

**ORDER 2021-06:
AN ORDER OF THE PORT OF SEATTLE COMMISSION**

to direct the Executive Director to develop and implement executive policies banning Port and private sector uses of public-facing biometrics for mass surveillance, and for law enforcement and security functions; developing and implementing Port policies – within the limitations of state and federal law – related to Port, federal and private-sector uses of public-facing biometrics at Port facilities for traveler functions; and endorsing federal legislation implementing a moratorium on federal uses of biometrics not explicitly approved by the United States Congress.

**ADOPTED
JULY 13, 2021**

INTRODUCTION

On December 10, 2019, the Port of Seattle Commission passed Motion 2019-13 – instituting guiding principles for the public-facing use of biometric technology at Port facilities and by Port employees; for the purposes of the Motion, “public-facing” was defined as any areas of Port facilities where visitors, travelers and other non-employees might reasonably be.

This action was both in response to the rapid implementation of biometric technology throughout the country – particularly the use of facial recognition technology in aviation and maritime settings – as well as because of limited state and federal policy guidance on biometrics to protect individual liberties, equity, and privacy. The Motion directed Port staff to develop tangible, enforceable policy recommendations based on these principles in collaboration with a Biometrics External Advisory Group and with the oversight of a Port of Seattle Commission Biometrics Special Committee.

Aviation and maritime uses of public-facing biometrics have potential operational, customer service and public health benefits but also create risks and concerns related to privacy, equity and civil liberties. To balance these interests, it is appropriate for the Port to regulate – within the bounds of its authority and to the extent permissible under state and federal law – the public-facing use of this technology at Port facilities and by Port employees. After more than a year and a half of work and approximately twenty public meetings, Port staff have developed policy recommendations for multiple “use cases” for public-facing biometrics at Port facilities. Already, one set of use case policy recommendations – regarding “Biometric Air Exit”, which is the federally-prescribed use of facial recognition technology for the boarding of departing international flights – was passed by the Port of Seattle Commission in March 2020.

As part of this policymaking process, the Port recognizes certain limitations on its authority to regulate all public-facing biometrics at Port facilities. For example, the federal government has authority to implement its own systems, particularly in federally controlled areas of Port facilities such as the U.S. Transportation Security Administration (TSA) security checkpoints at the airport and U.S. Customs and Border Protection (CBP) customs processing areas at airport and cruise facilities. Similarly, the federal Airline Deregulation Act (ADA) prevents the Port from exercising broad control over airlines' implementation of certain customer-facing systems and processes at airports. Regardless, the Port can take significant steps with all Port stakeholders – including federal agency partners and airline tenants – to pursue alignment with the Commission's biometrics principles.

In December 2020, the Commission Biometrics Special Committee recommended full Commission consideration of the remaining use case policy recommendations, as well as Commission action on other policies that align with Motion 2019-13. This Order would direct the Executive Director to implement executive policies aligned with the recommendations endorsed by the Special Committee.

TEXT OF THE ORDER

The Port Commission hereby directs the Executive Director to develop and implement executive policies to:

- 1) Extend the Port's existing ban on Port and private-sector use of public-facing biometrics for mass surveillance¹ at Port facilities, and by Port employees overall.
- 2) Extend the Port's existing ban on Port and private-sector use of public-facing biometrics to perform real time or near-real time law enforcement and security functions at Port facilities, and by Port employees overall.
- 3) Ensure, to the greatest extent permissible under state and federal law, that all uses of public-facing biometrics at the Port's aviation and maritime facilities for traveler functions are in alignment with the Port's biometric principles and policies.

In addition, the Executive Director shall include in the Port's Federal Legislative Agenda support for legislation that institutes a moratorium on federal government use of public-facing biometrics except for uses explicitly authorized by the United States Congress, and shall direct staff to advocate for this policy to the Washington Congressional delegation and relevant members of the Biden-Harris Administration.

¹ Defined as "the use of public-facing biometrics without the awareness and active participation of the individual."

STATEMENT IN SUPPORT OF THE ORDER

Biometrics is the use of technology to identify an individual through analysis of that person's physical and behavioral characteristics. Examples of physical characteristics include the unique features of an individual's face or their fingerprint, while examples of behavioral characteristics include an individual's voice, signature, or how they walk.

Due to technological advances, perceived customer benefits and federal requirements, there has been a significant increase in public-facing biometric technology deployment by public and private sector users, including in airport and seaport settings. In fact, public-facing biometrics are already being used at dozens of U.S. airports and cruise terminals by those who see the technology as a major benefit to travelers – both because of the potential for a faster and more efficient travel experience, as well as the belief that it offers a more accurate security process than human review of documents. In addition, the COVID-19 pandemic has increased interest in “touchless technologies” as a way to reduce potential transmission of disease; facial recognition biometrics could potentially reduce direct interactions like handing documents back-and-forth or touching screens.

Public-facing biometrics are already used in various forms at the Port of Seattle's aviation and maritime facilities, such as 1) CLEAR, a private company providing an option to those customers who want expedited screening at TSA checkpoints to voluntarily supply their biometric data in order to verify their identities, 2) CBP use of biometrics at Seattle-Tacoma International Airport (SEA) to validate arriving international traveler identities, and 3) use of biometrics to validate the identities of disembarking passengers from Norwegian Cruise Line ships docked at Pier 66.

However, many members of the public and various advocacy organizations have expressed concerns about the rapidly expanding use of biometrics. These stakeholders have raised issues around privacy, equity and civil liberties, as well as the potential for unregulated “mass surveillance.” To that end, after holding two Study Sessions, conducting stakeholder outreach and doing multiple site visits, the Port Commission passed Motion 2019-13 on December 10, 2019 – adopting seven “biometrics guiding principles,” and directing staff to translate those principles into tangible, enforceable policies.

Since the start of 2020, a working group of Port staff has collaborated with an external advisory group of key stakeholders to accomplish that task. One of the key findings from this process is that the various use cases of biometrics require separate analysis as to how the Port should (consistent with local, state and federal requirements) apply the biometrics guiding principles to develop policy. One unified set of policies is not practical because of key differences from one use case to another, such as who manages the data, requirements imposed by state or federal law, and the benefits and risks associated with each use.

One key limitation on the Port's policymaking process is the federal law and regulations that govern federal agency and airline activities at Port facilities. Regardless, the Port can take significant steps to ensure alignment with the Commission's biometrics principles and believes that all proposed policies are consistent with the preemptive limitations on the Port's authority posed by state and federal law.

As a result of its process, the Port staff has proposed multiple use case policy recommendations:

- Policies governing Port actions and rules regarding Biometric Air Exit, which is the use of biometrics (specifically facial recognition technology) to verify the identity of departing international air passengers using CBP's Traveler Verification System (TVS).²
- Policies governing Port actions in response to CBP's use of biometrics (including facial recognition) to confirm the identities of arriving international passengers as they exit aircraft or cruise ships, as well as future federal government use of biometrics for other traveler functions.³
- Policies governing Port actions and rules regarding the use of biometrics (including facial recognition) to perform real time or near-real time public-facing law enforcement and security functions at Port facilities.
- Policies governing Port actions and rules regarding a variety of uses of biometrics for traveler functions by Port staff and/or private-sector entities.

This Order would direct the Executive Director to implement executive policies aligned with the remaining use cases (in addition to the already-approved Biometric Air Exit policies), and would also direct the creation of an overarching executive policy banning Port and private-sector uses of public-facing biometrics for mass surveillance – as defined by Motion 2019-13. That Motion defines mass surveillance as the use of public-facing biometrics without the awareness and active participation of the individual; more concisely, no one at a Port facility should fear that the Port or a private sector tenant is actively tracking them with near time or near real time biometric technology as they traverse a Port facility.

Almost as important as the proposed public-facing biometrics policies themselves is the process used to achieve these recommendations. The Port Commission has held multiple public meetings and study sessions on this topic, and the Port hired an outside facilitation firm to manage the advisory group process – to ensure full and equal participation from all stakeholders. Below is a list of all public and advisory group meetings that helped inform Port staff efforts to develop these recommendations.

- September 10, 2019: First Commission Study Session on Biometric Technology
- October 29, 2019: Second Commission Study Session on Biometric Technology

² The policy recommendations for this use case were approved by the Port Commission on March 10, 2020, and implemented as Executive Policy (EX-23).

³ The Port has no jurisdiction over these activities, but can still play an important transparency and accountability role.

- December 10, 2019: Commission Public Meeting action on Biometrics Principles Motion 2019-13
- January 17, 2020: External Advisory Group meeting #1
- February 7, 2020: External Advisory Group meeting #2
- February 18, 2020: Commission Biometrics Special Committee meeting
- February 25, 2020: Commission Public Meeting briefing on Biometric Air Exit policy recommendations
- March 6, 2020: External Advisory Group meeting #3
- March 10, 2020: Commission Public Meeting action on Biometric Air Exit policy recommendations
- March 31, 2020: Commission Biometrics Special Committee meeting
- April 14, 2020: Commission Public Meeting action to extend deadlines for policy recommendations
- July 10, 2020: External Advisory Group meeting #4
- July 24, 2020: External Advisory Group meeting #5
- August 7, 2020: External Advisory Group meeting #6
- August 21, 2020: External Advisory Group meeting #7
- September 25, 2020: External Advisory Group meeting #8
- October 8, 2020: Commission Biometrics Special Committee meeting
- December 11, 2020: Commission Biometrics Special Committee meeting

In addition, all meeting materials – including External Advisory Group meetings – were made publicly available via the Port’s Biometrics External Advisory Group webpage at <https://www.portseattle.org/page/biometrics-external-advisory-group>.

It is important to note that not all members of the Biometrics External Advisory Group agree with the policy recommendations being submitted, for a wide range of reasons: from some stakeholders who see these recommendations as overly limiting and proscriptive, to other stakeholders believe the current state of facial recognition technology is incompatible with the Commission’s Biometric Principles and should be banned for all uses at Port facilities; however, several participants believe the technology has enormous value and promise but requires regulation to protect against bias or infringement on individuals’ privacy or civil rights. To that end, all stakeholder concerns are being submitted as part of the Commission materials to provide full transparency – outlining changes they think should be made to the specific use case recommendations and/or reasons they think the entire approach should be different.