

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

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

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

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

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

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19 **ARTICLE 54: FILING AND SIGNAGE REQUIREMENTS FOR RETAIL**

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ESTABLISHMENTS COLLECTING VIDEO DATA

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22 **SEC. 5401. POLICY.**

23 It is the policy of the City and County of San Francisco to prevent retail establishments from
 24 collecting and using consumer personal information derived from video monitoring without the
 25 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.

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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.

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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. 181214, creating this Article 54, becomes
14 effective.

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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.

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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.

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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.

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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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