

## Wong, Linda (BOS)

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**From:** Roberts, Brian (TIS)  
**Sent:** Monday, June 1, 2020 2:44 PM  
**To:** Wong, Linda (BOS)  
**Cc:** Somera, Alisa (BOS); Xie, Hao (TIS); Dere, Wilfred (TIS); Gerull, Linda (TIS)  
**Subject:** Re: BOS File No. 200465 - Agreement - Retroactive - Zones, LLC. - Microsoft 0365 Subscription and Enterprise Products  
**Attachments:** 1 - Microsoft FRT Memo - DT to OCA[1].pdf; 2 - Microsoft FRT Memo - OCA Memo to File[1].pdf

Linda, one of the Supervisor's Offices asked a question about the treatment of face recognition technology (FRT) features bundled with the Microsoft operating system. The attached documents make findings required by Sec. 19B2.G of the Administrative Code. Please include these in BOS File No. 200465.

Thank you.

Sincerely,  
Brian



### Brian Roberts

Policy Analyst  
1 South Van Ness Ave., 2<sup>nd</sup> Floor

(628) 652-5161 direct

[www.sfgov.org/dt](http://www.sfgov.org/dt)

President, National Assoc. of Telecommunications  
Officers and Advisors (NATOA)

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**From:** "Roberts, Brian (TIS)" <brian.roberts@sfgov.org>  
**Date:** Friday, May 29, 2020 at 11:04 AM  
**To:** "Wong, Linda (BOS)" <linda.wong@sfgov.org>, "Gerull, Linda (TIS)" <linda.gerull@sfgov.org>  
**Cc:** "Somera, Alisa (BOS)" <alisa.somera@sfgov.org>, "Xie, Hao (TIS)" <hao.xie@sfgov.org>, "Dere, Wilfred (TIS)" <wilfred.dere@sfgov.org>  
**Subject:** Re: BOS File No. 200465 - Agreement - Retroactive - Zones, LLC. - Microsoft 0365 Subscription and Enterprise Products

Linda, thanks for the suggestion. We will definitely attend the meeting remotely to be able to respond to questions and would like to submit the attached document to explain the retroactivity. Please submit to the file and distribute to the members.

We have not participated in a full Board meeting as an agency speaker. If there is any guidance you can provide, that would be greatly appreciated. Unlike the Budget and Finance meeting we will not be presenting, but will be available to answer questions.



London N. Breed  
Mayor

Sailaja Kurella  
Acting Director and Purchaser

**Date:** May 30, 2020  
**To:** Memo to File  
**From:** Sailaja Kurella, Acting Purchaser and Director of the Office of Contract Administration  
**Subject:** Acquisition of Facial Recognition Technology as it Relates to Microsoft Products

The purpose of this memo is to confirm, in writing, the Office of Contract Administration's findings with respect to the Facial Recognition Technology (FRT) embedded within the Microsoft Windows 10 and Office 365 software to be procured by the Department of Technology (DT) on behalf of the employees of the City and County of San Francisco. For reasons set forth below, OCA concurs with DT that the acquisition of Microsoft Windows 10 and Office 365 shall not be a violation of Subsection (d) of the Surveillance Technology Ordinance pertaining to the City's ban to acquire or obtain Face Recognition Technology.

#### Background

Subsection (d) of Ordinance No.107-19, also known as the Surveillance Technology Ordinance, bans the acquisition, retention, access or use of FRT or any information obtained from FRT, as defined therein. See: <https://sfbos.org/sites/default/files/o0286-19.pdf>. The Ordinance was passed on June 14, 2019 and became effective July 15, 2019.

On December 10, 2019, the Ordinance was amended to include, among other things, Sections 19B.2(f) and 19B.2(g).

Sections 19B.2(f) states, in pertinent part: "It shall not be a violation .... for a City Department to possess Face Recognition Technology on City-issued software or a City-issued product or device, provided that: (1) The Face Recognition Technology is a stock, manufacturer-installed capability, bundled with software or stored on a product or device, and that the functions unrelated to Face Recognition Technology are necessary to perform essential City functions; (2) The software, product, or device was not acquired for the purpose of performing the Face Recognition Technology function; (3) The Face Recognition Technology cannot be deleted from the software, product, or device; and (4) The Department does not use the Face Recognition Technology."

Section 19B.2(g) which states, in pertinent part: "It shall not be a violation of subsection (d) to acquire or obtain Face Recognition Technology provided that: (1) In advance of obtaining the Face Recognition Technology, the Department makes a written finding that the software, product, or device is not being acquired or obtained for the purpose of performing the Face Recognition Technology Function; (2) .... the Purchaser or the Purchaser's designee makes a written finding that the Face Recognition Technology is a stock, manufacturer-installed capability bundled with software, or stored on a product or device; that the functions unrelated to Face Recognition Technology are necessary to perform essential City functions; and that the software, product, or device is unavailable without the stock, manufacturer-installed Face Recognition Technology....(3) The City Department obtains approval of a Surveillance Technology Ordinance under this Chapter 19B where the software, product, or device constitutes Surveillance Technology".



London N. Breed  
Mayor

Sailaja Kurella  
Acting Director and Purchaser

Findings

DT and the Office of Contract Administration (OCA) wish to enter into an Enterprise Agreement with Microsoft for the procurement of Microsoft Windows 10 and Office 365 (“Microsoft Enterprise Agreement”). Microsoft Windows 10 and Office 365 are bundled with Microsoft’s “Hello” authentication software, a technology that enables Windows 10 users to authenticate secure access to their devices, apps, online services and networks with their fingerprint, iris scan or facial recognition.

Based on its evaluation of Microsoft Windows 10 and Office 365, OCA concurs with DT that Microsoft Windows 10 and Office 365 are not being acquired or obtained for the purpose of securing Hello’s Face Recognition Technology Functions.

OCA further finds that:


- 1) The Microsoft Windows 10 and Office 365 functions unrelated to Hello are necessary to perform essential City functions;
- 2) Hello is a stock, manufacturer-installed capability bundled with Microsoft Windows 10 and Office 365; and
- 3) Microsoft Windows 10 and Office 365 is unavailable without the stock, manufacturer-installed Hello software.

Based on the above findings, and in accordance with Section 19B.2(g)(2), OCA concurs with DT that the acquisition of Microsoft Windows 10 and Office 365 shall not be a violation of Subsection (d) of the Surveillance Technology Ordinance pertaining to the City’s ban to acquire or obtain Face Recognition Technology.



**Date:** December 11, 2019

**To:** Alaric Degrafinried  
Director, Office of Contract Administration

**From:** Linda Gerull   
City Chief Information Officer  
Executive Director, Department of Technology

**Subject:** Memo Pursuant to Amended Administrative Code §19B.2(g)(1) Regarding the Acquisition of Facial Recognition Technology as it Relates to Microsoft Products

## MEMORANDUM

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The Board of Supervisors passed Ordinance No. 107-19 on June 14, 2019 (effective July 15, 2019), which places a ban on the acquisition, retention, access or use of any Face Recognition Technology (“FRT”) or any information obtained from Face Recognition Technology, as defined therein. See Administrative Code Chapter 19B: Acquisition of Surveillance Technology. On November 18, 2019, the Rules Committee recommended approval of an amendment to this ordinance that will allow for the acquisition and retention of face recognition technology under certain conditions. The Board is currently considering the adoption of this recommendation.

In anticipation of the Board’s approval to amend the ordinance, this memorandum is made in compliance with the new proposed Section 19B.2(g)(1), as it applies to the acquisition and use of Microsoft products. The Department of Technology is currently in the process of finalizing a bid package for OCA to conduct a solicitation for a new Citywide Enterprise Agreement that will take effect June 1, 2020. Based on an analysis of potential Microsoft products available for procurement under the new EA, the DT has identified several products that include features which technically fit within the definition of FRT.

Face Recognition Technology is defined in Section 19B.1, as an automated or semi-automated process that assists in identifying or verifying an individual based on an individual’s face. Based on this definition, there are two known Microsoft products the City intends to procure which include FRT functionality. These are the “Stream” feature embedded within the Office365 products and the “Hello” feature embedded within the Windows Operating System. While these products include FRT functionality, the ordinance once amended, will allow for such possession





and acquisition when the FRT is a stock, manufacturer-installed capability bundled with software, and that the functions unrelated to the FRT are necessary to perform essential City functions.

Specifically, new Sections 19B.2(f) and 19B.2(g) when amended, will read as follows:

(f) It shall not be a violation of subsection (d) for a City Department to possess Face Recognition Technology on City-issued software or a City-issued product or device, provided that:

- (1) The Face Recognition Technology is a stock, manufacturer-installed capability, bundled with software or stored on a product or device, and that the functions unrelated to Face Recognition Technology are necessary to perform essential City functions;
- (2) The software, product, or device was not acquired for the purpose of performing the Face Recognition Technology function;
- (3) The Face Recognition Technology cannot be deleted from the software, product, or device; and
- (4) The Department does not use the Face Recognition Technology.

(g) It shall not be a violation of subsection (d) to acquire or obtain Face Recognition Technology provided that:

- (1) In advance of obtaining the Face Recognition Technology, the Department makes a written finding that the software, product, or device is not being acquired or obtained for the purpose of performing the Face Recognition Technology Function;
- (2) In advance of obtaining the Face Recognition Technology, the Purchaser or the Purchaser's designee makes a written finding that the Face Recognition Technology is a stock, manufacturer-installed capability bundled with software, or stored on a product or device; that the functions unrelated to Face Recognition Technology are necessary to perform essential City functions; and that the software, product, or device is unavailable without the stock, manufacturer-installed Face Recognition Technology; and
- (3) The City Department obtains approval of a Surveillance Technology Ordinance under this Chapter 19B where the software, product, or devices constitutes Surveillance Technology.



Thus, pursuant to Section 19B.2(g)(1), this memorandum will serve as DT's written finding that the Microsoft Windows Operating System includes a stock embedded FRT feature known as "Hello," and is not being acquired for the sole purpose of this functionality, but rather to allow for the control and management of hardware and other software contained in desktops, laptops, and mobile devices used by City employees.

Additionally, pursuant to Section 19B.2(f), this memorandum will also serve as DT's written finding that various Microsoft Office 365 products include a stock embedded FRT feature known as "Stream," which is installed by Microsoft as part of its bundled email products that are used by the majority of City employees as their primary method of communication to conduct normal work responsibilities. Further, the DT finds that such products are not being acquired for the FRT functionality and cannot be separated or deleted from the bundled products. Since the DT controls the licenses for these email products for the majority of City departments, DT can and will disable this FRT functionality to ensure City employees do not use this feature.

Based on the above, DT respectfully requests the solicitation for the acquisition of Microsoft products in the new Citywide EA be allowed to proceed, and that all City departments currently using O365 email products be allowed to continue their use without interruption. Pursuant to Section 19B.2(h) when amended, the DT will certify compliance to the above on an annual basis and will post such certification on the DT website.

Please contact Wilfred Dere at (628) 652-5057 if you require additional information.