

File No. 190926

Committee Item No. 5

Board Item No. 16

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Rules Committee

Date November 18, 2019

Board of Supervisors Meeting

Date DECEMBER 17, 2019

Cmte Board

- | | | |
|-------------------------------------|-------------------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Ordinance |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Introduction Form |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Memorandum of Understanding (MOU) |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement |
| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 - Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
| <input type="checkbox"/> | <input type="checkbox"/> | Form 700 |
| <input type="checkbox"/> | <input type="checkbox"/> | Vacancy Notice |
| <input type="checkbox"/> | <input type="checkbox"/> | Information Sheet |
| <input type="checkbox"/> | <input type="checkbox"/> | Public Correspondence |

OTHER

(Use back side if additional space is needed)

- | | | |
|--------------------------|--------------------------|----------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | Initiative Ordinance _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |

Completed by: Victor Young

Date Nov. 14, 2019

Completed by: Victor Young

Date 11/21/19

[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 on City-issued software or a City-issued product or device; 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).

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;

1 (1) In advance of obtaining the software, product, or deviceFace 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 deviceFace 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 (ehi) 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,
25

1 explanation, and/or declaration. The written certification shall specify the Surveillance
2 Technology acquired, or to be acquired.

3 (~~f~~i) Nothing in this Chapter 19B shall be construed to obstruct the constitutional and
4 statutory powers and duties of the District Attorney, the Sheriff, the Chief Adult Probation
5 Officer, or the Chief Juvenile Probation Officer.

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

11 (~~h~~k) Nothing in this Chapter 19B shall prohibit, restrict, or interfere with a
12 Department's use of Surveillance Technology to conduct internal investigations involving City
13 employees, contractors, and volunteers, or the City Attorney's ability to receive or use, in
14 preparation for or in civil or administrative proceedings, information from Surveillance
15 Technology (excluding Face Recognition Technology to the extent prohibited under ~~s~~Section
16 19B.2(d)(1) that any City agency, department, or official gathers or that any other non-City
17 entity or person gathers.

18
19 **SEC. 19B.8. ENFORCEMENT.**

20 (a) If a Department alleged to have violated this Chapter 19B takes corrective
21 measures in response to such allegation, the Department shall post a notice on the
22 Department's website that generally describes any corrective measure taken to address such
23 allegation.

24 (b) Any alleged violation of this Chapter 19B for which the City received notice under
25 subsection (c) and that is not corrected by the Department within 30 days of receipt of the notice.

1 constitutes a 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 (eb) shall be brought against the City.

5 (c) Prior to the initiation of any legal proceeding under subsection (eb), 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 ~~shall~~may~~shall~~ award costs and reasonable attorney's fees to a plaintiff who
12 is a prevailing party in any action brought under subsection (eb).

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.

22
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
25

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.

3
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.

10
11
12 APPROVED AS TO FORM:
13 DENNIS J. HERRERA, City Attorney

14 By:



15 JANA CLARK
16 Deputy City Attorney

17 n:\legana\as2019\1900073\01410765.docx

REVISED LEGISLATIVE DIGEST
(Amended in Board, 12/10/2019)

[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.

Existing Law

Administrative Code Chapter 19B regulates the City’s acquisition, retention, and use of Surveillance Technology, bans the acquisition, retention and use of Face Recognition Technology (“FRT”) with some exceptions, and provides that anyone injured by a violation of Chapter 19B may institute proceedings for injunctive relief, declaratory relief, or writ of mandate to remedy the violation.

Amendments to Current Law

This ordinance would amend the ban on the acquisition, retention and use of FRT to apply to City-issued software or a City-issued product or device only. This ordinance would allow the retention of FRT if the FRT is a stock, manufacturer-installed capability bundled with software, or stored on a product, necessary to perform essential City functions, the FRT wasn’t acquired to perform the function, and the FRT function can’t be deleted and isn’t used. This ordinance also would allow acquisition of FRT if the software or product with FRT is necessary to perform essential City functions and is unavailable without the FRT function. Finally, this ordinance would preclude legal relief for violations of Chapter 19B that the City timely cured following notice.

Background

This ordinance reflects amendments made in the Rules Committee on November 18, 2019, including an amendment to the ban on the acquisition, retention and use of FRT to apply to City-issued software or a City-issued product or device only.

n:\eganalas2019\1900073\01407929.docx

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

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 *Victor Young*
Rules Committee

DATE: September 20, 2019

SUBJECT: LEGISLATION INTRODUCED

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.

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

Introduction Form

By a Member of the Board of Supervisors or Mayor

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2019 SEP 10 PM 4:50

BY [Signature] Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor [] inquiries"
- 5. City Attorney Request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No. []
- 9. Reactivate File No. []
- 10. Topic submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Peskin

Subject:

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

The text is listed:

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.

Signature of Sponsoring Supervisor: [Signature]

For Clerk's Use Only