

BOARD of SUPERVISORS



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## MEMORANDUM

TO: All City Department Heads via Sophia Kittler, Mayor's Office  
Naomi Kelly, City Administrator  
Linda Gerull, Executive Director/CIO, Department of Technology

FROM: Victor Young, Assistant Clerk  
Rules Committee

A handwritten signature in cursive script that reads "Victor Young".

DATE: September 20, 2019

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Rules Committee received the following legislation on September 10, 2019:

**File No. 190926**

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

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](mailto:victor.young@sfgov.org).

c: Andres Power, Mayor's Office  
Rebecca Peacock, Mayor's Office  
Eddie McCaffrey, Mayor's Office  
Lynn Khaw, Office of the City Administrator  
Lihmeei Leu, Office of the City Administrator  
Nina D'Amato, Department of Technology

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

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

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

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

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

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

(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 ~~a~~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.

3  
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 a 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 shall 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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18  
19 APPROVED AS TO FORM:  
20 DENNIS J. HERRERA, City Attorney

21 By:   
22 JANA CLARK  
23 Deputy City Attorney

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