

LEGISLATIVE DIGEST

[Administrative Code - Acquisition of Surveillance Technology]

Ordinance amending the Administrative Code to define Surveillance Technology to exclude DNA processing tools and certain technology used by the Sheriff's department; to define acquisition and use; to require that City departments acquiring Surveillance Technology, entering into agreements to receive information from non-City owned Surveillance Technology, or using existing Surveillance Technology, do so only following Board of Supervisors approval of a Surveillance Technology Policy ordinance, adopted by the Committee on Information Technology (COIT) and introduced by the City Administrator, based on a policy or policies developed and adopted by COIT; and declaring that, under existing law, borrowing Surveillance Technology without using it does not require a Board- approved Surveillance Technology Policy ordinance.

Existing Law

Existing law defines "Surveillance Technology" to exclude computers, software, hardware, or devices so long as they are used only to monitor the safety and security of City facilities and City vehicles, and does not exclude from that definition DNA profiling tools used to process and compare crime scene samples. Existing law does not define "acquisition" or "use" of Surveillance Technology.

Existing law requires that a Department seeking Board of Supervisors approval for Surveillance Technology first submit to the Committee on Information Technology (COIT) a Surveillance Impact Report for the Surveillance Technology to be acquired or used. Existing law requires that, based on the Surveillance Impact Report submitted by the Department, COIT develop a Surveillance Technology Policy and that, at a public hearing, COIT consider the Surveillance Technology Policy. Existing law requires that COIT then recommend that the Board of Supervisors adopt, adopt with modifications, or decline to adopt the Surveillance Technology Policy. Existing law requires that a Department then introduce the Surveillance Technology Policy ordinance to the Board of Supervisors for approval.

Existing law exempts a Department from obtaining Board of Supervisors approval if the Department's acquisition or use complies with a previously approved Surveillance Technology Policy.

Existing law provides that each Department possessing or using Surveillance Technology should submit a proposed Surveillance Technology Policy ordinance to the Board of Supervisors for each particular Surveillance Technology no later than 180 days following the effective date of Chapter 19B, for review and approval by the Board by ordinance. Existing law provides that COIT may, for good cause extend the 180 day deadline.

Amendments to Current Law

The proposed ordinance would clarify that “Acquisition” means to obtain property based on a change of ownership and “Use” means to activate or deploy technology. The proposed ordinance also would define “Surveillance Technology” to exclude surveillance cameras intended to be used, and only used, to monitor the safety and security of City facilities and City vehicles, certain Sheriff’s Department tools, and DNA profiling tools used only to process crime scene samples.

The proposed ordinance would declare that Department must have Board of Supervisors approval by ordinance of a Surveillance Technology Policy when acquiring and using Surveillance Technology, prior to engaging in the following: (1) Borrowing and using Surveillance Technology (as distinguished from only borrowing without using) and (2) Entering into agreements with a non-City entity only when the agreement allows the Department to regularly acquire, share, or use the Surveillance Technology as distinguished from non-regular acquisition, sharing, or use.

The proposed ordinance also would declare that, except as restricted by the facial recognition technology ban, or in a Board approved policy, a Department does not violate Chapter 19B if a Department acquires, borrows, or shares Surveillance Technology from a third party if the Department does not use the Surveillance Technology or receive information or data acquired through the third party’s use of Surveillance Technology.

The proposed ordinance would state that Departments requiring Board approval of a Surveillance Technology Policy would first submit to COIT a Surveillance Impact Report for the Surveillance Technology to be acquired or used. The proposed ordinance would require that COIT: (1) develop a Surveillance Technology Policy for the Surveillance Technology to be acquired or used; (2) hold a public hearing for consideration of the policy no later than 60 days after a Department’s submission of the Surveillance Impact Report; (3) develop the Surveillance Technology Policy and a proposed Surveillance Technology Policy ordinance that incorporates the Surveillance Technology Policy; and (4) transmit the Surveillance Technology Policy ordinance that incorporates the adopted Surveillance Technology Policy to the City Administrator. The proposed ordinance would require the City Administrator to introduce the Surveillance Technology Policy ordinance to the Board of Supervisors for approval of the ordinance.

The proposed ordinance would require that the Board of Supervisors, not the Department itself, publicly post the Surveillance Impact Report submitted by a Department, and that the Department request that the Board hold a public hearing to consider the report. In addition, the proposed ordinance would require that the Board publicly post the Surveillance Impact Report and any Surveillance Technology Policy ordinance introduced by the City Administrator

The proposed ordinance also would require that a Department already possessing or using Surveillance Technology must request that the City Administrator submit a proposed Surveillance Technology Policy ordinance 90 days following the Department's submission of a Surveillance Impact Report and request for a public hearing. The proposed ordinance also would remove COIT's discretion to extend the deadline for submission of a Surveillance Technology Policy ordinance for existing Surveillance Technology.

Background Information

The proposed ordinance includes the Board's finding and declaration that the amendments to Administrative Code Sections 19B.2(a)(2), 19B.2(a)(3), 19B.2(a)(5), and 19B.2(m) are declaratory of existing law, meaning that those amendments are intended to express and clarify the Board's original intent and not intended as changes to change the existing law

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