

**REVISED LEGISLATIVE DIGEST**

(Amended in Board, 12/10/2019)

[Administrative, Public Works, Police Codes - Establishing Office of Emerging Technology - Requiring Permits for Using Emerging Technology Devices on Public Right-of-Ways]

**Ordinance amending the Administrative Code to create an Office of Emerging Technology within Public Works; amending the Public Works Code to require a permit to obstruct the public right-of-way within Public Works' jurisdiction; amending the Administrative Code to codify the Public Works Director's authority to take official actions, as defined herein, including adopting regulations for the pilot operation of emerging technology devices; amending the Public Works Code and Police Code to provide for administrative, civil, and criminal penalties for unlawful obstruction of the public right-of-way, including operation of emerging technology devices without a required permit; and affirming the Planning Department's determination under the California Environmental Quality Act.**

Background Information

Presently, the City does not have an office that is tasked with evaluating the City-wide effects of emerging technologies on City resources, infrastructure, and residents. This ordinance establishes an Office of Emerging Technology in accordance with Board Resolution No. 102-18, which established principles for the regulation of emerging technology and urged the City Administrator to convene an emerging technology working group, and the final report of the Emerging Technology Working Group.

Amendments to Current Law

1. New Administrative Code Chapter 22G (Office of Emerging Technology)

- As proposed, Administrative Code Chapter 22G would establish the Office of Emerging Technology ("OET"). In addition, Chapter 22G would attempt to streamline and coordinate the City's review and permitting of Emerging Technologies through the evaluation of pilot projects and the formulation of legislative and policy recommendations for consideration by the Board of Supervisors.
- "Emerging Technologies" would include "one or more physical objects, whether mobile or stationary, that constitute or incorporate new electronic or mobile technologies or applications of technology and which are proposed for use upon, above, or below City property and/or public right-of-way. Characteristics of new electronic or mobile technologies or applications of technology include but are not limited to designation of the technology as a beta, test, or pre-sale product or system or application software;

lacking written evaluation or analysis for safety purposes by any regulatory body of the United States, the State of California, or the City.”

- OET would be housed in the Department of Public Works and headed by the OET Director. OET would function City-wide subject to the existing authority of “Special Jurisdiction Agencies” (defined as the Recreation and Park Commission, the Airport Commission, SFMTA, the Port of San Francisco, and SFPUC) and applicable limitations under California law and/or the Charter. The ordinance will not abridge, modify, or alter the authority of the Special Jurisdiction Agencies, however, any Special Jurisdiction Agency may adopt legislative or regulatory changes and enter into agreements with other City Departments to implement the ordinance consistent with State law, the Charter, the Municipal Code, and City ordinances.
- OET’s powers and duties would include the following:
  - *Emerging Technology Front Door.* OET will provide informational resources to Emerging Technology Companies to help enable such businesses to determine which permitting, regulatory, and other requirements may be applicable to the operation of the Emerging Technology in San Francisco. OET will be the City’s point of contact for providing information to and facilitating dialogue among Emerging Technology Companies and San Francisco residents, workers, local businesses, visitors, and other members of the public regarding Emerging Technologies. In addition, OET will receive comments, ideas, and concerns about Emerging Technology.
  - *Testing, Evaluation, and Data Collection and Sharing.* OET will strive to provide Emerging Technology Companies with consistent and agile processes for safely developing, operating, and testing products and services in public spaces. OET will research, design, and implement methods for testing, evaluating, and measuring the effects of Emerging Technology and will coordinate City Department efforts to develop data collection and evaluation criteria regarding the effects of Emerging Technology on San Francisco residents and City resources and infrastructure. OET will collaborate with other City Departments regarding the testing, evaluation, permitting, and regulation of Emerging Technology within the City, and data collection and sharing methods and protocols.
  - *Evaluation of Proposed Pilot Projects.* OET will receive and review pilot project proposals, and will deny or approve a pilot project proposal, subject to the project sponsor’s obtaining additional agency approvals that are required, and complying with all applicable conditions of approval. OET will facilitate the referral and review of pilot project applications by appropriate City Departments and the issuance of testing and other permits by City Departments, as applicable, to help ensure Emerging Technologies can operate to serve the public good while minimizing harms to public health, safety, welfare, and convenience, and public spaces; and to facilitate the streamlined and consolidated issuance of permits and consideration of appeals.

- *Thought Leadership and Policy Development.* OET will: (A) investigate, research, and consult subject matter experts regarding the development, usage, and effects of Emerging Technology on the City's resources, infrastructure, and residents, particularly the most vulnerable members of the San Francisco community including seniors, children, economically disadvantaged individuals, and persons with mobility or other medical or health limitations; (B) support responsive policy development in areas such as equity, accessibility, privacy, and responsible and sustainable use of data; (C) focus on and monitor existing and evolving accessibility standards; and (D) make and provide support for recommendations to the Board of Supervisors, the Mayor, and other City Departments regarding amendments and updates to the Municipal Code and City regulations and processes to address the challenges posed and opportunities presented by Emerging Technologies.
- *Communication.* OET will research, develop, and apply best practices to facilitate communication and share information regarding Emerging Technologies among City departments, Emerging Technology companies, and stakeholders.
- *Forecasting.* OET will create partnerships with businesses, organizations, educational institutions, and government agencies separate from the City to learn from deployments of Emerging Technologies outside of San Francisco and related Emerging Technology trends. OET will host gatherings, forums, and presentations about Emerging Technology priority issues facing San Francisco.
- **Pilot Project Review, Approval, and Written Notice to Proceed.**
  - Under the ordinance, subject to certain exemptions, an Emerging Technology company seeking to operate an Emerging Technology upon, over, or under City property or the public right-of-way, would be required to first obtain approval of a pilot project proposal from the OET Director, then comply with all conditions of the Approval, and then receive a written notice informing the applicant that the pilot project may proceed.
  - The OET Director may determine criteria for evaluation of pilot project applications. In addition, the OET Director's evaluation of applications may consider, among other factors, whether the pilot project is intended to yield information that could be used to safeguard and further public health, safety, and welfare; develop technical knowledge and expertise regarding the Emerging Technology; or develop best practices and regulatory requirements; or whether the pilot project poses unknown or unreasonable risks to public health, safety, and welfare. In addition, the OET Director may consider the extent to which an applicant has the capacity to meet the permit terms based on past experience operating permit programs, including, but not limited to, the applicant's compliance with applicable laws.
  - An Emerging Technology company would be exempt from the need to obtain Approval from the OET Director if the Emerging Technology company demonstrates that the proposed activities are, in their entirety, independently

authorized by federal law or California law, or if the Proposed Activities are entirely within the jurisdiction of one Special Jurisdiction Agency, or if the Proposed Activities are entirely within the jurisdiction of more than one Special Jurisdiction Agency and are governed by an agreement approved by each applicable Special Jurisdiction Agency.

- Annual Reports. No later than one year from the effective date of the ordinance, and annually thereafter, OET will submit to the Board of Supervisors and the Mayor an Emerging Technology report that describes the work performed by OET including the pilot project proposals received, reviewed, approved, and/or completed; the OET Director's analysis and recommendations regarding each pilot project; OET's analysis of Emerging Technology data, including the effects of Emerging Technologies on public spaces and the labor market, and the OET Director's conclusions and recommendations regarding such data. These annual reports will include recommendations that the City, including Special Jurisdiction Agencies, take legislative and/or administrative actions to modify, streamline, consolidate, amend, or terminate, as applicable, existing permit programs and requirements; to create new permit programs; and to streamline or consolidate regulatory review and approval processes and requirements among City Department Partners. The annual reports will include recommendations that the Board adopt or refrain from adoption of new legislation to regulate, deregulate, allow, or prohibit such Emerging Technologies upon, above, or below public property or the public right-of-way.
2. New Public Works Code Section 723.5 (Testing Emerging Technology Devices on Public Right-of-Ways – Permit Required)
- As proposed, Public Works Section 723.5 would establish a pilot permit program administered by the Public Works Director (in consultation with all applicable City departments) to regulate and temporarily authorize the physical operation, testing, and/or placement of certain Emerging Technology devices upon, above, or below City sidewalks, public right-of-ways, and property within the jurisdiction of Public Works. Emerging Technology devices permitted under Section 723.5 will be required to comply with certain operational requirements intended to protect the public health, safety, and welfare.
  - Notably, Section 723.5 will not govern the operation of Emerging Technology Devices on City streets or highways, or public property subject to the sole jurisdiction of one or more Special Jurisdiction Agencies (as defined in Administrative Code Chapter 22G), unless such agencies authorize the application of this Section to such City streets or highways, or public property.
  - Permit applicants will be required to post written notices of their pilot permit applications and members of the public will have an opportunity to comment on and request a public hearing regarding the permit application.

- The Public Works Director's approval or denial of a pilot permit application, or the Director's modification, suspension, or revocation of a pilot permit, may be appealed to the Board of Appeals.
  - Prior to the expiration of the pilot project permit, Public Works will provide a pilot project performance report to the OET Director to evaluate the performance of the pilot project and determine whether, based on the pilot project, the Emerging Technology device may be operated safely and feasibly on City sidewalks and public right-of-ways beyond the term of the pilot project.
3. Amendments to Administrative Code Section 2A.190 (Department of Public Works)
- This ordinance includes conforming amendments to Administrative Code Section 2A.190 to assist with the implementation of this ordinance.
  - A new subsection (f) will be added to Section 2A.190 to codify the Public Works Director's authority to adopt regulations and to perform official acts within the regulatory authority of the Public Works Department by approval and issuance of an order.
4. Amendments to Public Works Code Section 2.1.3 (Additional Fees)
- This ordinance includes conforming amendments to Public Works Code Section 2.1.3 assist with the implementation of this ordinance.
  - As amended, Section 2.1.3 would authorize the Public Works Director to require an applicant or permittee to pay additional fees, in excess of the established fee amounts, to cover City Departments' actual costs of administering or processing any applicable application, approval, or permit.
5. Amendments to Public Works Code Section 723 (Obstruction of Public Right-of-Way Prohibited)
- This ordinance includes conforming amendments to Public Works Code Section 723 to assist with the implementation of this ordinance.
  - As amended, Section 723 would prohibit the obstruction of public right-of-ways without permission from Public Works. Any violation of Section 723 would be a public nuisance subject to enforcement actions pursuant to the Administrative Code, the Police Code, and Public Works regulations and procedures.
6. Amendments to Police Code Section 39-1 (Procedure for Assessment and Collection of Administrative Penalties for Specified Littering and Nuisance Violations)
- This ordinance includes conforming amendments to Police Code Section 39-1, which governs the imposition, assessment, and collection of administrative penalties, to assist with the implementation of this ordinance.

FILE NO. 191033

- As amended, Section 39-1 would include new references to Public Works Code Sections 723 and 723.5, and Administrative Code Section 22G.4.

n:\legana\as2019\1900542\01398290.docx