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.
             Additions to Codes are in *single-underline italics Times New Roman font*.
11   **Deletions to Codes** are in ~~*strikethrough italics Times New Roman font*~~.
             Board amendment additions are in <u>double-underlined Arial font</u>.
12   **Board amendment deletions** are in ~~strikethrough Arial font~~.
             Asterisks (*   *   *) indicate the omission of unchanged Code
13   subsections or parts of tables.

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

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18   Section 1. The Administrative Code is hereby amended by revising Sections 19B.2

19   and 19B.8, and adding Section 19B.9, to read as follows:

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21   **SEC. 19B.2. BOARD OF SUPERVISORS APPROVAL OF SURVEILLANCE**

22   **TECHNOLOGY POLICY.***   *   *   *

23   (d) Notwithstanding the provisions of this Chapter 19B, it shall be unlawful for any

24   Department to obtain, retain, access, or use: 1) any Face Recognition Technology <u>on City-</u>

25   <u>issued software or a City-issued product or device</u>; or 2) any information obtained from Face

1 Recognition Technology on City-issued software or a City-issued product or device. *This*

2 *subsection (d) is subject to the exceptions in subsections (e)-(g) and the qualifications in subsections*

3 *(h)-(*~~k~~l*).*

4   *(e)* A Department's inadvertent or unintentional receipt, retention, access to, or use of

5 any information obtained from Face Recognition Technology shall not be a violation of ~~*this*~~

6 subsection (d), provided that:

7   (1) The Department does not request or solicit its receipt, access to, or use of

8 such information; and

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

10 Surveillance Report.

11   *(f) It shall not be a violation of subsection (d)* for a City Department *to* ~~retain~~ possess *Face*

12 *Recognition Technology* on City-issued software or a City-issued product or device*, provided*

13 *that:*

14   *(1) The Face Recognition Technology is a stock, manufacturer-installed capability,*

15 *bundled with software*~~,~~ *or stored on a product* or device, and that the functions unrelated to Face

16 Recognition Technology are *necessary to perform essential City functions;*

17   *(2) The software,* ~~or~~ *product,* or device *was not acquired for the purpose of performing*

18 *the Face Recognition Technology function;*

19   *(3) The Face Recognition Technology* ~~function~~ *cannot be deleted from the software,* ~~or~~

20 *product,* or device*; and*

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

22   *(g) It shall not be a violation of subsection (d) to* acquire or *obtain* a software, product, or

23 device that includes *Face Recognition Technology provided that*~~, in advance of obtaining the~~

24 ~~Face Recognition Technology~~*:*

25

1   *(1)* In advance of obtaining the software, product, or device~~Face Recognition~~

2 ~~Technology,~~ The the *Department makes a written finding that the software,* ~~or~~ *product,* or device *is*

3 *not being acquired or obtained for the purpose of performing the Face Recognition Technology*

4 *Function;* ~~and~~

5   *(2)* In advance of obtaining the software, product, or device~~Face Recognition~~

6 ~~Technology,~~ The the *Purchaser or the Purchaser's designee makes a written finding that the Face*

7 *Recognition Technology is a stock, manufacturer-installed capability bundled with software, or stored*

8 *on a product* or device; *that the functions unrelated to Face Recognition Technology are* ~~is~~

9 *necessary to perform essential City functions; and that the software,* ~~or~~ *product,* or device *is*

10 *unavailable without the stock, manufacturer-installed Face Recognition Technology*; and~~.~~

11   (3)   The City Department obtains approval of a Surveillance Technology

12 Ordinance under this Chapter 19B where the software, product, or device constitutes

13 Surveillance Technology.

14   (h)   A City Department that possesses Face Recognition Technology shall certify

15 annually compliance with subsections (e)-(l) and post that certification and the written findings

16 required by subsection (g) on the Department website.

17   (~~g~~h<u>i</u>) If either the District Attorney or Sheriff certifies in writing to the Controller that

18 acquisition of Surveillance Technology is necessary to perform an investigative or

19 prosecutorial function and provides in writing to the Controller either an explanation of how

20 compliance with this Chapter 19B will obstruct their investigative or prosecutorial function or a

21 declaration that the explanation itself will obstruct either function, the District Attorney or

22 Sheriff shall simultaneously submit a copy of the document to the Clerk of the Board of

23 Supervisors so that the Board in its discretion may hold a hearing and request that the District

24 Attorney or Sheriff appear to respond to the Board's questions regarding such certification,

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explanation, and/or declaration. The written certification shall specify the Surveillance

Technology acquired, or to be acquired.

(~~h~~i) Nothing in this Chapter 19B shall be construed to obstruct the constitutional and

statutory powers and duties of the District Attorney, the Sheriff, the Chief Adult Probation

Officer, or the Chief Juvenile Probation Officer.

(~~g~~j~~i~~k) Except as restricted by subsection 19B.2(d) or expressly restricted in a

Surveillance Technology Policy developed pursuant to subsection 19B.2(a)(5), nothing in this

Chapter 19B shall be construed to prohibit, restrict, or interfere with the receipt, access to, or

use by a City ~~d~~Department of information gathered by a non-City entity or individual from

Surveillance Technology.

(~~h~~k~~i~~l)   Nothing in this Chapter 19B shall prohibit, restrict, or interfere with a

Department's use of Surveillance Technology to conduct internal investigations involving City

employees, contractors, and volunteers, or 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 to the extent prohibited under ~~s~~Section

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

entity or person gathers.

SEC. 19B.8. ENFORCEMENT.

(a) If a Department alleged to have violated this Chapter 19B takes corrective

measures in response to such allegation, the Department shall post a notice on the

Department's website that generally describes any corrective measure taken to address such

allegation.

(b) Any *alleged* violation of this Chapter 19B *for which the City received notice under*

subsection (c) and that is not corrected by the Department within 30 days of receipt of the notice,

1 constitutes a~~n~~ _legally cognizable basis for relief,_ ~~injury,~~ and any person _affected thereby_ may

2 institute proceedings for injunctive relief, declaratory relief, or writ of mandate _to remedy the_

3 _violation,_ in any court of competent jurisdiction to enforce this Chapter 19B. An action

4 instituted under this subsection (~~c~~_b_) shall be brought against the City.

5   (c) Prior to the initiation of any legal proceeding under subsection (~~c~~_b_), the City must

6 be given written notice of the _alleged_ violation(s) and an opportunity to correct such alleged

7 violation(s) within 30 days of receipt of the notice.

8   (d) If the alleged violation(s) is substantiated and subsequently corrected, a notice

9 shall be posted in a conspicuous space on the City's website that describes the corrective

10 measure(s) taken to address the violation(s).

11   (e) A court <u>shall</u>~~may~~~~_shall_~~ award costs and reasonable attorney's fees to a plaintiff who

12 is a prevailing party in any action brought under subsection (~~c~~_b_).

13   _**SEC. 19B.9. IMPLEMENTING STANDARDS.**_

14   _After notice and a public hearing, the City Administrator or the City Administrator's designee is_

15 _authorized to adopt or amend rules, regulations, operational standards and interpretative guidelines_

16 _("Implementing Standards") that are not inconsistent with this Chapter 19B or its purposes and that_

17 _will assist and guide departments in implementing this Chapter. An Implementing Standard adopted_

18 _under this Section 19B.9 shall not become operative until 10 days after the notice of the adoption is_

19 _posted on the City Administrator's website. The Implementing Standard shall cease to be operative if_

20 _an ordinance referring to the specific Implementing Standard and proposing to address the same_

21 _subject matter as that Implementing Standard is introduced at the Board of Supervisors._

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

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

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

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

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4 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors

5 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,

6 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal

7 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment

8 additions, and Board amendment deletions in accordance with the "Note" that appears under

9 the official title of the ordinance.

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

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14 By: _____
         JANA CLARK

15   Deputy City Attorney

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