


BOARD of SUPERVISORS



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MEMORANDUM

TO: Ben Rosenfield, City Controller, Office of the Controller

FROM:  Alisa Somera, Legislative Deputy Director, Rules Committee
Board of Supervisors

DATE: July 10, 2018

SUBJECT: AMENDED CHARTER AMENDMENT
November 6, 2018 Election

The Board of Supervisors' Rules Committee has received the following Charter Amendment for the November 6, 2018, Election, amended by Supervisor Peskin on July 9, 2018. This matter is being referred to you in accordance with Rules of Order 2.22.4.

File No. 180545-2

Charter Amendment (Second Draft) to amend the Charter of the City and County of San Francisco to adopt a Privacy First Policy; at an election to be held on November 6, 2018.

Please review and prepare a financial analysis of the amended measure prior to the first Rules Committee hearing.

If you have any questions or concerns, please call me at (415) 554-7711 or email: alisa.somera@sfgov.org. To submit documentation, please forward to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Todd Rydstrom, Deputy City Controller
Peg Stevenson, City Performance Director
Natasha Mihal, City Services Auditor

1 [Charter Amendment - Privacy First Policy]

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3 **Describing and setting forth a proposal to the voters at an election to be held November 6,**
4 **2018, to amend the Charter of the City and County of San Francisco to adopt a Privacy**
5 **First Policy.**

6 NOTE: **Unchanged Charter text and uncodified text** are in plain font.
7 **Additions** are *single-underline italics Times New Roman font*.
8 **Deletions** are ~~*strike-through italics Times New Roman font*~~.
9 **Asterisks (* * * *)** indicate the omission of unchanged Charter
10 subsections.

11 Section 1. The Board of Supervisors hereby submits to the qualified voters of the City
12 and County, at an election to be held on November 6, 2018, a proposal to amend the Charter of
13 the City and County of San Francisco by adding Section 16.130, to read as follows:

14 **SEC. 16.130. PRIVACY FIRST POLICY.**

15 (a) The principles stated in subsection (e) of this Section 16.130 constitute the Privacy
16 First Policy of the City and County of San Francisco (“City”) and are intended to provide
17 guidance to the City when considering the adoption of privacy-protective laws, regulations,
18 policies, and practices for the City; the City’s contractors, lessees, and grantees; third parties
19 receiving permits, licenses, or other entitlements from the City; and persons (including
20 businesses and other entities) within the regulatory authority of the City.

21 (b) All parts of City government, including but not limited to boards, commissions,
22 departments, other bodies, and officials, are authorized to implement any or all of these
23 principles consistent with other provisions of the Charter, including this Section 16.130, and City
24 law.

25 (c) Notwithstanding subsection (b), and notwithstanding any other provision of the
Charter, the Board of Supervisors shall have authority by ordinance to implement these

1 principles as it deems appropriate. This authority includes imposing requirements that
2 implement any or all of these principles on any or all City boards, commissions, departments,
3 other entities, and officials, and on any or all contractors, lessees, grantees, third parties
4 receiving permits, licenses, or other entitlements, or others, within the jurisdiction of said
5 boards, commissions, departments, other entities, and officials.

6 (d) For purposes of the Privacy First Policy, “Personal Information” means any
7 information that identifies, relates to, describes, or is capable of being associated with, a
8 particular individual. Personal Information includes, but is not limited to, an individual’s name,
9 signature, social security number, physical characteristics or description, address, geolocation
10 data, IP address, telephone number, passport number, driver’s license or state identification
11 card number, insurance policy number, education, employment, employment history, bank
12 account number, credit card number, debit card number, or any other financial information,
13 medical information, genetic and biometric data, or health insurance information.

14 (e) When considering the adoption of privacy-protective laws, regulations, policies, and
15 practices, the City shall:

16 (1) Engage with and inform individuals and communities likely to be impacted by
17 the collection, storage, sharing, or use of their Personal Information prior to authorizing and
18 prior to any change regarding the collection, storage, sharing, or use of their Personal
19 Information.

20 (2) Ensure that Personal Information is only collected, stored, shared, or used
21 pursuant to a lawful and authorized purpose.

22 (3) Allow individuals to access Personal Information about themselves that has
23 been collected, and provide access and tools to correct any inaccurate Personal Information.

1 (4) Solicit informed consent to the collection, storage, sharing, or use of Personal
2 Information, and provide alternative and equal access to goods and services for those who deny
3 or revoke consent.

4 (5) Discourage the collection, storage, sharing, or use of Personal Information,
5 including Personal Information that may identify an individual's race, religion or creed,
6 national origin, gender, sexual orientation, age, physical or mental disability, or other
7 potentially sensitive demographic information, unless necessary to accomplish a lawful and
8 authorized purpose.

9 (6) De-identify data sets, when collected for research, statistical, or other
10 analytical purposes, thereby removing the ability to connect personal characteristics with
11 specific individuals, and implement technical safeguards to prevent re-identification of
12 information.

13 (7) Adopt and make public, or cause to be made public, policies and practices for
14 responding to requests or demands for Personal Information from governmental entities.

15 (8) Allow individuals to move and organize throughout the City without being
16 tracked or located in a manner that subjects them to collection of Personal Information without
17 their consent.

18 (9) Evaluate and mitigate bias or inaccuracy in the collection, storage, sharing,
19 or use of Personal Information, and anticipate potential bias in secondary uses of and
20 algorithms used in connection with Personal Information.

21 (10) Retain Personal Information for only as long as necessary to accomplish a
22 lawful and authorized purpose.

23 (11) Secure Personal Information against unauthorized or unlawful processing
24 or disclosure; unwarranted access, manipulation, or misuse; and accidental loss, destruction, or
25 damage.

1 (f) In furtherance of the Privacy First Policy, the City Administrator, by May 31, 2019,
2 shall propose for consideration by the Board of Supervisors an ordinance establishing criteria
3 and rules that the City shall adhere to (1) in the City's own practices for the collection, storage,
4 sharing, and use of Personal Information; (2) when entering into contracts, grants, or leases
5 with third parties that are, or may in the future be, in a position to collect, store, share, or use
6 Personal Information in connection with or generated by the contract, grant, or lease; and (3)
7 when issuing permits, licenses, or other entitlements that involve, or may in the future involve,
8 collection, storage, sharing, or use of Personal Information in connection with or generated by
9 the permit, license, or other entitlement. The proposed ordinance may also address criteria and
10 rules regarding collection, storage, sharing, and use of Personal Information by persons
11 (including businesses and other entities) within the City's regulatory authority. This subsection
12 (f) shall not be construed to restrict the authority of the Board of Supervisors at any time to
13 adopt an ordinance concerning the subjects that are or could be addressed by the City
14 Administrator in the proposed ordinance.

15 (g) No less frequently than every three years following the submission under subsection
16 (f) of the City Administrator's proposed ordinance, the City Administrator shall provide to the
17 Board of Supervisors and the Mayor a written report describing the City's implementation of the
18 Privacy First Policy; describing new dimensions of collecting, storing, sharing, and using
19 Personal Information that may present a threat to privacy; and making such recommendations
20 as the City Administrator deems appropriate, including but not limited to recommendations to
21 adopt or amend ordinances regarding the collection, storage, sharing, or use of Personal
22 Information.

23 (h) The principles in subsection (e) underlying the Privacy First Policy are not binding
24 or self-executing but rather are intended as a guide to City boards, commissions, departments,
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1 other bodies, and officials, and to the Board of Supervisors, when considering the adoption of
2 privacy-protective laws, regulations, policies, and practices.


3 (i) The Privacy First Policy may not be implemented in a manner that is inconsistent
4 with voter-approved ordinances regarding privacy, open meetings, or public records.

5 Notwithstanding any other provision of the Charter, the Board of Supervisors is authorized by
6 ordinance to amend voter-approved ordinances regarding privacy, open meetings, or public
7 records, provided that any such amendment is not inconsistent with the purpose or intent of the
8 voter-approved ordinance.

9 (j) The Privacy First Policy is not intended in any manner to limit the power of the City
10 to protect privacy by adopting laws, regulations, policies, and practices within the City's power,
11 whether specified or not specified in this Section 16.130.

12 (k) This Section 16.130 shall not apply to the extent, if any, its application is preempted
13 by federal or state law.

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16 APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

17 By: 
18 _____
PAUL ZAREFSKY
19 Deputy City Attorney

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REVISED LEGISLATIVE DIGEST

(7/9/2018, Amended in Committee)

[Charter Amendment - Privacy First Policy]

Describing and setting forth a proposal to the voters at an election to be held November 6, 2018, to amend the Charter of the City and County of San Francisco to adopt a Privacy First Policy.

Existing Law

While federal, state, and City law provide some protections for privacy in the collection, storage, sharing, and use of Personal Information, there is no overarching set of privacy-protective principles in City law.

Amendments to Current Law

The Charter amendment establishes a Privacy First Policy to provide guidance to the City when considering the adoption of privacy-protective laws, regulations, policies, and practices for the City; the City's contractors, lessees, and grantees; third parties receiving permits, licenses, or other entitlements from the City; and persons (including businesses and other entities) within the regulatory authority of the City.

These principles constitute the Privacy First Policy:

1. Engage with and inform those likely to be impacted by the collection, storage, sharing, or use of their Personal Information prior to authorizing and prior to any change regarding the collection, storage, sharing, or use of their Personal Information.
2. Ensure that Personal Information that is collected, stored, shared, or used is done so pursuant to a lawful and authorized purpose.
3. Allow individuals to access Personal Information about themselves that has been collected, and provide access and tools to correct any inaccurate Personal Information.
4. Solicit informed consent to the collection, storage, sharing, or use of Personal Information, and provide alternative and equal access to goods and services for those who deny or revoke consent.
5. Discourage the collection, storage, sharing, or use of Personal Information, including potentially sensitive demographic information, unless necessary to accomplish a lawful, authorized purpose.

6. De-identify data sets, when collected for research and other analytical purposes, to remove the ability to connect personal characteristics with specific individuals, and implement technical safeguards to prevent re-identification of information.
7. Adopt and make public or cause to be made public policies and practices to respond to requests or demands for Personal Information from governmental entities.
8. Allow individuals to move and organize in the City without being tracked or located in a manner that subjects them to unconsented collection of their Personal Information.
9. Evaluate, anticipate, and mitigate actual or potential bias or inaccuracy in the collection, storage, sharing, or use of Personal Information.
10. Retain Personal Information for only as long as necessary to accomplish a lawful and authorized purpose.
11. Secure Personal Information against unauthorized or unlawful processing or disclosure; unwarranted access, manipulation or misuse; and accidental loss, destruction, or damage.

For purposes of the Privacy First Policy, Personal Information is “any information that identifies, relates to, describes, or is capable of being associated with, a particular individual. Personal Information includes, but is not limited to, an individual’s name, signature, social security number, physical characteristics or description, address, geolocation data, IP address, telephone number, passport number, driver’s license or state identification card number, insurance policy number, education, employment, employment history, bank account number, credit card number, debit card number, or any other financial information, medical information, genetic and biometric data, or health insurance information.”

The Charter amendment authorizes all parts of City government (such as boards, commissions, departments, other entities, and officials) to implement the Privacy First Policy. It further authorizes the Board of Supervisors to impose requirements implementing the Privacy First Policy on all parts of City government.

The Privacy First Policy is not in itself binding or self-executing. But the Charter amendment requires the City Administrator, by May 29, 2019, to propose an ordinance establishing criteria and rules to implement the Privacy First Policy. The City Administrator’s proposed ordinance would neither limit the legislative authority of the Board of Supervisors nor require the Board to adopt legislation. The Charter amendment also requires the City Administrator, no less frequently than every three years following submission of the proposed ordinance, to submit a report describing the City’s implementation of the Privacy First Policy and new dimensions of collecting, storing, sharing, and using Personal Information that may present a threat to

privacy, and making recommendations as appropriate, including regarding adoption or amendment of ordinances in furtherance of the Privacy First Policy.

The Charter amendment may not be implemented in a manner that is inconsistent with voter-approved ordinances regarding privacy, open meetings, or public records. It permits the Board of Supervisors by ordinance to amend such voter-approved ordinances if such amendment is not inconsistent with the purpose or intent of the voter-approved ordinances.

The Charter amendment does not apply to the extent, if any, its application would be preempted by federal or state law.

Background Information

This Legislative Digest accompanies the Second Draft of the Charter amendment, as presented in committee on July 9, 2018.

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