BOARD of SUPERVISORS

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M E M O R A N D U M

TO: All City Department Heads via Sophia Kittler, Mayor's Office
             Cheryl Leger, Administrator, Sunshine Ordinance Task Force
             Lily Liang, Committee on Information Technology

FROM: Victor Young, Assistant Clerk
             Rules Committee

DATE: June 19, 2019

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Rules Committee received the following proposed legislation on June 11, 2019:

> **File No. 190643**
>
> **Ordinance amending the Administrative Code to implement the Privacy First Policy in Charter, Section 16.130, by creating an Office of Data Privacy under the City Administrator, headed by a Chief Privacy Officer ("CPO") with responsibilities for implementing the Policy; requiring City departments to provide information to the CPO regarding their collection, storage, sharing, and use of personal information to enable the CPO to provide guidance and recommendations to departments, and recommendations to the City Administrator, for implementing the Policy; authorizing the City Administrator to adopt rules and regulations to implement the Policy, and to delegate that authority to the CPO and the Purchaser; requiring the City Administrator to make periodic reports describing the City's implementation of the Policy; and authorizing the City Administrator rather than the Mayor to appoint the Chief Data Officer ("CDO") and shifting responsibilities for determining which data sets are appropriate for public disclosure from the CDO to the CPO.**

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: victor.young@sfgov.org.

c: Andres Power, Mayor's Office
Rebecca Peacock, Mayor's Office
Eddie McCaffrey, Mayor's Office

1   [Administrative Code - Implementing the Charter's Privacy First Policy]

2

3   **Ordinance amending the Administrative Code to implement the Privacy First Policy in**

4   **Charter, Section 16.130, by creating an Office of Data Privacy under the City**

5   **Administrator, headed by a Chief Privacy Officer ("CPO") with responsibilities for**

6   **implementing the Policy; requiring City departments to provide information to the CPO**

7   **regarding their collection, storage, sharing, and use of personal information to enable**

8   **the CPO to provide guidance and recommendations to departments, and**

9   **recommendations to the City Administrator, for implementing the Policy; authorizing**

10   **the City Administrator to adopt rules and regulations to implement the Policy, and to**

11   **delegate that authority to the CPO and the Purchaser; requiring the City Administrator**

12   **to make periodic reports describing the City's implementation of the Policy; and**

13   **authorizing the City Administrator rather than the Mayor to appoint the Chief Data**

14   **Officer ("CDO") and shifting responsibilities for determining which data sets are**

15   **appropriate for public disclosure from the CDO to the CPO.**

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

20

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

22

23   Section 1. The Administrative Code is hereby amended by adding Chapter 22E,

24   consisting of Sections 22E.1, 22E.2, 22E.3, 22E.4, 22E.5, and 22E.6, to read as follows:

25

CHAPTER 22E: OFFICE OF DATA PRIVACY

SEC. 22E.1. OFFICE OF DATA PRIVACY; CHIEF PRIVACY OFFICER.

(a) *Establishment of Office.* There is hereby established the Office of Data Privacy, under the authority of the City Administrator.

(b) *Head of Office.* The City Administrator shall appoint a Chief Privacy Officer for the City to head the Office of Data Privacy, which shall include such officers and employees as are authorized pursuant to the budgetary and fiscal provisions of the Charter. The Chief Privacy Officer shall serve at-will under the City Administrator. For purposes of this Chapter 22E, where duties, functions, or powers are assigned to the Chief Privacy Officer, the term "Chief Privacy Officer" shall include any designee of the Chief Privacy Officer, unless stated otherwise.

SEC. 22E.2. PRIVACY FIRST POLICY.

(a) When considering the adoption of privacy-protective laws, regulations, policies, and practices, and when exercising their responsibilities under this Chapter 22E, the Chief Privacy Officer, Purchaser, and City Administrator, as applicable, shall be guided by the following principles derived from the City's Privacy First Policy in Charter Section 16.130(e):

(1) Engage with and inform individuals and communities likely to be impacted by the collection, storage, sharing, or use of their Personal Information prior to authorizing and prior to any change regarding the collection, storage, sharing, or use of their Personal Information.

(2) Ensure that Personal Information is only collected, stored, shared, or used pursuant to a lawful and authorized purpose.

(3) Allow individuals to access Personal Information about themselves that has been collected, and provide access and tools to correct any inaccurate Personal Information.

1   *(4) Solicit informed consent to the collection, storage, sharing, or use of Personal*

2 *Information, and provide alternative and equal access to goods and services for those who deny or*

3 *revoke consent.*

4   *(5) Discourage the collection, storage, sharing, or use of Personal Information,*

5 *including Personal Information that may identify an individual's race, religion or creed, national*

6 *origin, gender, sexual orientation, age, physical or mental disability, or other potentially sensitive*

7 *demographic information, unless necessary to accomplish a lawful and authorized purpose.*

8   *(6) De-identify data sets, when collected for research, statistical, or other analytical*

9 *purposes, thereby removing the ability to connect personal characteristics with specific individuals,*

10 *and implement technical safeguards to prevent re-identification of information.*

11   *(7) Adopt and make public, or cause to be made public, policies and practices for*

12 *responding to requests or demands for Personal Information from governmental entities.*

13   *(8) Allow individuals to move and organize throughout the City without being tracked*

14 *or located in a manner that subjects them to collection of Personal Information without their consent.*

15   *(9) Evaluate and mitigate bias or inaccuracy in the collection, storage, sharing, or use*

16 *of Personal Information, and anticipate potential bias in secondary uses of and algorithms used in*

17 *connection with Personal Information.*

18   *(10) Retain Personal Information for only as long as necessary to accomplish a lawful*

19 *and authorized purpose.*

20   *(11) Secure Personal Information against unauthorized or unlawful processing or*

21 *disclosure; unwarranted access, manipulation, or misuse; and accidental loss, destruction, or damage.*

22   *(b) For purposes of this Chapter 22E, "Personal Information" shall have the meaning derived*

23 *from Charter Section 16.130(d): any information that identifies, relates to, describes, or is capable of*

24 *being associated with, a particular individual. Personal Information includes, but is not limited to, an*

25 *individual's name, signature, social security number, physical characteristics or description, address,*

1   *geolocation data, IP address, telephone number, passport number, driver's license or state*

2   *identification card number, insurance policy number, education, employment, employment history,*

3   *bank account number, credit card number, debit card number, or any other financial information,*

4   *medical information, genetic and biometric data, or health insurance information.*

5

6   ### *SEC. 22E.3. DUTIES AND FUNCTIONS OF CHIEF PRIVACY OFFICER.*

7   *(a) The Chief Privacy Officer shall be responsible for overseeing the implementation of the*

8   *Charter's Privacy First Policy, Charter Section 16.130, and laws and regulations governing data*

9   *privacy; for performing any other functions related to data privacy as assigned by the City*

10   *Administrator; and for performing any other functions as provided by ordinance.*

11   *(b) The Chief Privacy Officer, in consultation with the City Attorney's Office as to legal issues,*

12   *shall provide guidance for City departments that is intended to aid in the implementation of the Privacy*

13   *First Policy.*

14   *(c) Data collection and reporting.*

15   *(1) The Chief Privacy Officer shall request information from all City departments*

16   *(defined broadly for purposes of this Chapter 22E to include all City offices and entities) on the data*

17   *they collect, the legal and programmatic basis for its collection, how it is stored and for how long, how*

18   *it is used, and with whom it is shared, and the names of any outside vendors used for data-related*

19   *functions, and such other information as the Chief Privacy Officer deems necessary or appropriate to*

20   *facilitate implementation of the Privacy First Policy. To aid in the gathering of this information, the*

21   *Chief Privacy Officer shall provide departments with a template or standard format for submitting the*

22   *requested data.*

23   *(2) Within six months of the request for information described in subsection (c)(1), each*

24   *department shall provide the information requested to the Chief Privacy Officer. The Chief Privacy*

25   *Officer may extend this deadline for one or more departments if the Chief Privacy Officer makes a*

written determination, as to each such department, that the extension is necessary or appropriate. All

departments shall cooperate with the Chief Privacy Officer in their efforts to provide the data requested

under subsection (c)(1).

(3) After collecting the department reports, the Chief Privacy Officer shall review the

department data collected and send a composite report with findings to the City Administrator. The

Chief Privacy Officer shall recommend policies and procedures, as appropriate, to departments and to

the City Administrator, regarding the collection, storage, sharing, and use of personal identifying

information while taking into consideration each department's unique mission, subject matter

expertise, and legal obligations.

(4) The process for data collection and reporting as outlined in subsections (c)(1)-(3)

shall be repeated at least every three years.

(d) Within six months after a new City department is established, the Chief Privacy Officer

shall conduct a review of how data is collected, stored, shared, and used for the new department's

programs or projects. The Chief Privacy Officer shall thereafter inform the department of the privacy

risks, if any, associated with a program or project as well as ways to reduce or eliminate those risks.

(e) No information that is required to be reported or disclosed pursuant to this Chapter 22E

shall be reported or disclosed in a manner that would violate any applicable provision of federal, state,

or City law relating to privacy, or would interfere with a law enforcement investigation or other

investigative activity by an agency, or would compromise public safety.

SEC. 22E.4. RULES AND REGULATIONS.

(a) The City Administrator may adopt rules and regulations that are consistent with the

Charter and that implement the Privacy First Policy, including the privacy principles stated in Charter

Section 16.130(e).

1   *(b)   Such rules and regulations shall be adopted after a public hearing, preceded by 10 days'*

2   *notice on the City Administrator's website, at which members of the public have an opportunity to*

3   *comment.   Substantial amendments of rules and regulations shall be subject to the same notice and*

4   *hearing requirements.   The hearing requirement may be waived, or the time for public notice*

5   *shortened, if the City Administrator makes a written determination that such waiver or shortening of*

6   *time is necessary to serve the public interest.*

7   *(c)   The City Administrator may delegate any powers under subsections (a) and (b) to the Chief*

8   *Privacy Officer, but those powers may not be delegated to a designee of the Chief Privacy Officer.*

9   *(d)   The City Administrator may delegate powers under subsections (a) and (b) regarding*

10   *procurement to the Purchaser, but those powers may not be delegated to a designee of the Purchaser.*

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12   *SEC. 22E.5.   REPORTS.*

13   *Within one year of the effective date of this Chapter 22E, the City Administrator shall submit to*

14   *the Board of Supervisors and the Mayor a written report describing the City's implementation of the*

15   *Privacy First Policy.   The City Administrator shall submit a subsequent report to the Board of*

16   *Supervisors and the Mayor within three years of the effective date of this Chapter 22E describing*

17   *implementation of the Privacy First Policy, and also addressing as appropriate the other matters*

18   *identified in Charter Section 16.130(g).   Thereafter, the City Administrator shall submit a report to the*

19   *Board of Supervisors and the Mayor every three years as required by Charter Section 16.130(g).*

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21   *SEC. 22E.6.   UNDERTAKING FOR THE GENERAL WELFARE.*

22   *In enacting and implementing this Chapter 22E, the City is assuming an undertaking only to*

23   *promote the general welfare.   It is not assuming, nor is it imposing on its officers and employees, an*

24   *obligation for breach of which it is liable in money damages to any person who claims that such breach*

25   *proximately caused injury.*

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2   Section 2. Chapter 12M of the Administrative Code is hereby amended by revising

3   Section 12M.1, to read as follows:

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5   **SEC. 12M.1. DEFINITIONS.**

6   For the purposes of this Chapter, the following definitions shall apply to the terms use_d_

7   herein.

8   *   *   *   *

9   (e)   "Private Information" shall mean any information that (1) could be used to identify

10   an individual, including without limitation name, address, social security number, medical

11   information, financial information, date and location of birth, and names of relative; or (2) the

12   law forbids any person from disclosing. _"Private Information" shall also include Personal_

13   _Information as defined in Charter Section 16.130(d): any information that identifies, relates to,_

14   _describes, or is capable of being associated with, a particular individual. Personal Information_

15   _includes, but is not limited to, an individual's name, signature, social security number, physical_

16   _characteristics or description, address, geolocation data, IP address, telephone number, passport_

17   _number, driver's license or state identification card number, insurance policy number, education,_

18   _employment, employment history, bank account number, credit card number, debit card number, or any_

19   _other financial information, medical information, genetic and biometric data, or health insurance_

20   _information._

21   *   *   *   *

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23   Section 3. Chapter 22D of the Administrative Code is hereby amended by revising

24   Sections 22D.2 and 22D.3, to read as follows:

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SEC. 22D.2 CHIEF DATA OFFICER AND CITY DEPARTMENTS.

(a) **Chief Data Officer.** In order to coordinate implementation, compliance, and expansion of the City's Open Data Policy, the ~~Mayor~~ *City Administrator* shall appoint a Chief Data Officer (CDO) for the City and County of San Francisco. The CDO shall be responsible for drafting rules and technical standards to implement the open data policy~~, and determining within the boundaries of law which data sets are appropriate for public disclosure. In making this determination, the CDO shall balance the benefits of open data set forth in Section 22D.1, with the need to protect from disclosure information that is proprietary or confidential and that may be protected from disclosure in accordance with law. Nothing in the rules and technical standards shall compel or authorize the disclosure of privileged information, law enforcement information, national security information, personal information, unless required by law. Nothing in the rules or technical standards shall compel or authorize the disclosure of information which is prohibited by law~~. *The Chief Privacy Officer, in consultation with the Chief Data Officer if and to the extent the Chief Privacy Officer deems appropriate, shall determine which data sets are appropriate for public disclosure, consistent with Administrative Code Sections 22E.3 and 22E.4. Nothing in the rules or technical standards shall compel or authorize the disclosure of Personal Information, as defined in Administrative Code Section 22E.2(b), that would violate any applicable provision of federal, state, or City law relating to privacy, or would interfere with a law enforcement investigation or other investigative activity by an agency, or would compromise public safety.*

(b) The CDO's duties shall include, but are not limited to the following:

(1) Draft rules and technical standards to implement the open data policy ensuring the policy incorporates the following principles:

(A) Data prioritized for publication should be of likely interest to the public;

(B) Data sets should be free of charge to the public through the web portal;

(C)   Data sets shall not include privileged or confidential information, law enforcement information, national security information, personal information, proprietary information or information the disclosure of which is prohibited by law; and

(D)   Data sets shall include, to the extent possible, metadata descriptions, API documentation, and the description of licensing requirements. Common core metadata shall, at a minimum, include fields for every dataset's title, description, tags, last update, publisher, contact information, unique identifier, and public access level as defined by the CDO.

(E)   That data sets are managed consistent with the City's Privacy First Policy in Charter Section 16.130.

*   *   *   *

~~(9)   Establish a process for providing citizens with secure access to their private data held by the City;~~

(~~10~~9)   Establish guidelines for licensing open data sets released by the City and evaluate the merits and feasibility of making City data sets available pursuant to a generic license, such as those offered by "Creative Commons." Such a license could grant any user the right to copy, distribute, display and create derivative works at no cost and with a minimum level of conditions placed on the use; and,

(~~11~~10)   Prior to issuing universally significant and substantial changes to rules and standards, solicit comments from the public, including from individuals and firms who have successfully developed applications using open data sets.

(c)   **City Departments.** Each City department, board, commission, and agency ("Department") shall:

(1)   Make reasonable efforts to make publicly available all data sets under the Department's control, provided however, that such disclosure shall be consistent with the

rules and technical standards drafted by the CDO and adopted by COIT and with applicable

law, including laws related to privacy _and the City's Privacy First Policy_;

        (2)   Review department data sets for potential inclusion on DataSF and ensure

they comply with the rules and technical standards adopted by COIT;

        (3)   Designate a Data Coordinator (DC) ~~no later than three months after the~~

~~effective date of Ordinance No. 285-13,~~ who will oversee implementation and compliance with the

Open Data Policy within his/her respective department. Each DC shall work with the CDO to

implement the City's open data policies and standards. The DC shall prepare an Open Data

plan for the Department which shall include:

        (A)   A timeline for the publication of the Department's open data and a

summary of open data efforts planned and/or underway in the Department;

        (B)   A summary description of all data sets under the control of each

Department (including data contained in already-operating information technology systems);

        (C)   All public data sets proposed for inclusion on DataSF;

        (D)   Quarterly updates of data sets available for publication.

        (4)   The DC's duties shall include, but are not limited to the following:

        (A)   ~~No later than six months after the effective date of Ordinance No. 285-13,~~

_p_Publish on DataSF, a catalogue of the Department's data that can be made public, including

both raw data sets and application programming interfaces (API's).

        (B)   Appear before COIT and respond to questions regarding the

Department's compliance with the City's Open Data policies and standards;

        (C)   Conspicuously display his/her contact information (including name,

phone number or email address) on DataSF with his/her department's data sets;

        (D)   Monitor comments and public feedback on the Department's data

sets on a timely basis and provide a prompt response;

(E)   Notify the ~~Department of Technology~~_Chief Data Officer_ upon publication of any updates or corrective action;

(F)   Work with the CDO to provide citizens with secure access to their own private data by outlining the types of relevant information that can be made available to individuals who request such information;

(G)   Implement the privacy protection guidelines established by the ~~CDO~~ _Chief Privacy Officer_ and ~~hold primary responsibility for~~ ensur~~ing~~_e_ that each published data set does not include information that is private, confidential, or proprietary; and

(H)   Make reasonable efforts to minimize restrictions or license-related barriers on the reuse of published open data.

*   *   *   *

SEC. 22D.3. STANDARDS AND COMPLIANCE.

~~(a)~~   The CDO and COIT shall work with the Purchaser to develop contract provisions to promote Open Data policies. The provisions shall include rules for including open data requirements in applicable City contracts and standard contract provisions that promote the City's open data policies, including, where appropriate, provisions to ensure that the City retains ownership of City data and the ability to post the data on data.sfgov.org or make it available through other means.

~~(b)   The following Open Data Policy deadlines are measured from effective date of Ordinance No. 285-13:~~

~~(1)   Within three months, department heads designate Department Data Coordinators to oversee implementation and compliance with the Open Data Policy within his/her respective department;~~

(2) Within six months, each Department shall begin conducting quarterly reviews of their progress on providing access to data sets requested by the public through the designated web portal;

(3) Within six months, each Department shall publish on DataSF a catalogue of their Department's data that can be made public, including both raw datasets and APIs; and

(4) Within one year, the CDO shall present updated citywide Open Data implementation plan to COIT, the Mayor and Board of Supervisors.

(5) The CDO may propose a modification, for adoption by COIT, of the timelines set forth in the legislation.

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

Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, letters, punctuation marks, charts, diagrams, or any other constituent parts of the Administrative Code that are explicitly shown in this ordinance as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the "Note" that appears under the official title of the ordinance.

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2   Section 6. Effective Date. This ordinance shall become effective 30 days after

3   enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the

4   ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board

5   of Supervisors overrides the Mayor's veto of the ordinance.

6

7   APPROVED AS TO FORM:
     DENNIS J. HERRERA, City Attorney
8

9   By: _____
             MARGARITA GUTIERREZ
10   Deputy City Attorney

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