surveillance Technologies in the possession and/or use of the County. Such report shall include all of the following information with regard to each type of Surveillance Technology:

1. Description: A description of all information about use of the Surveillance Technology, including but not limited to the type and quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report shall include general information about recipient entities, including the names of the entities, purposes for such sharing, and legal standard(s) under which the information was disclosed;
2. Geographic Deployment: Where applicable, information about where the surveillance technology was deployed geographically;
3. Complaints: A summary of each complaint, if any, received by the County about the Surveillance Technology;
4. Audits and Violations: The results of any internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response;
5. Data Breaches: Information about any data breaches or other unauthorized access to the data collected by the Surveillance Technology, including information about the scope of the breach and the actions taken in response;
6. Effectiveness: Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes;
7. Costs: Total annual costs for the Surveillance Technology, including personnel and other ongoing costs, and what source of funding will fund the technology in the coming year.

- E. "Surveillance Acquisition Report" means a publicly-released written report produced prior to acquisition or to proposed permanent use after use in Exigent Circumstances (as provided for within this Chapter), of a type of Surveillance Technology that includes the following:
1. Description: Information describing the Surveillance Technology and how it works, including product descriptions from manufacturers;
 2. Purpose: Information on the proposed purpose(s) for the Surveillance Technology;
 3. Location: The general location(s) the Surveillance Technology may be deployed and reasons for deployment in those location(s);
 4. Impact: An assessment identifying potential impacts on civil liberties and civil rights including but not limited to potential disparate or adverse impacts on any communities or groups;
 5. Mitigation: Information regarding specific technical and procedural measures that will be implemented to appropriately safeguard the public from any impacts identified in subsection (4);
 6. Data Types and Sources: A list of the sources of data proposed to be collected, analyzed, or processed by the Surveillance Technology, including "open source" data;
 7. Data Security: Information about the steps that will be taken to ensure adequate security measures to safeguard the data collected or generated from unauthorized access or disclosure;
 8. Fiscal Cost: The fiscal costs for the Surveillance Technology, including initial purchase, personnel and other ongoing costs, including to the extent practicable costs associated with compliance with this and other reporting and oversight requirements, as well as any current or potential sources of funding;
 9. Third Party Dependence and Access: Whether use or maintenance of the technology will require data gathered by the technology to be handled or stored by a third-party vendor on an ongoing basis, and whether a third party may have access to such data or may have the right to sell or otherwise share the data in aggregated, disaggregated, raw or any other formats;

10. Alternatives: A summary and general assessment of potentially viable alternative methods (whether involving the use of a new technology or not), if any, considered before deciding to propose acquiring the Surveillance Technology; and
 11. Experience of Other Entities: To the extent such information is available, a summary of the experience of comparable government entities with the proposed technology, including any unanticipated financial or community costs and benefits, experienced by such other entities.
- F. "Surveillance Use Policy" means a publicly-released and legally-enforceable policy for use of each type of the Surveillance Technology that shall reflect the Surveillance Acquisition Report produced for that Surveillance Technology and that at a minimum specifies the following:
1. Purpose: The specific purpose(s) that the Surveillance Technology is intended to advance;
 2. Authorized Use: The uses that are authorized, the rules and processes required prior to such use, and the uses that are prohibited;
 3. Data Collection: Information collection that is allowed and prohibited. Where applicable, list any data sources the technology will rely upon, including "open source" data;
 4. Data Access: A general description of the title and position of the employees and entities authorized to access or use the collected information, and the rules and processes required prior to access or use of the information, and a description of any and all rights of third party vendors to access and use, sell or otherwise share information for any purpose;
 5. Data Protection: A general description of the safeguards that protect information from unauthorized access, including encryption and access control mechanisms, and safeguards that exist to protect data at the vendor level;
 6. Civil Liberties and Rights Protection: A general description of the safeguards that protect against the use of the Surveillance Technology and any data resulting from its use in a way that violates or infringes on civil rights and liberties, including but not limited to potential disparate or adverse impacts on any communities or groups;

7. Data Retention: The time period, if any, for which information collected by the Surveillance Technology will be routinely retained, the reason such retention period is appropriate to further the purpose(s) that the Surveillance Technology is intended to advance, the process by which the information is regularly deleted after that period lapses, and the specific conditions that must be met to retain information beyond such period;
 8. Public Access: How collected information may be accessed or used by members of the public;
 9. Third Party Data Sharing: If and how other County or non-County entities can access or use the information, including any required justification or legal standard necessary to do so and any obligations imposed on the recipient of the information;
 10. Training: Training required for any employee authorized to use the Surveillance Technology or to access information collected;
 11. Auditing and Oversight: Mechanisms to ensure that the Surveillance Use Policy is followed, technical measures to monitor for misuse, and the legally enforceable sanctions for intentional violations of the policy; and
 12. Maintenance: The mechanisms and procedures to ensure maintenance of the security and integrity of the Surveillance Technology and collected information.
- G. "Exigent Circumstances" means the County Manager's or County Official's good faith belief that an emergency involving imminent danger of death or serious physical injury to any person, or imminent danger of significant property damage, requires use of the Surveillance Technology or the information it provides.
- H. "Facial Recognition" means an automated or semi-automated process that assists in identifying or verifying an individual based on an individual's face.

§5-820.2. Surveillance technology acquisition and use.

- A. The County Manager and/or any County Official must obtain County Council approval, except in Exigent Circumstances, via duly enacted ordinance, including the holding of a public hearing on the matter, prior to undertaking any of the following:
1. Seeking, soliciting, or accepting grant funds for the purchase of, or in-kind or other donations of, Surveillance Technology;

2. Acquiring or borrowing new Surveillance Technology, including but not limited to procuring such technology without the exchange of monies or consideration;
 3. Using new Surveillance Technology, or using Surveillance Technology previously approved by the County Council for a purpose, or in a manner not previously approved by the County Council; or
 4. Entering into an agreement with a non-County entity to acquire, share or otherwise use Surveillance Technology or the information it provides, or expanding a vendor's permission to share or otherwise use Surveillance Technology or the information it provides.
- B. In the event that Exigent Circumstances apply to any action defined under the terms of Subsection A, the County Manager and/or County Official determining that such Exigent Circumstances exist shall immediately notify all members of County Council in writing of the existence of such circumstances, the action(s) to be undertaken, and the types of Surveillance Technology to be employed and the fashion in which it will be used, and shall provide a further public briefing regarding the action(s) undertaken upon motion approved by the full Council. Written notice provided under the terms of this Section shall be subject to the provisions of the Commonwealth's Right to Know Law, 65 P.S. §67.101, *et. seq.*
- C. Notwithstanding any provision of County law, policy, or practice to the contrary, the requirements of Subsection A shall not be satisfied by the enactment of any budget, budget amendment, Executive action, fund transfer, or other administrative or legislative item not strictly complying with each of the form and content requirements established in Subsection A.
- D. The County Manager must submit for review a Surveillance Acquisition Report and obtain County Council approval of a Surveillance Use Policy prior to engaging in any of the activities described in Subsections A.1 through A.4.
- E. Evidence received relating to the investigation of a specific crime that may have been generated from Facial Recognition technology but was not intentionally solicited shall not be a violation of this ordinance.
- F. Notwithstanding any other provision of this Chapter, it shall be a violation of this ordinance for the County Manager, County Official or any person acting on the County Manager's or a County Official's behalf to obtain, retain, request, access, or use: i) any Facial Recognition technology; or ii) any information obtained from Facial Recognition technology, except for personal communication devices as defined in this Chapter. The inadvertent or unintentional receipt, access to, or

use of any information obtained from Facial Recognition technology shall not be a violation of this subsection provided that the County Manager, County Official, or any person acting on the County Manager's or County Official's behalf does not request or solicit the receipt, access to, or use of such information, and all copies of the information are promptly destroyed upon discovery of the information, and the information is not used for any purpose.

- G. The County Manager, in conjunction with other County Officials as necessary and appropriate, shall log the receipt, access to, or use of any information obtained, including how this information was used and its duration of use, from Facial Recognition technology in its Annual Surveillance Technology Report. The Surveillance Technology Report shall identify measures taken by the County to prevent the further transmission or use of any information inadvertently or unintentionally obtained through the use of Facial Recognition technology; provided, however, that nothing in this Chapter shall limit the ability to use such information in connection with a criminal investigation.

§5-820.3. Surveillance technology prohibitions; enforcement.

- A. **Suppression.** No data collected or derived from any use of Surveillance Technology in violation of this Chapter 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 Allegheny County.
- B. **Cause of Action.** Any violation of this Chapter shall be deemed to constitute an injury and any person(s) aggrieved thereby may institute proceedings for injunctive and/or declaratory relief in any court of competent jurisdiction to enforce the provisions of this Chapter.
- C. **Penalties.** Any person who knowingly violates this Act shall be deemed guilty of a misdemeanor and may be punished by a fine not exceeding \$2,500 per violation, imprisonment of not more than six months, or both.
- D. **Limitations of Use.** No data collected within the scope of surveillance permitted under this Ordinance may be used for economic or other extraneous purposes, including but not limited to being sold or used for analysis unrelated to the original purposes of the data collection.
- E. Nothing in this section shall be construed to limit any individual's rights under State or Federal law.

SECTION 2. Effective Date.

The provisions of this Ordinance shall become effective immediately upon final approval.

SECTION 3. Severability. If any provision of this Ordinance shall be determined to be unlawful, invalid, void or unenforceable, then that provision shall be considered severable from the remaining provisions of this Ordinance which shall be in full force and effect.

SECTION 4. Repealer. Any Resolution or Ordinance or part thereof conflicting with the provisions of this Ordinance is hereby repealed so far as the same affects this Ordinance.

PRIMARY SPONSOR: COUNCIL MEMBER HALLAM

CO-SPONSORS: COUNCIL MEMBER BENNETT

Enacted in Council, this _____ day of _____, 2020,

Council Agenda No. _____

Patrick Catena
President of Council

Attest: _____
Jared E. Barker, Chief Clerk
Allegheny County Council

Chief Executive Office _____, 2020

Approved: _____
Rich Fitzgerald
Chief Executive

Attest: _____
Sonya Dietz
Executive's Secretary