

BOARD of SUPERVISORS



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MEMORANDUM

TO: Andres Power, Liaison to the Board of Supervisors, Mayor's Office
Jon Givner, Deputy City Attorney, Office of the City Attorney
John Arntz, Director, Department of Elections
LeeAnn Pelham, Executive Director, Ethics Commission
Naomi Kelly, City Administrator, Office of the City Administrator
Linda Gerull, Executive Director/CIO, Department of Technology
Barbara A. Garcia, Director, Department of Public Health
William Scott, Police Chief, Police Department
Vicki Hennessy, Sheriff, Sheriff's Department
Joanne Hayes-White, Chief, Fire Department

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

DATE: May 30, 2018

SUBJECT: CHARTER AMENDMENT INTRODUCED
November 6, 2018 Election

The Board of Supervisors' Rules Committee has received the following Charter Amendment for the November 6, 2018, Election, introduced by Supervisor Peskin on May 22, 2018. This matter is being referred to you in accordance with Rules of Order 2.22.4.

File No. 180545

Charter Amendment (First 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 submit any reports or comments you wish to be included with the legislative file.

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: Shahde Tavakoli, Mayor's Office
- Kyle Kundert, Ethics Commission
- Lynn Khaw, Office of the City Administrator
- Lihmeei Leu, Office of the City Administrator
- David German, Department of Technology
- Greg Wagner, Department of Public Health
- Naveena Bobba, Department of Public Health
- Sneha Patil, Department of Public Health
- Rowena Carr, Police Department
- Asja Steeves, Police Department
- Theodore Toet, Sheriff's Department
- Katherine Gorwood, Sheriff's Department
- Nancy Crowley, Sheriff's Department
- Kelly Alves, Fire Department

1 [Charter Amendment - Privacy First Policy]

2
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 following principles constitute the Privacy First Policy of the City and County of
16 San Francisco (City) and shall apply broadly to the City, its contractors, and those whom the
17 City allows to use its public space or resources. The City, through its boards, commissions,
18 departments, and other publicly accountable officials and bodies, shall implement these
19 principles consistent with other provisions of the Charter. Notwithstanding any other provision
20 of the Charter, the Board of Supervisors shall have authority by ordinance to impose
21 requirements implementing these principles that must be adhered to by all City boards,
22 commissions, departments, other bodies, and officials.

23 (b) "Personal Information" means any information that identifies, relates to, describes,
24 or is capable of being associated with, a particular individual. Personal Information includes,
25 but is not limited to, an individual's name, signature, social security number, email address,
physical characteristics or description, residential address, telephone number, passport number,

1 driver's license or state identification card number, insurance policy number, education,
2 employment, employment history, bank account number, credit card number, debit card number,
3 or any other financial information, medical information, or health insurance information.
4 Personal Information does not include publicly available information that is lawfully made
5 available to the general public from federal, state, or local government records.

6 (c) In implementing this Section 16.130 and in executing all City laws, the Board of
7 Supervisors, the Mayor, all members of the executive branch of City government, and all
8 members of boards and commissions, shall be guided by the following core principles:

9 1. Engaging Impacted Communities.

10 All San Francisco visitors and residents have an interest in policies governing the
11 collection, storage, or use of Personal Information that reflect the input and interests of all
12 impacted communities. The City shall ensure that communities are informed and consulted
13 before any collection, storage, or use of Personal Information is authorized, and as existing
14 policies and practices regarding collection, storage, or use of Personal Information evolve.

15 2. Data Transparency.

16 San Francisco residents, visitors, and communities have a right to know how their
17 Personal Information is collected and stored and how it is being used or may be used in the
18 future, and have a right to have access to information about and control over the collection,
19 storage or use of their Personal Information. Personal Information of San Francisco residents
20 and visitors collected by the City shall be collected legally and for a public purpose specifically
21 enumerated by ordinance, resolution, regulation, or executive directive, as applicable. The
22 City's contractors and those whom the City allows to use its public space or resources that
23 collect Personal Information shall collect Personal Information only for those specified, explicit,
24 and legitimate purposes recognized by the City that are integral or directly related to the
25 performance of the businesses' core function.

1 3. The Right to Privacy in Public and Private Space.

2 Existing and emerging technologies that are capable of collecting Personal Information
3 about San Francisco residents and visitors in public or in private may reveal a resident's,
4 visitor's, or community's familial, political, professional, religious, sexual, or other personal
5 associations. The City shall enact policies that honor the right of San Francisco residents and
6 visitors to move and organize anonymously throughout the City without being tracked, located,
7 or subject to data collection without their consent. This principle may be reconciled as
8 necessary and appropriate with the City's interest in public safety, security, and law
9 enforcement.

10 4. Evaluating Costs and Risks Associated with Collection of Personal Data.

11 Technologies that rely in whole or in part on the collection, storage, or use of Personal
12 Information may cause harm to San Francisco residents, visitors, and communities, especially if
13 the information is used in connection with data sets or algorithms that are themselves biased or
14 where secondary uses of the data are not clearly explained or fully understood by the individuals
15 whose Personal Information is collected. The City shall anticipate and identify costs and risks to
16 and impact upon the privacy and anonymity of San Francisco residents, visitors, and
17 communities before granting any permit, license, or other such entitlement allowing use of the
18 City's public space or resources, and before entering any contract that involves the collection,
19 storage, or use of Personal Information.

20 5. Privacy by Default.

21 Personal Information shall not be collected about San Francisco residents or visitors
22 unless individuals have given express, informed consent to the collection, storage, or use of the
23 Personal Information. Any such collection, storage, or use of Personal Information shall offer
24 an anonymous, private alternative where feasible. The City shall enact policies to ensure that
25 San Francisco residents and visitors can meaningfully consent to or refuse the collection,

1 storage, or use of Personal Information about them. This principle may be reconciled as
2 necessary and appropriate with the City's interest in public safety, security, and law
3 enforcement.

4 6. Minimizing Data Collection.

5 The City shall discourage the collection, storage, or use of information that may identify
6 an individual's race, religion or creed, national origin, gender, sexual orientation, age, physical,
7 or mental disability, or other protected characteristics for any purpose other than as necessary
8 to accomplish the purpose of the collection. Personal Information shall not be retained for
9 longer than is necessary to accomplish the purpose to which an individual has consented. This
10 principle does not prohibit the lawful collection of such data to the extent necessary and
11 appropriate for protecting the public health and safety, including the provision of services to
12 individuals as required or permitted by law.

13 7. Securing Data.

14 The City shall enact policies that ensure that Personal Information is collected, stored,
15 and used in a manner that ensures appropriate security of the Personal Information, including
16 protection against unauthorized or unlawful processing or disclosure and against accidental
17 loss, destruction, or damage. The City shall employ appropriate technical or organizational
18 measures to achieve these ends. In addition, the City, its contractors, and those whom the City
19 allows to use public spaces or resources, shall make public their respective positions, policies,
20 or practices, regarding response to government requests or demands for Personal Information,
21 and shall endeavor to secure Personal Information from unlawful or unwarranted access,
22 manipulation, or misuse.

23 (d) In adopting this Privacy First Policy, the people of San Francisco recognize that
24 technology is rapidly changing, posing ever greater threats to the integrity of the individual and
25 to personal privacy. At the same time, the people recognize that technological progress can

1 greatly enhance the health, safety, and quality of life for all San Francisco residents. Central to
2 this Charter provision is the objective of promoting in the City's dealings with third parties in its
3 proprietary capacity, and in its capacity of regulating third party access to the City's public
4 spaces and resources, informed consent by affected individuals to the access and use by third
5 parties of individuals' Personal Information. The City intends to foster the benefits of
6 technological progress while recognizing the need to protect individuals' privacy, autonomy,
7 and anonymity and prevent unauthorized collection, storage, and use of an individual's Personal
8 Information.

9 (e) The City may not collect, store, or use any data in violation of the Privacy First
10 Policy, and, further, may not collect or store any data unless the collection and storage of that
11 data is for a specifically enumerated public purpose.

12 (f) The City may not issue permits, licenses, or other such entitlements allowing use of the
13 City's public space or resources by any party, and may not enter into contracts with any party,
14 that does not adhere to the Privacy First Policy, unless the Board of Supervisors approves any
15 such permit, license, other such entitlement, or contract by ordinance by two thirds vote or
16 approves any category of such permit, license, other such entitlement, or contract by ordinance
17 by two thirds vote. In addition, the Board may, by ordinance, delegate within the executive
18 branch of City government any or all of the aforementioned approval authority, which, when
19 exercised by the delegatee, shall have the same effect as if exercised by the Board.

20 (g) The principles underlying the Privacy First Policy, in subsections (c), (d), and (e),
21 are not self-executing but rather are intended as a guide to City boards, commissions,
22 departments, other bodies, and officials. Failure to comply with the Privacy First Policy or its
23 objectives shall not alone provide the basis for a legal action against the City. Nothing in this
24 policy is intended to affect lawful subpoena and discovery processes in civil or criminal cases.
25

1 (h) The Privacy First Policy recognizes that in some circumstances privacy principles
2 must be reconciled with other legitimate public interests. Section 16.130 is not intended to
3 compromise the City's ability through otherwise lawful and legitimate means to protect the
4 public health, safety, and security and to recognize the legitimate needs of law enforcement to
5 protect the community.

6 (i) The Board of Supervisors may by ordinance amend Chapters 12M and 67 of the
7 Administrative Code in a manner that is consistent with and furthers the Privacy First Policy,
8 and that is consistent with the policy and intent of Chapters 12M and 67, respectively.

9 (j) This Section 16.130 shall be operative on April 2, 2019.

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

15 By:

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18 MARGARITA GUTIERREZ
19 Deputy City Attorney

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LEGISLATIVE DIGEST

(First Draft, 5/22/2018)

[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

Under existing law, the City does not require its contractors and those whom the City allows to use its public space or resources to follow a Privacy First Policy.

Background Information

The proposed Charter Amendment would define the term “Personal Information” and require the City, its contractors, and those whom the City allows to use its public space or resources be guided by the following core privacy principles when collecting, using or storing personal information of San Francisco’s residents and visitors.

1. Impacted communities are informed and consulted before the collection, storage, or use of Personal Information is authorized.
2. Individuals have the right to know how their Personal Information is collected and stored and how it is being used or may be used in the future, and have a right to have access to information about and control over the collection, storage or use of their Personal Information.
3. Individuals have the right to move and organize anonymously throughout the City without being tracked, located, or subject to data collection without their consent.
4. The costs and risks to and impact upon the privacy and anonymity of residents, visitors, and communities is evaluated before granting any permit, license, or other such entitlement allowing use of the City’s public space or resources, and before

entering any contract that involves the collection, storage, or use of Personal Information.

5. Personal Information shall not be collected unless individuals have given express, informed consent to the collection, storage, or use of the Personal Information

6. The collection, storage, or use of information that may identify an individual's race, religion or creed, national origin, gender, sexual orientation, age, physical, or mental disability, or other protected characteristics for any purpose other than as necessary to accomplish the purpose of the collection shall be discouraged. Personal Information shall not be retained for longer than is necessary to accomplish the purpose to which an individual has consented.

7. Personal Information is collected, stored, and used in a manner that ensures appropriate security of the Personal Information, including protection against unauthorized or unlawful processing or disclosure and against accidental loss, destruction, or damage.

The Privacy First Policy recognizes that in some circumstances privacy principles must be reconciled with other legitimate public interests and is not intended to compromise the City's ability through otherwise lawful and legitimate means to protect the public health, safety, and security and to recognize the legitimate needs of law enforcement to protect the community. The Board may by ordinance amend Chapter 12M and 67 of the Administrative Code in a manner that is consistent with this policy.

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