

LEGISLATIVE DIGEST

(Revised 5/6/19)

[Administrative Code - Acquisition of Surveillance Technology]

Ordinance amending the Administrative Code to require that City departments acquiring surveillance technology, or entering into agreements to receive information from non-City owned surveillance technology, submit a Board of Supervisors approved Surveillance Technology Policy Ordinance, based on a policy or policies developed by the Committee on Information Technology (COIT), and a Surveillance Impact Report to the Board in connection with any request to appropriate funds for the purchase of such technology or to accept and expend grant funds for such purpose, or otherwise to procure surveillance technology equipment or services; require each City department that owns and operates existing surveillance technology equipment or services to submit to the Board a proposed Surveillance Technology Policy Ordinance governing the use of the surveillance technology; and requiring the Controller, as City Services Auditor, to audit annually the use of surveillance technology equipment or services and the conformity of such use with an approved Surveillance Technology Policy Ordinance and provide an audit report to the Board of Supervisors.

Existing Law

Existing law requires any department, board or commission that seeks to accept and expend grant funds in excess of \$100,000 to request Board of Supervisors' approval. Existing law requires any department, board or commission that seeks to accept and expend grant funds less than \$100,000 to comply with rules prescribed by the Controller for the acceptance and expenditure of grant funds.

Existing law requires that any department, board or commission that seeks to purchase commodities and services comply with the Purchaser's rules and regulations set forth in Chapter 21 of the Administrative Code.

Existing law requires that the Controller audit the accounts of all boards, officers and employees and the account of all moneys coming into the hands of the Treasurer. Existing law authorizes the Controller to audit the effectiveness and efficiency of all boards, commissions, officers and departments.

Amendments to Current Law

This ordinance would require departments (defined to exclude the District Attorney and Sheriff while performing investigative or prosecutorial functions) seeking to acquire surveillance technology or services, or to enter into agreements to receive information gathered by non-

City entities from surveillance technology, to submit to the Committee on Information Technology (COIT), a Surveillance Impact Report. This ordinance would require COIT to develop a Surveillance Technology Policy. This ordinance would require that a Surveillance Technology Policy describe the product or services, their purpose and cost, locations for use, a data storage and retention plan, authorized uses, whether the data will be public, authorized access, required training, access controls, complaint procedures, and any safeguards to reduce the chilling effect of the technology and prevent its unauthorized use. This ordinance would prohibit departments' use of surveillance technology services or equipment, or departments' receipt of data from non-City Surveillance Technology, unless the Board of Supervisors had approved a Surveillance Technology Policy ordinance for the use of services or equipment, or receipt of that information, following COIT's development of a policy and recommendation. This ordinance would require departments seeking to acquire surveillance technology or services to submit with any funding request a Surveillance Technology Policy ordinance, approved by the Board of Supervisors. It also would require that departments prepare for review by the Board of Supervisors an Annual Surveillance Report that describes how the technology was used, what data was retained, deleted, or shared, a summary of public comments or concerns about the technology's use, the results of any internal audit, statistics that calculate its effectiveness in achieving its designed purpose, whether data generated was requested and or provided by and to the public, and the total costs. This ordinance would prohibit departments' use of face recognition technology, except at federally regulated facilities at the Airport or Port.

The ordinance also would require the Controller to audit annually the use of surveillance technology, including a review of whether a department has and is operating in compliance with a Surveillance Technology Policy ordinance and completed an Annual Surveillance Report. The ordinance also would require that the Controller's audit include a review of the costs of the surveillance technology and services. Finally, the ordinance would require that the Controller, in consultation with the City Attorney, recommend any changes to any Surveillance Technology Policy ordinance and its implementation to the Board of Supervisors.

Background Information

This ordinance reflects amendments made at the May 6, 2019 meeting of the Rules Committee. This ordinance was amended to modify the definition Annual Surveillance Report to include a description of products and services acquired or used in the preceding year that are not already included in the Surveillance Technology Policy. This ordinance was amended to modify the definition of Surveillance Technology Policy to omit the requirement that the policy identify the manufacturer and model numbers for products or services. This ordinance was amended to modify the definition of Surveillance Technology to include technology used to monitor or investigate City employees or contractors. This ordinance was amended to require certain procedures be followed before the Board may approve a Surveillance Technology Policy ordinance: (1) Departments must first submit to COIT a Surveillance Impact Report for the Surveillance Technology to be acquired or used; (2) COIT must develop

a Surveillance Technology Policy for the Surveillance Technology to be acquired or used; and (3) Following a public hearing at which COIT considers the Surveillance Technology Policy, COIT must recommend that the Board adopt, adopt with modifications, or decline to adopt the Surveillance Technology Policy. This ordinance also was amended to require that departments obtain Board approval by ordinance of a Surveillance Technology Policy before entering into an agreement under which a non-City entity regularly provides data or information acquired through the entity's use of surveillance technology. This ordinance was amended to permit the use of face recognition technology at federally-regulated facilities at the Airport and Port and to clarify that the unintentional or inadvertent receipt or use of face recognition technology does not violate the prohibition on the use or receipt of that technology. This ordinance was amended to clarify that nothing in the ordinance was intended to prohibit, restrict, or interfere with the receipt, access to, or use by a City department of information gathered by a non-City entity or individual from Surveillance Technology. This ordinance was amended to declare that Chapter 19B shall not prohibit, restrict, or interfere with the City Attorney's ability to receive or use, in preparation for or in civil or administrative proceedings, information from Surveillance Technology (excluding Face Recognition Technology) that any City agency, department or official gathers or that any other non-City entity or person gathers. Finally, this ordinance was amended to delete language making knowing use of surveillance technology a misdemeanor.

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