

1 [Administrative Code - Acquisition of Surveillance Technology]

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3 **Ordinance amending the Administrative Code to define Surveillance Technology to**
4 **exclude DNA processing tools and certain technology used by the Sheriff's**
5 **Department; to define acquisition and use; to require that City departments acquiring**
6 **Surveillance Technology, entering into agreements to receive information from non-**
7 **City owned Surveillance Technology, or using existing Surveillance Technology, do so**
8 **only following Board of Supervisors approval of a Surveillance Technology Policy**
9 **Ordinance, adopted by the Committee on Information Technology (COIT) and**
10 **introduced by the City Administrator, based on a policy or policies developed and**
11 **adopted by COIT; and declaring that, under existing law, borrowing Surveillance**
12 **Technology without using it does not require a Board- approved Surveillance**
13 **Technology Policy Ordinance.**

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

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

22 Section 1. Chapter 19 of the Administrative Code is hereby amended by revising
23 Sections 19B.1, 19B.2, 19B.3, and 19B.5, to read as follows:

24 **SEC. 19B.1. DEFINITIONS.**

1 To “Acquire” shall mean to take possession of property based on a change of ownership, with
2 or without the exchange of monies or other consideration.

3 “Annual Surveillance Report” means a written report that includes all the following:

4 * * * *

5 “Surveillance Technology” means any software, electronic device, system utilizing an
6 electronic device, or similar device used, designed, or primarily intended to collect, retain,
7 process, or share audio, electronic, visual, location, thermal, biometric, olfactory or similar
8 information specifically associated with, or capable of being associated with, any individual or
9 group. Surveillance Technology” includes but is not limited to the following: international
10 mobile subscriber identity (IMSI) catchers and other cell site simulators; automatic license
11 plate readers; electric toll readers; closed-circuit television cameras; gunshot detection
12 hardware and services; video and audio monitoring and/or recording technology, such as
13 surveillance cameras, wide-angle cameras, and wearable body cameras; mobile DNA capture
14 technology; biometric recognition software or technology, including facial, voice, iris, and gait-
15 recognition software and databases; software designed to monitor social media services; x-
16 ray vans; software designed to forecast criminal activity or criminality; radio-frequency I.D.
17 (RFID) scanners used for anything other than physical access control systems, employee
18 identification management systems, or other physical control systems; and tools, including software
19 and hardware, used to gain unauthorized access to a computer, computer service, or
20 computer network. Surveillance Technology does not include the following devices, hardware,
21 or software:

22 * * * *

23 (12) Police Department or Sheriff’s Department interview rooms, holding cells,
24 and internal security audio/video recording systems;

1 (13) Police Department *or Sheriff's Department* computer aided dispatch (CAD),
2 records/case management, Live Scan, booking, Department of Motor Vehicles, California Law
3 Enforcement Telecommunications Systems (CLETS), 9-1-1 and related dispatch and
4 operation or emergency services systems;

5 (14) Police Department *or Sheriff's Department* early warning systems; *and*

6 (15) Computers, software, hardware, or devices, *including surveillance cameras,*
7 intended to be used solely to monitor the safety and security of City facilities and City
8 vehicles, *provided that they are* not generally accessible to the public, *and provided further that*
9 *they are actually used solely to monitor the safety and security of City facilities and City vehicles; and*

10 (16) DNA Profiling tools used only to process crime scene samples and compare
11 against reference samples.

12 "Surveillance Technology Policy" means a written policy that includes:

13 * * * *

14 (5) The specific ~~categories and~~ titles of individuals who are authorized by the
15 Department to access or use the collected information, including restrictions on how and
16 under what circumstances data collected with Surveillance Technology can be analyzed and
17 reviewed, and the rules and processes required prior to access or use of the information;

18 * * * *

19 "Use" means to deploy or activate the Surveillance Technology.

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

23 (a) Except as stated in subsection (c), and in accordance with the procedures set forth
24 in subsection (b), a Department must ~~obtain~~ have Board of Supervisors approval by ordinance
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1 of a Surveillance Technology Policy under which the Department will acquire and use
2 Surveillance Technology, prior to engaging in any of the following:

3 (1) Seeking funds for Surveillance Technology, including but not limited to
4 applying for a grant, or accepting state or federal funds, or public or private in-kind or other
5 donations;

6 (2) Acquiring ~~or borrowing~~ new Surveillance Technology, ~~including but not limited~~
7 ~~to acquiring Surveillance Technology without the exchange of monies or other consideration;~~

8 (3) Borrowing and thereafter using Surveillance Technology, without the exchange of
9 monies or other consideration (borrowing, without using, not covered by this provision);

10 ~~(34)~~ Using new or existing Surveillance Technology for a purpose, in a manner,
11 or in a location not specified in a Surveillance Technology Policy ordinance approved by the
12 Board in accordance with this Chapter 19B;

13 ~~(45)~~ Entering into agreement with a non-City entity to regularly acquire, share, or
14 otherwise use Surveillance Technology; or

15 ~~(56)~~ Entering into an oral or written agreement under which a non-City entity or
16 individual regularly provides the Department with data or information acquired through the
17 entity's use of Surveillance Technology.

18 (b) The Board of Supervisors may approve a Surveillance Technology Policy
19 ordinance under subsection (a) only under the following circumstances:

20 (1) The Department ~~seeking~~ requiring Board approval under subsection (a) first
21 submits to COIT a Surveillance Impact Report for the Surveillance Technology to be acquired
22 or used;

23 (2) Based on the Surveillance Impact Report submitted by the Department,
24 COIT develops a Surveillance Technology Policy for the Surveillance Technology to be
25 acquired or used;

1 (3) At a public hearing held no later than 60 days after a Department's submission to
2 COIT of the Surveillance Impact Report required by subsection (b)(1) and at which COIT considers
3 the Surveillance Technology Policy it has developed pursuant to subsection (b)(2), COIT
4 ~~recommends that the Board of Supervisors~~ adopts a proposed ~~adopt with modifications, or decline to~~
5 ~~adopt the~~ Surveillance Technology Policy and a proposed Surveillance Technology Policy ordinance
6 that incorporates the Surveillance Technology Policy, for the Surveillance Technology to be
7 acquired or used.

8 (4) Following COIT's adoption of a proposed Surveillance Technology Policy and
9 proposed Surveillance Technology Policy ordinance, required by subsection (b)(3), COIT transmits the
10 Surveillance Technology Policy ordinance to the City Administrator.

11 (5) The City Administrator introduces the Surveillance Technology Policy ordinance to
12 the Board of Supervisors, for the Board to consider approval of the ordinance.

13 (c) A Department is not required to ~~obtain~~ have Board of Supervisors approval by
14 ordinance of a Surveillance Technology Policy if the Department's acquisition or use of the
15 Surveillance Technology complies with a Surveillance Technology Policy previously approved
16 by the Board by ordinance.

17 (d) Notwithstanding the provisions of this Chapter 19B, it shall be unlawful for any
18 Department to obtain, retain, access, or use: 1) any Face Recognition Technology on City-
19 issued software or a City-issued product or device; or 2) any information obtained from Face
20 Recognition Technology on City-issued software or a City-issued product or device. This
21 subsection (d) is subject to the exceptions in subsections (e)-(g) and the qualifications in
22 subsections (h)-(l).

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

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

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

5 (f) It shall not be a violation of subsection (d) for a City Department to possess Face
6 Recognition Technology on City-issued software or a City-issued product or device, provided
7 that:

8 (1) The Face Recognition Technology is a stock, manufacturer-installed
9 capability, bundled with software or stored on a product or device, and that the functions
10 unrelated to Face Recognition Technology are necessary to perform essential City functions;

11 (2) The software, product, or device was not acquired for the purpose of
12 performing the Face Recognition Technology function;

13 (3) The Face Recognition Technology cannot be deleted from the software,
14 product, or device; and

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

16 (g) It shall not be a violation of subsection (d) to acquire or obtain a software, product,
17 or device that includes Face Recognition Technology provided that:

18 (1) In advance of obtaining the software, product, or device, the Department
19 makes a written finding that the software, product, or device is not being acquired or obtained
20 for the purpose of performing the Face Recognition Technology Function;

21 (2) In advance of obtaining the software, product, or device, the Purchaser or
22 the Purchaser's designee makes a written finding that the Face Recognition Technology is a
23 stock, manufacturer-installed capability bundled with software, or stored on a product or
24 device; that the functions unrelated to Face Recognition Technology are necessary to perform
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1 essential City functions; and that the software, product, or device is unavailable without the
2 stock, manufacturer-installed Face Recognition Technology; and

3 (3) The ~~City Department obtains approval of~~ Board of Supervisors has approved a
4 Surveillance Technology Ordinance under this Chapter 19B where the software, product, or
5 device constitutes Surveillance Technology.

6 (h) A City Department that possesses Face Recognition Technology shall certify
7 annually compliance with subsections (e)-(l) and post that certification and the written findings
8 required by subsection (g) on the Department website.

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

19 (j) Nothing in this Chapter 19B shall be construed to obstruct the constitutional and
20 statutory powers and duties of the District Attorney, the Sheriff, the Chief Adult Probation
21 Officer, or the Chief Juvenile Probation Officer.

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

3 (l) Nothing in this Chapter 19B shall prohibit, restrict, or interfere with a Department's
4 use of Surveillance Technology to conduct internal investigations involving City employees,
5 contractors, and volunteers, or the City Attorney's ability to receive or use, in preparation for
6 or in civil or administrative proceedings, information from Surveillance Technology (excluding
7 Face Recognition Technology to the extent prohibited under Section 19B.2 .(d)(1) that any
8 City agency, department, or official gathers or that any other non-City entity or person gathers.

9 (m) Except as restricted by subsection (d) or expressly restricted in a Surveillance Technology
10 Policy developed pursuant to subsection (b)(2), nothing in this Chapter 19B shall prohibit or restrict a
11 Department from acquiring, borrowing, or sharing Surveillance Technology from a third party if the
12 Department does not use the Surveillance Technology or receive information or data acquired through
13 the third party's use of Surveillance Technology.

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15 **SEC. 19B.3. SURVEILLANCE IMPACT REPORT AND SURVEILLANCE**
16 **TECHNOLOGY POLICY SUBMISSION.**

17 (a) COIT shall post on COIT's website each Surveillance Impact Report submitted by
18 Departments under Section 19B.2(b)(1) and COIT's proposed Surveillance Technology Policy,
19 adopted recommendations to the Board of Supervisor's under Section 19B.2(b)(3), for each
20 Surveillance Technology Policy

21 (b) The Department ~~seeking~~ requiring approval under Section 19B.2 shall submit to the
22 Board of Supervisors the Surveillance Impact Report submitted to COIT, as required subsection
23 19B.2(b)(1), and request that the Board of Supervisors schedule a public hearing to consider the
24 report. The Board of Supervisors shall ~~and~~ publicly post on its ~~the Department~~ website ~~at~~ the
25 Surveillance Impact Report and any corresponding ~~a proposed~~ Surveillance Technology Policy

1 ordinance ~~introduced by the City Administrator at least 30 days prior to the public meeting where the~~
2 ~~Board will consider that Surveillance Technology Policy ordinance pursuant to Section 19B.2.~~

3 (c) Prior to the City Administrator's submitting the Surveillance Technology Policy
4 ordinance to the Board, the City Administrator or the City Administrator's designee shall require
5 that the Department ~~must first~~ (1) approve the policy, (2) submit the policy to the City Attorney
6 for review, and (3) submit the policy to the Mayor.

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9 **SEC. 19B.5. COMPLIANCE FOR EXISTING SURVEILLANCE TECHNOLOGY.**

10 (a) Each Department possessing or using Surveillance Technology before the effective
11 date of this Chapter 19B shall submit an inventory of its Surveillance Technology to COIT,
12 within 60 days of the effective date of this Chapter. COIT shall publicly post the inventory on
13 COIT's website.

14 (b) Each Department possessing or using Surveillance Technology before the effective
15 date of this Chapter 19B shall request that the City Administrator submit a proposed Surveillance
16 Technology Policy ordinance to the Board of Supervisors, in accordance with the procedures
17 set forth in subsection 19B.2(b), for each particular Surveillance Technology no later than ~~180~~
18 90 days following the completion of the steps required by Section 19B.3(c) effective date of this
19 Chapter, for review and approval by the Board by ordinance. A Department may request that the
20 City Administrator submit a Surveillance Technology Policy ordinance that includes multiple,
21 separate policies for each particular Surveillance Technology possessed or used before the
22 effective date of this Chapter 19B.

23 ~~(c) If a Department is unable to meet this 180-day timeline, the Department may notify the~~
24 ~~COIT in writing of the Department's request to extend this period and the reasons for that request.~~

1 ~~COIT may for good cause grant a Department extensions of up to 90 days per extension, beyond the~~
2 ~~180-day timeline to submit a proposed Surveillance Technology Policy.~~

3 (d) Each Department possessing or using Surveillance Technology before the
4 effective date of this Chapter 19B may continue its use of the Surveillance Technology and
5 the sharing of data from the Surveillance Technology until such time as the Board enacts an
6 ordinance regarding the Department's Surveillance Technology Policy and such ordinance
7 becomes effective under Charter Section 2.105.

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9 Section 2. The Board finds and declares that rather than constituting a change in the
10 law, the amendments in this ordinance to Administrative Code Sections 19B.2(a)(2),
11 19B.2(a)(3), 19B.2(a)(5), and 19B.2(m) are declaratory of existing law.

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13 Section 3. Effective Date. This ordinance shall become effective 30 days after
14 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
15 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
16 of Supervisors overrides the Mayor's veto of the ordinance.

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1 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
2 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
3 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
4 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
5 additions, and Board amendment deletions in accordance with the "Note" that appears under
6 the official title of the ordinance.

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

9 By: /s/ Jana Clark
10 JANA CLARK
11 Deputy City Attorney

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