

1 [Administrative Code - Acquisition, Retention, and Use of Surveillance Technology]

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3 **Ordinance amending Chapter 19B of the Administrative Code, governing the City’s**
4 **acquisition, retention, and use of surveillance technology, to allow the acquisition and**
5 **retention of face recognition technology under certain conditions; to preclude legal**
6 **relief for alleged violations of Chapter 19B that the City timely cured following notice;**
7 **and to authorize the City Administrator to adopt implementing standards to guide**
8 **departments in compliance with Chapter 19B’s restrictions on the acquisition,**
9 **retention, and use of surveillance technology.**

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

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

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20 Section 1. The Administrative Code is hereby amended by revising Sections 19B.2
21 and 19B.8, and adding Section 19B.9, to read as follows:

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23 **SEC. 19B.2. BOARD OF SUPERVISORS APPROVAL OF SURVEILLANCE**
24 **TECHNOLOGY POLICY.* * * ***

25 (d) Notwithstanding the provisions of this Chapter 19B, it shall be unlawful for any
Department to obtain, retain, access, or use: 1) any Face Recognition Technology; or 2) any

1 information obtained from Face Recognition Technology. This subsection (d) is subject to the
2 exceptions in subsections (e)-(g) and the qualifications in subsections (h)-(k).

3 (e) A Department's inadvertent or unintentional receipt, retention, access to, or use of
4 any information obtained from Face Recognition Technology shall not be a violation of ~~this~~
5 subsection (d), provided that:

6 (1) The Department does not request or solicit its receipt, access to, or use of
7 such information; and

8 (2) The Department logs such receipt, access to, or use in its Annual
9 Surveillance Report.

10 (f) It shall not be a violation of subsection (d) to retain Face Recognition Technology provided
11 that:

12 (1) The Face Recognition Technology is a stock, manufacturer-installed capability
13 bundled with software, or stored on a product, necessary to perform essential City functions;

14 (2) The software or product was not acquired for the purpose of performing the Face
15 Recognition Technology function;

16 (3) The Face Recognition Technology function cannot be deleted from the software or
17 product; and

18 (4) The Department does not use the Face Recognition Technology.

19 (g) It shall not be a violation of subsection (d) to obtain Face Recognition Technology provided
20 that, in advance of obtaining the Face Recognition Technology:

21 (1) The Department makes a written finding that the software or product is not being
22 acquired or obtained for the purpose of performing the Face Recognition Technology Function; and

23 (2) The Purchaser or the Purchaser's designee makes a written finding that the Face
24 Recognition Technology is a stock, manufacturer-installed capability bundled with software, or stored
25

1 on a product; is necessary to perform essential City functions; and that the software or product is
2 unavailable without the stock, manufacturer-installed Face Recognition Technology.

3 (~~eh~~) If either the District Attorney or Sheriff certifies in writing to the Controller that
4 acquisition of Surveillance Technology is necessary to perform an investigative or
5 prosecutorial function and provides in writing to the Controller either an explanation of how
6 compliance with this Chapter 19B will obstruct their investigative or prosecutorial function or a
7 declaration that the explanation itself will obstruct either function, the District Attorney or
8 Sheriff shall simultaneously submit a copy of the document to the Clerk of the Board of
9 Supervisors so that the Board in its discretion may hold a hearing and request that the District
10 Attorney or Sheriff appear to respond to the Board's questions regarding such certification,
11 explanation, and/or declaration. The written certification shall specify the Surveillance
12 Technology acquired, or to be acquired.

13 (~~fi~~) Nothing in this Chapter 19B shall be construed to obstruct the constitutional and
14 statutory powers and duties of the District Attorney, the Sheriff, the Chief Adult Probation
15 Officer, or the Chief Juvenile Probation Officer.

16 (~~gi~~) Except as restricted by subsection 19B.2(d) or expressly restricted in a
17 Surveillance Technology Policy developed pursuant to subsection 19B.2(a)(5), nothing in this
18 Chapter 19B shall be construed to prohibit, restrict, or interfere with the receipt, access to, or
19 use by a City ~~d~~Department of information gathered by a non-City entity or individual from
20 Surveillance Technology.

21 (~~hk~~) Nothing in this Chapter 19B shall prohibit, restrict, or interfere with a
22 Department's use of Surveillance Technology to conduct internal investigations involving City
23 employees, contractors, and volunteers, or the City Attorney's ability to receive or use, in
24 preparation for or in civil or administrative proceedings, information from Surveillance
25 Technology (excluding Face Recognition Technology to the extent prohibited under ~~s~~Section

1 19B.2(d)(1) that any City agency, department, or official gathers or that any other non-City
2 entity or person gathers.

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4 **SEC. 19B.8. ENFORCEMENT.**(a) If a Department alleged to have violated this
5 Chapter 19B takes corrective measures in response to such allegation, the Department shall
6 post a notice on the Department’s website that generally describes any corrective measure
7 taken to address such allegation.

8 (b) Any alleged violation of this Chapter 19B for which the City received notice under
9 subsection (c) and that is not corrected by the Department within 30 days of receipt of the notice,
10 constitutes an ~~an~~ legally cognizable basis for relief, injury, and any person affected thereby may
11 institute proceedings for injunctive relief, declaratory relief, or writ of mandate to remedy the
12 violation, in any court of competent jurisdiction to enforce this Chapter 19B. An action
13 instituted under this subsection (~~eb~~) shall be brought against the City.

14 (c) Prior to the initiation of any legal proceeding under subsection (~~eb~~), the City must
15 be given written notice of the alleged violation(s) and an opportunity to correct such alleged
16 violation(s) within 30 days of receipt of the notice.

17 (d) If the alleged violation(s) is substantiated and subsequently corrected, a notice
18 shall be posted in a conspicuous space on the City’s website that describes the corrective
19 measure(s) taken to address the violation(s).

20 (e) A court ~~may~~ award costs and reasonable attorney’s fees to a plaintiff who is a
21 prevailing party in any action brought under subsection (~~eb~~).

22 **SEC. 19B.9. IMPLEMENTING STANDARDS.**

23 After notice and a public hearing, the City Administrator or the City Administrator’s designee is
24 authorized to adopt or amend rules, regulations, operational standards and interpretative guidelines
25 (“Implementing Standards”) that are not inconsistent with this Chapter 19B or its purposes and that

1 will assist and guide departments in implementing this Chapter. An Implementing Standard adopted
2 under this Section 19B.9 shall not become operative until 10 days after the notice of the adoption is
3 posted on the City Administrator’s website. The Implementing Standard shall cease to be operative if
4 an ordinance referring to the specific Implementing Standard and proposing to address the same
5 subject matter as that Implementing Standard is introduced at the Board of Supervisors.

6 Section 2. Effective Date. This ordinance shall become effective 30 days after
7 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
8 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
9 of Supervisors overrides the Mayor’s veto of the ordinance.

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11 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
12 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
13 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
14 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
15 additions, and Board amendment deletions in accordance with the “Note” that appears under
16 the official title of the ordinance.

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19 APPROVED AS TO FORM:
20 DENNIS J. HERRERA, City Attorney

21 By: _____
22 JANA CLARK
23 Deputy City Attorney

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