File No. 121031

Committee Item No. _____
Board Item No. 33

# COMMITTEE/BOARD OF SUPERVISORS

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Committee: _____ Date _____

Board of Supervisors Meeting Date 12/4/2012

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Completed by: Erica Dayrit Date 11/29/2012
Completed by: _____ Date _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document can be found in the file.

FILE NO. 121031 RESOLUTION NO.

[Urging the Metropolitan Transportation Commission to strengthen the privacy provisions of the Clipper card program]

**Resolution urging the Metropolitan Transportation Commission to strengthen the privacy provisions of personal information by the Clipper card program.**

WHEREAS, The Clipper card is an electronic fare payment card for Bay Area public transit agencies that is operated by the Metropolitan Transportation Commission (MTC); and

WHEREAS, As of September 2012, there are more than one million active Clipper cards; and

WHEREAS, The MTC maintains the usage history for Clipper cards, such as when value is added to cards and when they are used on transit systems; and

WHEREAS, For Bay Area Rapid Transit (BART), where fares are based on the distance traveled, the Clipper usage history records users' travel routes, and

WHEREAS, To be able to replace Clipper cards if they are lost, stolen, or damaged, Clipper users must register their cards on the Clipper website; and

WHEREAS, For users who register their Clipper cards, the MTC database links their transit history with the users' personally identifiable information, such as their name, address, credit card number, and other contact information; and

WHEREAS, The Clipper Privacy Policy allows the MTC to maintain all personally identifiable information indefinitely for active Clipper accounts and for up to seven years after accounts are closed or terminated; and

WHEREAS, The Clipper Privacy Policy allows the MTC to share personally identifiable information only with participating transit agencies, third-party contractors, the California Department of Justice, and the Better Business Bureau; and

WHEREAS, Clipper cards store their users' last five add value transactions and their last ten transit usage transactions as unencrypted data, which for BART trips, includes the source and destination stations; and

WHEREAS, Clipper cards do not store any of their users' personally identifiable information; and

WHEREAS, A recently designed smartphone application provides the ability to scan any Clipper card and obtain the card's stored transit usage history; and

WHEREAS, This smartphone application can potentially be used without the Clipper card owner's permission or knowledge by placing the smartphone within a few inches of the Clipper card; and

WHEREAS, This public availability of Clipper card users' BART transit history creates a potential public safety risk by exposing users' regular travel patterns; and

WHEREAS, This public availability of Clipper users' BART transit history potentially threatens the constitutional protections of anonymous speech and associational privacy by revealing users' transit usage near First Amendment activities; and

WHEREAS, Clipper users can minimize the ability for others to scan their cards by storing the card in a bag or other location where it would be difficult for someone to place a smartphone within a few inches of the card; and

WHEREAS, The Clipper card uses the MIFARE DESFire microchip, which was discontinued as of December 31, 2011, and has been replaced by the MIFARE DESFire EV1 that offers additional security enhancements; and

WHEREAS, NXP Semiconductor, the manufacturer of the MIFARE DESFire, has acknowledged that it contains a potential security vulnerability and recommends that customers migrate to the MIFARE DESFire EV1; and

WHEREAS, SB 1268, authored by State Senator Joe Simitian and signed into law on September 29, 2010, added Chapter 8 to Division 17 of the California Street and Highways Code to limit transportation agencies ability to use, store, and retain personally identifiable information obtained through electronic toll collection systems; and

WHEREAS, SB 1268 proscribes stricter limits on transportation agencies ability to retain personally identifiable information than Clipper's current privacy policy; and

WHEREAS, The Clipper Privacy Policy contains more stringent privacy protections than the privacy policies of commercial cellphones, which often reserve the right to sell personal information; and

WHEREAS, Strengthening the Clipper Privacy Policy and further explaining both how the policy affects users' privacy and how users can protect their own privacy will increase the confidence of Clipper users in the Clipper program; now, therefore, be itRESOLVED, That the Board of Supervisors urges the MTC to evaluate the minimum length of time for which users' transit usage history information must be retained for legal or operational purposes, inform the Board of Supervisors as to the legal or operational reasons requiring that duration of time, and revise the Clipper Privacy Policy to purge such information after that duration of time, and, be it

FURTHER RESOLVED, That the Board of Supervisors urges the MTC to evaluate the minimum length of time for which users' personally identifiable information must be retained for legal or operational purposes after accounts are closed or terminated, inform the Board of Supervisors as to the legal or operational reasons requiring that duration of time, and to revise the Clipper Privacy Policy to purge all personally identifiable information for closed or terminated accounts after that duration of time; and, be it

FURTHER RESOLVED, That the Board of Supervisors urges the MTC to explore the feasibility of minimizing the amount of data stored on Clipper cards, encrypting the data, or providing the ability for users to clear the transit data stored on their cards; and, be it

FURTHER RESOLVED, That the Board of Supervisors urges the MTC to create a Frequently Asked Questions document that explains the Clipper privacy policy and how Clipper users can protect their transit history and personal information; and, be it

FURTHER RESOLVED, That the Board of Supervisors urges the MTC to create an annual transparency report to publish the number of requests for information from law enforcement and other groups, and the number of those requests that were granted or rejected; and, be it

FURTHER RESOLVED, That the Board of Supervisors asks the MTC to report on its plans to phase out the use of the MIFARE DESFire chip in Clipper cards; and, be it

FURTHER RESOLVED, That the Board of Supervisors directs the Clerk of the Board to transmit copies of this resolution to the MTC with a request to take all action necessary to achieve the objectives of this resolution.

**Re: Transfer 121031 from CONS to Public Safety**
**Judson True** to: Jeremy Pollock 11/05/2012 04:44 PM
Cc: Derek Evans, Linda Wong

Derek and Linda please transfer as requested thanks!

Judson True
Office of Supervisor David Chiu
City Hall, Room 264
San Francisco, CA 94102
415.554.7451 desk
415.554.7454 fax

Jeremy Pollock Hi Judson, Can you transfer this resolution from... 11/05/2012 04:42:45 PM

From: Jeremy Pollock/BOS/SFGOV
To: Judson True/BOS/SFGOV@SFGOV
Cc: Linda Wong/BOS/SFGOV@SFGOV, Derek Evans/BOS/SFGOV@SFGOV
Date: 11/05/2012 04:42 PM
Subject: Transfer 121031 from CONS to Public Safety

Hi Judson,

Can you transfer this resolution from CONS to the Public Safety committee?

**121031 [Metropolitan Transportation Commission - Strengthen Provisions of Personal Information of the Clipper Card Program]**

Thanks,
Jeremy

Jeremy Pollock
Legislative Aide
Supervisor John Avalos
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102
(415) 554-6975 telephone
(415) 554-7910 direct
(415) 554-6979 fax
jeremy.pollock@sfgov.org

Print Form

# Introduction Form

**By a Member of the Board of Supervisors or the Mayor**

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

☒ 1. For reference to Committee: City Operations and Neighborhood Services
An ordinance, resolution, motion, or charter amendment.

☐ 2. Request for next printed agenda without reference to Committee.

☐ 3. Request for hearing on a subject matter at Committee:

☐ 4. Request for letter beginning "Supervisor _____ inquires"

☐ 5. City Attorney request.

☐ 6. Call File No. _____ from Committee.

☐ 7. Budget Analyst request (attach written motion).

☐ 8. Substitute Legislation File No.

☐ 9. Request for Closed Session (attach written motion).

☐ 10. Board to Sit as A Committee of the Whole.

☐ 11. Question(s) submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

☐ Small Business Commission ☐ Youth Commission ☐ Ethics Commission

☐ Planning Commission ☐ Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use a different form.**

**Sponsor(s):**

Avalos, Chiu, Olague

**Subject:**

Resolution - Urging the Metropolitan Transportation Commission and the State Legislature to strengthen the privacy provisions of the Clipper card program

**The text is listed below or attached:**

Signature of Sponsoring Supervisor:

For Clerk's Use Only:

121031