

**RESOLUTION NO. 2021-19**

**A RESOLUTION CONCERNING INITIATIVE BILL 2021-02 WHICH WOULD PROHIBIT  
THE USE OF FACIAL RECOGNITION TECHNOLOGY AND PREDICTIVE POLICING  
TECHNOLOGY**

**WHEREAS**, a sufficient number of qualified electors of the City of Bellingham have proposed an Initiative Bill, previously assigned 2021-02, which would prohibit the use of facial recognition technology and predictive policing technology;

**WHEREAS**, Initiative Bill 2021-02 would prohibit the City from acquiring or using facial recognition technology, prohibit the City from contracting with a third party to use facial recognition technology on its behalf, prohibit the use of predictive policing technology, prohibit the retention of unlawfully acquired data, prohibit the use of data, information, or evidence derived from the use of facial recognition technology or predictive policing technology in any legal proceeding, and authorize private civil enforcement actions;

**WHEREAS**, the City Charter and BMC 1.02.070 provide that the City Council may choose to enact the bill, reject the bill, reject the bill and propose another bill dealing with the same subject, defer the bill to the voters, or take no action on the bill;

**WHEREAS**, RCW 29A.04.330 requires that the City Council pass a resolution on or before August 3, 2021 to allow an initiative to be placed on the general election ballot in November 2021.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BELLINGHAM:**

The City Council hereby defers Initiative Bill 2021-02 to the voters. The Finance Director is instructed to deliver the Initiative Bill to the Whatcom County Auditor for submission to the qualified electors for approval or rejection on the November 2, 2021, ballot pursuant to the City Charter and the Bellingham Municipal Code, as well as all paperwork required to ensure that the measure is placed on the ballot in November.

The City Council designates the following community members to serve on the committee "For" the initiative bill to prepare a statement advocating that voters approve the measure:

Cleveland Harris II, Jessmaya Morales, and Josh Cerretti.

The City Council designates the following community members to serve on the committee "Against" the initiative bill to prepare a statement advocating that voters reject the measure:

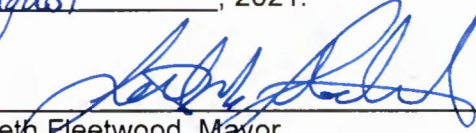
Phyllis McKee, David Charleston, and Sean Brogan.

City of Bellingham  
City Attorney  
210 Lottie Street  
Bellingham, Washington 98225  
360-778-8270

**PASSED** by the Council this 2<sup>nd</sup> day of August, 2021.

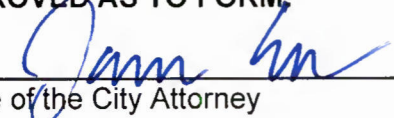
  
Hannah Stone, Council President

**APPROVED** by me this 2 day of August, 2021.

  
Seth Fleetwood, Mayor

**ATTEST:**   
Andy Asbjornsen, Finance Director

**APPROVED AS TO FORM:**

  
Office of the City Attorney

City of Bellingham  
City Attorney  
210 Lottie Street  
Bellingham, Washington 98225  
360-778-8270

I, Sarah Jones, am a legal registered voter in Bellingham, Washington.

I herewith submit a proposed initiative petition measure attached as described below:

### Restricting Use of Advanced Policing Technologies

Shall the City of Bellingham restrict the use of certain advanced policing technologies, including facial recognition technology and predictive policing technology, for City of Bellingham departments and officials in order to ensure more equitable and transparent processes regarding criminal proceedings, citizen interactions with law enforcement, and the use of citywide data at large?

### Full Text of Ordinance:

### AN ORDINANCE OF THE CITY OF BELLINGHAM, WASHINGTON REGARDING A PROHIBITION ON THE CITY'S ACQUISITION AND USE OF ADVANCED POLICING TECHNOLOGIES

**WHEREAS**, police surveillance and actions based on predicted crimes may threaten the privacy of all of us, and they have historically been used to intimidate and oppress certain communities and groups more than others, including those that are defined by a common race, ethnicity, religion, national origin, income level, sexual orientation, or political perspective.

**WHEREAS**, in recent years, some Police Departments across the United States have adopted advanced policing technologies, including facial recognition and predictive policing technologies.

**WHEREAS**, whenever possible, decisions relating to advanced policing technology should occur with strong consideration given to the impact that such technologies may have on civil rights and civil liberties.

**WHEREAS**, many facial recognition and predictive policing technologies used by municipal police departments rely on proprietary algorithms, which cannot be subjected to full public scrutiny.

**WHEREAS**, a 2020 study by the US National Institute of Standards and Technology (NIST) of two-hundred facial recognition algorithms concluded that they have high rates of false positive identifications for Black people.

**WHEREAS**, the voters of Bellingham recognize the emerging need to protect the public safety, privacy, and civil rights of their residents, a growing number of local governments have adopted laws that prohibit the use of facial recognition and other biometric surveillance technology. More than half a dozen U.S. cities have passed bans on the government use of facial recognition.

**WHEREAS**, police departments employing predictive police technology elsewhere in the United States have not demonstrated a commitment to transparency and public accountability.

**WHEREAS**, the application of predictive policing technology may violate the constitutional requirement that police possess reasonable suspicion before stopping individuals.

**WHEREAS**, Bellingham voters find that advanced policing technologies currently lack the protections needed to adequately safeguard the rights and liberties of all people.

**WHEREAS**, the propensity for facial recognition technology and predictive policing technology to endanger civil rights and civil liberties substantially outweighs its purported benefits, and the technology will exacerbate racial injustice and threaten our ability to live free of continuous government monitoring.

NOW, THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

**Section 1.** Purpose of this Article

The purpose of this Article is to ensure equal treatment of all people and to protect the privacy and civil liberties of all people in Bellingham.

**Section 2.** Definitions

For the purposes of this Article, the following terms have the following meanings:

1. "City of Bellingham" means any department, agency, bureau, and/or subordinate division of the City of Bellingham.
2. "City of Bellingham official" means any person or entity acting on behalf of the City of Bellingham, including any officer, employee, agent, contractor, subcontractor, or vendor.
3. "Facial recognition" means an automated or semi-automated process that assists in identifying or verifying an individual or captures information about them, based on the physical characteristics of their face. Facial recognition as you used here is synonymous with "facial surveillance."
4. "Facial recognition technology" means any computer software or application that performs face surveillance, including any software or application used to recognize faces. Facial recognition technology as used here is synonymous with "facial surveillance technology."
5. "Predictive policing technology" means software that is used to predict information or trends about crime or criminality in the present or future, including but not limited to the characteristics or profile of any person(s) likely to commit a crime, the identity of any

person(s) likely to commit crime, the locations or frequency of crime, or the person(s) impacted by predicted crime. Such software typically uses algorithms to sort through large data sets.

**Section 3.** Prohibition on the City's Acquisition or Use of Facial Recognition Technology

1. It shall be unlawful for the City of Bellingham or any City of Bellingham official to:
  - a. Obtain, retain, store, possess, access, use, or collect:
    - i. any facial recognition technology; or
    - ii. any data or information derived from a facial recognition technology or other use of facial recognition;
  - b. Enter into a contract or other agreement with any third party for the purpose of obtaining, retaining, storing, possessing, accessing, using, or collecting, by or on behalf of the City of Bellingham or any City of Bellingham official:
    - i. any facial recognition technology; or
    - ii. any data or information derived from a facial recognition technology or other use of facial recognition; or
    - iii. issue any permit or enter into a contract or other agreement that authorizes any third party to obtain, retain, store, possess, access, use, or collect:
      1. any facial recognition technology; or
      2. any data or information derived from a facial recognition technology or other use of facial recognition.
2. The inadvertent or unintentional obtainment, retention, storage, possession, access, use, or collection of any information obtained from facial recognition technology by the City of Bellingham or any City of Bellingham official shall not be a violation of this Section provided:
  - a. the City of Bellingham or any City of Bellingham official did not request or solicit the obtainment, retention, storage, possession, access, use, or collection of such information,
  - b. and, a designated City of Bellingham official logs such obtainment, retention, storage, possession, access, use, or collection;
  - c. and, a designated City of Bellingham official publishes that information on the City Council's website within thirty (30) days or in the agenda for the next regular meeting of the City Council. Such a report shall not include any personally

identifiable information or other information the release of which is prohibited by law.

- d. and, a designated City of Bellingham official notifies any and all persons identified as a result of such inadvertent or unintentional obtainment, retention, storage, possession, access, use, or collection of any information obtained from facial recognition technology within thirty (30) days of discovery of such inadvertent or unintentional obtainment, retention, storage, possession, access, use, or collection of any information by registered mail.

**Section 4.** Use of Facial Recognition Technology in Criminal or Civil Proceedings is Unlawful

No data or information that is obtained, retained, stored, possessed, accessed, used, collected, or derived from any facial recognition technology or other use of facial recognition in violation of Section 3, and no evidence derived therefrom, may be used by the City of Bellingham or City of Bellingham officials as 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.

**Section 5.** Retention of Data or Information Obtained in Violation of Section 3 is Unlawful

1. Any data or information that is obtained, retained, stored, possessed, accessed, used, collected, or derived in violation of Section 3 shall be considered unlawfully obtained, and shall be deleted upon discovery.
2. In the event that any data or information on an individual is obtained, retained, stored, possessed, accessed, used, collected, or derived in violation of Section 3 that individual should be notified within thirty (30) days of the violation by registered mail.

**Section 6.** Prohibition on the City's Acquisition or Use of Predictive Policing Technology

1. It shall be unlawful for the City of Bellingham or any City of Bellingham official to
  - a. Obtain, retain, store, possess, access, use, or collect:
    - i. Any predictive policing technology; or
    - ii. any data or information derived from a predictive policing technology or other use of predictive policing; or
  - b. issue any permit or enter into a contract or other agreement that authorizes any third party to obtain, retain, store, possess, access, use, or collect:
    - i. any predictive policing technology; or
    - ii. any data or information derived from a predictive policing technology or other use of predictive policing.



2. The inadvertent or unintentional obtainment, retention, storage, possession, access, use, or collection of any information obtained from predictive policing technology by the City of Bellingham or any City of Bellingham official shall not be a violation of this Section provided:
  - a. the City of Bellingham or any City of Bellingham official did not request or solicit the obtainment, retention, storage, possession, access, use, or collection of such information,
  - b. and, a designated City of Bellingham official logs such obtainment, retention, storage, possession, access, use, or collection;
  - c. and, a designated City of Bellingham official publishes that information on the City Council's website within thirty (30) days or in the agenda for the next regular meeting of the City Council. Such a report shall not include any personally identifiable information or other information the release of which is prohibited by law.
  - d. and, a designated City of Bellingham official notifies any and all persons identified as a result of such inadvertent or unintentional obtainment, retention, storage, possession, access, use, or collection of any information obtained from predictive policing technology within thirty (30) days of discovery of such inadvertent or unintentional obtainment, retention, storage, possession, access, use, or collection of any information by registered mail.

**Section 7.** Use of Predictive Policing Technology in Criminal or Civil Proceedings is Unlawful

No data or information that is obtained, retained, stored, possessed, accessed, used, collected, or derived from any predictive policing technology or other use of predictive policing in violation of Section 6, and no evidence derived therefrom, may be used by the City of Bellingham, its Departments, or officials as 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.

**Section 8.** Retention of Data or Information Obtained in Violation of Section 6 is Unlawful

1. Any data or information that is obtained, retained, stored, possessed, accessed, used, collected, or derived in violation of Section 6 shall be considered unlawfully obtained, and shall be deleted upon discovery.
2. In the event that any data or information on an individual is obtained, retained, stored, possessed, accessed, used, collected, or derived in violation of Section 7, that individual should be notified within thirty (30) days of the violation by registered mail.

**Section 9.** Enforcement

1. Any person injured by a violation of this Article may institute proceedings for relief, including a writ of mandate, in any court of competent jurisdiction to enforce this Article.

2. An action instituted under this paragraph may be brought against the City of Bellingham, if necessary to effectuate compliance with this Article (including to expunge information unlawfully obtained, retained, stored, possessed, accessed, used, collected, or derived thereunder) or to redress injury suffered by an individual through violation of this Article.
  - a. Prior to the initiation of any legal proceeding, the City of Bellingham shall be given written notice of the alleged violation(s) and an opportunity to correct such alleged violation(s) within 90 days of receipt of the notice.
  - b. If the alleged violation(s) is substantiated and subsequently cured, a notice shall be posted in a conspicuous space on the City's website that generally describes the corrective measure(s) taken to address the violation(s).
  - c. Notice to the injured party shall also be provided by registered mail, or electronic substitute if consented to by the injured party.

#### **Section 10.** Exceptions and Safe Harbors

Nothing in this article shall be construed to:

1. conflict with the Constitution of the United States, the Constitution of the State of Washington or with any State or federal law;
2. prohibit the use of an automated or semiautomated process for the purpose of redacting a recording for release or disclosure to protect the privacy of a subject depicted in the recording;
3. prohibit the use of facial recognition or similar biometric technique on privately owned consumer devices for personal use or security, or for commercial use or security; or
4. prohibit the use of facial recognition technology by the City of Bellingham or City of Bellingham officials in managing secure entry or access to restricted buildings, rooms, or other secure spaces, devices, or things, provided that:
  - a. any data or information derived from such a system is only obtained, retained, stored, possessed, accessed, used, or collected with the knowledge and consent of any person authorized for such entry or access; and
  - b. no data or information derived from such a system about any persons not authorized for such entry or access may be obtained, retained, stored, possessed, accessed, used, or collected for any purposes other than listed herein.

#### **Section 11.** Severability



The provisions of this Article are severable. If any provision of this Article or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

I request that The City of Bellingham Finance Director assign the proposed initiative measure a number and transmit a copy to The City of Bellingham City Attorney.

### **Proponent Contact Information**

Sarah Jones

Name

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Phone

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Email Address



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Signature of Proponent

March 2, 2021

Date Signed