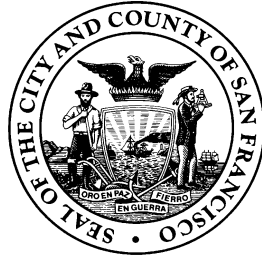


BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Regina Dick-Endrizzi, Director
Small Business Commission, City Hall, Room 448

FROM: John Carroll, Assistant Clerk, Public Safety and Neighborhood Services
Committee, Board of Supervisors

DATE: December 20, 2018

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Public Safety and Neighborhood Services Committee

The Board of Supervisors' Public Safety and Neighborhood Services Committee has received the following legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 181214

Ordinance amending the Police Code to require retail establishments that use video cameras to monitor a shopper's movements, as it relates to the shopper's interest in a product or range of products, to submit a letter to the City Administrator's Office; to post signage advising consumers about the collection and use of their personal information derived from video camera footage; and providing for administrative penalties, as defined herein.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, California 94102.

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

_____ **No Comment**

_____ **Recommendation Attached**

Chairperson, Small Business Commission

[Police Code - Video Cameras Monitoring Shoppers' Movements in Retail Stores]

Ordinance amending the Police Code to require retail establishments that use video cameras to monitor a shopper's movements, as it relates to the shopper's interest in a product or range of products, to submit a letter to the City Administrator's Office; to post signage advising consumers about the collection and use of their personal information derived from video camera footage; and providing for administrative penalties, as defined herein.

NOTE: Unchanged Code text and uncodified text are in plain Arial font. Additions to Codes are in *single-underline italics Times New Roman font*. Deletions to Codes are in *strikethrough italics Times New Roman font*. Board amendment additions are in double-underlined Arial font. Board amendment deletions are in ~~strikethrough Arial font~~. Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The Police Code is hereby amended by adding Article 54, consisting of Sections 5401, 5402, 5403, 5404, and 5405, to read as follows:

ARTICLE 54: FILING AND SIGNAGE REQUIREMENTS FOR RETAIL ESTABLISHMENTS COLLECTING VIDEO DATA

SEC. 5401. POLICY.

It is the policy of the City and County of San Francisco to prevent retail establishments from collecting and using consumer personal information derived from video monitoring without the consumer's knowledge and consent. San Francisco voters recently approved a charter amendment

1 adopting a Privacy First Policy that provides guidance to the City when considering the adoption of
2 privacy-protective laws. Charter § 16.130, adopted as Proposition B, Nov. 6, 2018. This Article 54 is
3 consistent with that policy.

4
5 **SEC. 5402. DEFINITIONS.**

6 “Agency” means the City Administrator’s Office.

7 “Covered Store” means any retail business in San Francisco that uses one or more video
8 cameras to record or observe a shopper’s physical movement in the store as it relates to the shopper’s
9 interest in a product or a range of products, including but not limited to, evaluating, considering, or
10 comparing products. “Covered Store” does not include stores that use video cameras solely to confirm
11 that a shopper took an item, and/or solely for security purposes.

12 “Data Collection Policy” means any policy:

13 (a) To which a Covered Store requests the shopper’s consent prior to shopping in the
14 store; and

15 (b) Which describes the Covered Store’s collection and possible use of data that may be
16 captured by the store’s video cameras.

17
18 **SEC. 5403. FILING REQUIREMENTS.**

19 (a) A Covered Store must submit a letter to the Agency, which contains the following
20 information:

21 (1) A statement that the letter is submitted pursuant to this Section 5403;

22 (2) The legal entity name of the Covered Store;

23 (3) Any “doing business as/DBA name” under which the Covered Store holds itself out
24 to potential customers;

25 (4) The street address of the Covered Store;

1 (5) The date on which the Covered Store opened, or plans to open, to shoppers; and
2 (6) A copy of the Covered Store's Data Collection Policy, current as of the date of the
3 letter.

4 (b) The letter must be submitted by U.S. mail to the following address:

5 Office of the City Administrator
6 City and County of San Francisco
7 1 Dr. Carlton B. Goodlett Place, Room 362
8 San Francisco, CA 94102.

9 (c) The letter must be submitted before the following deadlines:

10 (1) For new stores, the letter shall be postmarked prior to the first day the Covered
11 Store is open to customers.

12 (2) For existing stores, the letter shall be submitted no later than seven business days
13 after the date on which the ordinance in Board File No. _____, creating this Article 54, becomes
14 effective.

181214

16 **SEC. 5404. SIGNAGE REQUIREMENTS.**

17 A Covered Store, prior to allowing shoppers into the store, must post signs as follows:

18 (a) Location. Signs must be posted as follows:

19 (1) Signs shall be posted on the exterior of the store, located as close as possible to each
20 public entrance (exclusive of service, emergency, maintenance, and related entrances) to the Covered
21 Store, but in no case shall any portion of such sign be located more than five feet from the nearest
22 entrance.

23 (2) At least one sign must be posted in the interior of the Covered Store. It must be easily
24 visible to shoppers after entering the store in a location determined by the store.

25 (b) Content. Each sign shall include the following information:

1 (1) A statement that the Covered Store will monitor, by video camera, the shopper's
2 physical movement inside the store, as it relates to the shopper's interest in a product or a range of
3 products, including but not limited to, evaluating, considering, or comparing products;

4 (2) A description of whether the Covered Store may retain or sell the information
5 gathered by video camera; and

6 (3) A description of the purposes for which the Covered Store may use the information
7 gathered by video camera.

8 (c) **Positioning.** The signs shall be placed so that the midpoint of the sign is positioned at a
9 height between four and one-half to six feet above grade level.

10
11 **SEC. 5405. ENFORCEMENT.**

12 (a) **Administrative Penalties.** Any Covered Store violating any of the provisions of Sections
13 5403 or 5404 of this Article 54 shall be subject to administrative penalties imposed by the Agency. The
14 Agency may assess an administrative penalty not exceeding \$250 for a first violation; not exceeding
15 \$500 for a second violation; and not exceeding \$1000 for the third and each subsequent violation of
16 Sections 5403 or 5404.

17 (b) Before imposing an administrative penalty, the Agency must serve upon the Covered Store a
18 notice of initial determination. The notice shall state the proposed administrative penalty and the basis
19 for the Agency's initial determination, including the alleged acts or failures to act that constitute a
20 basis for the administrative penalty. The notice shall inform the Covered Store that it has the right to
21 request administrative review of the penalty within 15 days of receipt of the notice. The notice may
22 also require that the Covered Store cease and desist from all video monitoring activity.

23 (c) If no request for review of the Agency's initial determination is filed with the Agency within
24 15 days of the Covered Store's receipt of the notice of initial determination, the Agency's initial
25 determination shall be deemed final and shall be effective 15 days after the notice of initial

1 determination was served on the Covered Store. The Agency shall thereupon issue an Order imposing
2 an administrative penalty and serve it upon the party served with the notice of initial determination.
3 Payment of any administrative penalty is due within 30 days of service of the Agency's Order. Any
4 administrative penalty assessed and received in an action brought under this Article 54 shall be paid to
5 the Treasurer of the City and County of San Francisco. The Covered Store against whom an
6 administrative penalty is imposed also shall be liable for the costs and attorney's fees incurred by the
7 City and County of San Francisco in bringing any civil action to enforce the provisions of this Article
8 54, including obtaining a court order requiring payment of the administrative penalty.

9 (d) If the Covered Store files a timely request for review of the Agency's initial determination,
10 the Agency, or the Agency's designee, shall conduct a hearing. Within 15 days of receipt of the request
11 for review, the Agency shall notify the Covered Store of the date, time, and place of the hearing. Said
12 hearing shall be held no later than 30 days after the Agency receives the request, unless time is
13 extended by mutual agreement of the affected parties. The Agency may adopt rules and regulations
14 regarding the hearing procedures.

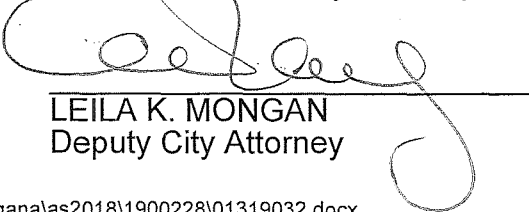
15 (e) Following the hearing, the Agency shall serve written notice of the Agency's decision on the
16 Covered Store. If the Agency's decision is that the Covered Store must pay an administrative penalty,
17 the notice of decision shall state that the recipient has 10 days in which to pay the penalty. Any
18 administrative penalty assessed and received in an action brought under this Article 54 shall be paid to
19 the Treasurer of the City and County of San Francisco. The Covered Store against whom an
20 administrative penalty is imposed also shall be liable for the costs and attorney's fees incurred by the
21 City and County of San Francisco in bringing any civil action to enforce the provisions of this Article
22 54, including obtaining a court order requiring payment of the administrative penalty.

1 Section 2. Severability. If any section, subsection, sentence, clause, phrase, or word of
2 this ordinance, or any application thereof to any person or circumstance, is held to be invalid
3 or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not
4 affect the validity of the remaining portions or applications of the ordinance. The Board of
5 Supervisors hereby declares that it would have passed this ordinance and each and every
6 section, subsection, sentence, clause, phrase, and word not declared invalid or
7 unconstitutional without regard to whether any other portion of this ordinance or application
8 thereof would be subsequently declared invalid or unconstitutional.

9
10 Section 3. Effective Date. This ordinance shall become effective 30 days after
11 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
12 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
13 of Supervisors overrides the Mayor's veto of the ordinance.

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

17 By:


18 LEILA K. MONGAN
19 Deputy City Attorney

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LEGISLATIVE DIGEST

[Police Code - Video Cameras Monitoring Shoppers' Movements in Retail Stores]

Ordinance amending the Police Code to require retail establishments that use video cameras to monitor a shopper's movements, as it relates to the shopper's interest in a product or range of products, to submit a letter to the City Administrator's Office; to post signage advising consumers about the collection and use of their personal information derived from video camera footage; and providing for administrative penalties, as defined herein.

Existing Law

The City does not presently have any laws relating to retail stores' data collection or privacy practices. Voters recently approved a charter amendment adopting a Privacy First Policy that provides guidance to the City when considering the adoption of privacy-protective laws. Charter § 16.130, adopted as Proposition B, Nov. 6, 2018.

Amendments to Current Law

The proposed ordinance applies to San Francisco retail stores that use video cameras to track shoppers' movements for profiling purposes. To our knowledge, only checkout-free stores currently use video cameras in this way, though it may be that not all checkout-free stores do so. "Checkout-free" means the store has no cashiers and no self-service cashier stations. Presently, several businesses operate checkout-free stores in San Francisco, but the most prominent is "Amazon Go," which sells a small selection of groceries and premade meals and snacks. To shop at Amazon Go, or any checkout-free store, shoppers take items directly from the shelves and simply walk out of the store. The store's video cameras and sensors on the shelves determine which items each shopper took, and the store automatically charges the shopper's credit card. The proposed ordinance addresses the use of video cameras to monitor shopper's movements relating to consideration or comparison of products, even if the shopper does not ultimately purchase the item.

The proposed ordinance would impose two requirements on any store using video data in this way:

- Before opening, or within seven days of the effective date of the proposed ordinance, the store must file with the City Administrator a letter containing information about their existence, location, ownership, and data collection policies; and
- The store must post signs inside and outside the store advising shoppers whether their physical movements inside the store will be monitored by video cameras; describing whether the store may retain or sell the data gathered by such monitoring; and describing the purposes for which the data may be used.

FILE NO. 181214

A store in violation of either requirement would be subject to administrative penalties. The City Administrator will oversee enforcement of the proposed ordinance. The proposed ordinance does not apply to stores that use video cameras solely for security (e.g., to prevent shoplifting), or to confirm purchases (e.g., that the shopper took an item at a checkout-free store because they intended to purchase it).

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Print Form

Introduction Form

By a Member of the Board of Supervisors or Mayor

RECEIVED
 BOARD OF SUPERVISORS
 SAN FRANCISCO
 2018 DEC 11 PM 4:23
 BY _____ Time stamp
 or meeting date _____

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

- 1. For reference to Committee. (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 [] inquiries"
- 5. City Attorney Request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No. []
- 9. Reactivate File No. []
- 10. Topic 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 the Imperative Form.

Sponsor(s):

Fewer

Subject:

[Police Code - Video Cameras Monitoring Shoppers' Movements in Retail Stores]

The text is listed:

Ordinance amending the Police Code to require retail establishments that use video cameras to monitor a shopper's movements, as it relates to the shopper's interest in a product or range or products, to submit a letter to the City Administrator's Office; to post signage advising consumers about the collection and use of their personal information derived from video camera footage; and providing for administrative penalties.

Signature of Sponsoring Supervisor: []

Sandon Lee Fewer

For Clerk's Use Only