

Memorandum

TO: SMART CITIES AND SERVICE
IMPROVEMENTS COMMITTEE

FROM: Dolan Beckel
Leland Wilcox
Rob Lloyd

SUBJECT: PRIVACY POLICY UPDATE

DATE: September 5, 2019

Approved



Date 21 August 2019

RECOMMENDATION

Approve the Privacy Policy Workplan.

BACKGROUND

In May 2018, the City engaged and received pro-bono guidance from the Harvard Cyberlaw Clinic (Harvard), part of the Berkman Klein Center for Internet & Society, to shape a strong approach to privacy in the City's adoption of new and data-centric technologies. Harvard's recommendations were to:

- (1) Develop a set of Privacy Principles through a combination of community engagement and subject matter expertise. The Harvard team noted that the privacy landscape is changing and that no true standard has emerged for communities to follow.
- (2) Use the Privacy Principles to develop a Privacy Policy for the City. The Harvard team noted that while few cities in the United States have developed both privacy principles and a privacy policy, there is a need for such policy to guide still-emerging uses of identifying technologies and data, as well as to address inaction by the Federal Government.

Privacy Principles Background

The City applied the Harvard recommendation and established a three-pronged approach to create and vet its Privacy Principles. The following actions were taken to advance this work:

- (1) **Creation of an Internal Privacy Working Group.** The Privacy Working Group is comprised of senior, cross-departmental staff from the City organization and receives and integrates input from public forums and the Privacy Advisory Taskforce.
- (2) **Creation of an External Advisory Taskforce.** The Privacy Advisory Taskforce meets quarterly with eight (8) members as subject matter experts from industry, nonprofits, and academia. Members provide guidance on the City's approach and the Privacy Principles.

- (3) **Engagement with the Broader Community.** Community input was gathered through a series of stakeholder interviews and public forums conducted in English, Spanish, and Vietnamese.

Upon conclusion of the community and expert input efforts, the Privacy Principles were presented to, and approved by, the Smart Cities and Service Improvements Committee (Committee) on June 6, 2019, and then referred to the City Council for approval.

City Council is scheduled to consider the Privacy Principles recommendation at the September 17, 2019 City Council meeting.

The Privacy Principles are:

- **We value privacy** - We affirm that privacy is an inherent human right. San José commits to fully evaluating risks to your privacy before collecting, using, or sharing your information.
- **We collect only what we need** - We collect only what is required to provide and improve City services and comply with the law. We seek community input about what information is used and collected.
- **We are open and transparent** - We are transparent about what information we collect, why we collect it, and how it is used. We commit to being open about our actions, policies, and procedures related to your data. We make our policy documents publicly available and easy to understand.
- **We give you control over your data** - We will provide you with the information to make an informed decision about sharing your data. We have clear processes that ensure data accuracy and provide you visibility into what data the City has collected from you.
- **We share only what we need** - We anonymize your information before we share it outside the City, except in very limited circumstances. Business partners and contracted vendors who receive or collect personal information from us or for us to deliver City services must agree to our privacy requirements.
- **We design for privacy and security** - We integrate privacy and security into our designs, systems, and processes. We commit to updating our technology and processes to effectively protect your information while under our care. We follow strict protocols in the event your information is compromised.

The Office of Civic Innovation also committed to returning to the Committee in September 2019 with a detailed workplan to advance the full Digital Privacy Policy in the next year.

Privacy Policy Development Background

The development of the City's Privacy Policy can be thought of in four phases:

- Phase 1 - Development of Privacy Principles;
- Phase 2 - Development of the Privacy Policy;
- Phase 3 - Implementation of the Privacy Policy and associated tools; and
- Phase 4 - Continuous evaluation and input, resulting in policy and process improvements.

The organizational approach taken for Phase 1 was successful in establishing the foundation needed to move into Phase 2 but was not sufficient with 0.25 FTE (Full-time Equivalent) of a Broadband Policy Analyst position to scale citywide reviews of technologies, nor develop the formal citywide Privacy Policy. To address this capacity issue, the Office of Civic Innovation partnered with the Office of Administration, Policy, and Intergovernmental Affairs, and the Information Technology Department as a joint City Manager's Office (CMO) Team to co-lead and manage the Privacy Policy Development (Phase 2).

Additionally, in the City's 2019-2020 fiscal year Operating Budget, City Council approved resourcing for one Full-time Equivalent (1.0 FTE) senior analyst position dedicated to process and product management, as well as supporting community outreach through periodic meetings.

The CMO Team will work together over the current fiscal year to advance Phase 2. It will consult throughout policy development with the Digital Privacy Working Group, the Privacy Advisory Taskforce, and key stakeholders in the community and City organization. Upon completion of Phase 2, the CMO Team will make recommendations to City Council pertaining to resource needs required for Phase 3 of this work.

ANALYSIS

Privacy Policy Development Approach

Throughout June and July 2019, the CMO Team explored best practices across government agencies to create an approach that leverages the lessons learned from privacy policy leaders in government but that is tailored to San José's needs. This review resulted in the identification of three key cities (the City of Seattle, the City of New York, and the City of Chicago) for the City of San José to benchmark against, with the City of Seattle being considered the pacesetter in local government privacy.

The City of Seattle has a fully formed Privacy Program that has evolved through various iterations—a function of their working on this issue since 2015—and Seattle has also embedded an equity lens within their Privacy Program to align with the Seattle's Race and Social Justice Initiative. Considering the comprehensive nature of Seattle's Privacy Program, the knowledge they can share after doing this work for five years, and its commitment to issues of equity in its evolving smart city projects (technologies), the City of San José will place special focus on the City of Seattle's lessons learned.

The City is also evaluating the adoption of the General Data Privacy Regulations (GDPR) by all European organizations. Many macro forces including corporate globalization, regulatory, and technology are driving towards GDPR as the best long-term privacy model. Beginning with the end in mind, San José should consider adopting GDPR as the guiding privacy policy framework.

Aeris, a Top 100 Internet of Things Technology Influencer based in Silicon Valley states, “Many businesses are choosing to design their products, processes, and systems to meet a single set of privacy requirements and are selecting GDPR as their global standard since it is a stricter set of rules than those in effect in many countries, including the United States.”

The City of Dublin, Ireland, has agreed to work closely with the City on this GDPR evaluation and path forward.

In compliance with the June 6, 2019 meeting of the Smart Cities and Service Improvements Committee’s direction to develop a workplan to build the City’s Privacy Policy, Attachment A provides the CMO Team’s Workplan for September 2019 – September 2020. The following sections address components of the Workplan. Please note that the schedule of activities is based on the CMO Team’s best estimate as of August 2019. Some activities are dependent on the completion of others and, as such, a delay in one activity may impact others. The hiring and onboarding of the privacy policy analyst, for instance, is a critical activity that the Office of Civic Innovation is focused on as it directly impacts all activities that follow. To ensure transparency and accountability, the CMO Team will bring back any Workplan modifications to the Smart Cities and Service Improvements Committee by March 2020.

Privacy Policy Deliverables

The purpose of the Privacy Policy Workplan is to both develop an overarching Citywide Privacy Policy that operationalizes the City’s Privacy Principles and to establish a sustainable privacy governance model. The CMO’s approach to this work is founded on the understanding that the City plays an important role in ensuring the protection of the populations it serves and especially in ensuring it neither creates nor perpetuates structural inequities. Grounded in this value, the policy development process will ensure the inclusion of community voices to help guide how (and what) data is collected and used. In defining what equity means in this space and specifically in San José, the CMO Team will consult the City’s Government Alliance on Race and Equity (GARE) members, experts in this field, as well as other cities and nonprofits working on equity issues related to privacy and digital technologies.

The CMO Team’s initial scan of best practices defined deliverables that it believes will create a comprehensive privacy policy. Please note that this list may be modified as additional research and community and key stakeholder engagement is conducted. The current deliverables include a:

- *Citywide Privacy Policy* document providing clear direction and requirements to departments, private sector partners, and the community regarding the collection and management of personally identifying information.

- *Citywide Data Retention Schedule* outlining a data retention and disposal schedule for various public records created or received by the City.
- *Privacy Impact Assessment Toolkit* creating a new review process called a Privacy Impact Assessment to identify and evaluate potential public privacy impacts of proposed partnerships and/or technologies and ways to mitigate those impacts as appropriate.
- *Training Framework for City Departments* to provide guidance to City staff to ensure broad understanding and application of privacy framework.
- *Master List of Sensing Technologies* compiling a list of sensing technologies (including audio and video) used by Department and with descriptions to ensure proper handling.
- *Sustainable Privacy Governance Model* establishing the responsible groups and/or individuals who must review new and existing projects using the privacy impact assessment process, along with authorities.
- *Stakeholder Engagement for Guidance and Feedback* to be conducted through periodic meetings and will include the community public forums, the external Advisory Taskforce, and the internal Privacy Working Group.

Privacy Policy Workplan

As mentioned above, the attached workplan and schedule, which is already underway, is the CMO Team's best estimate of the activities it will pursue over the current fiscal year that relates to Phase 2 of the City's Privacy Policy development.

On August 8, 2019, the draft workplan was reviewed with the Privacy Working Group, who provided feedback on the privacy policy development approach and workplan. Importantly, it was noted that more analysis must be performed to address implementation of the Privacy Policy framework and how it will impact City operations. As such, it is important to note that Phase 3 (Implementation) of the Privacy Policy is not accounted for in this fiscal year and may require additional resources and planning once Phase 2 is complete.

The CMO Team also expects to review and receive feedback from the Privacy Advisory Taskforce in early Fall 2019. This feedback may result in additional amendments to the workplan as currently written.

EVALUATION AND FOLLOW-UP

Moving from Privacy Principles to Privacy Policy and Implementation

The City's inclusive engagement approach for Phase 1 was effective to draft, amend, and finalize the Privacy Principles. To better leverage existing City expertise and capacity, the Office of Civic Innovation partnered with other City departments to create the CMO Team that will work on Phase 2 over the next fiscal year. The CMO Team is committed to reinforcing the role of the Privacy Advisory Taskforce, as well as the internal Privacy Working Group as policy development moves through Phase 2 and into Phase 3. Continuous process and policy

improvements will be considered upon completion of the Privacy Policy. Evaluation throughout the implementation process will be critical as this policy area is dynamic and technology and public opinion on these issues is always evolving.

The CMO Team will finalize project scoping and resourcing as well as complete research and analysis by the end of October 2019. As staff transition to developing solutions over the winter, the team will provide an information memo update to City Council by March 2020. Finally, an annual update to City Council is scheduled for June 2020 to assess our approach, deliverables, and set the path forward for Citywide Privacy Policy.

PUBLIC OUTREACH

Privacy Policy Public Engagement

Similar to the public engagement performed to evaluate the Privacy Principles, the CMO Team will continue community engagement throughout the workplan using periodic public forum meetings. Public engagement will initially concentrate on the City's new approach during the Fall of 2019 and will pivot to input on the Privacy Impact Assessment throughout the remainder of the fiscal year. Public forums will be conducted in English, Spanish, and Vietnamese and may utilize online feedback mechanisms for collecting comments.

COORDINATION

This memo was coordinated with members of the Privacy Working Group including the Office of the Mayor, the City Manager's Office, the City Attorney's Office, the Library Department, the Information Technology Department, and the Police Department.

FISCAL/POLICY ALIGNMENT

This recommendation aligns with the City's Broadband and Digital Inclusion strategy approved by the City Council in November of 2017.

CEQA

Not a Project, PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment, and PP17-004, Government Funding Mechanism, or Fiscal Activity with no commitment to a specific project which may result in a potentially significant physical impact on the environment.

SMART CITIES AND SERVICE IMPROVEMENTS COMMITTEE

September 5, 2019

Subject: Privacy Policy Development Update

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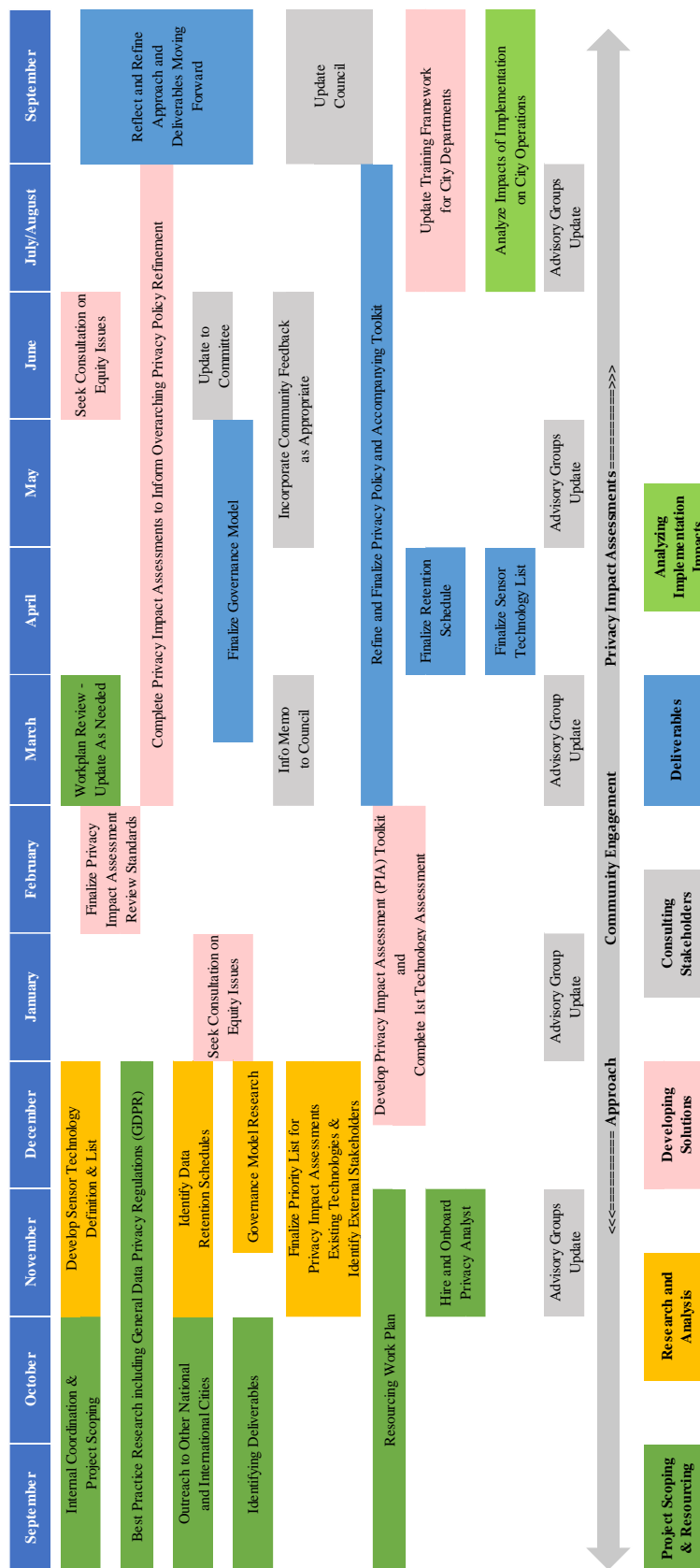
For questions, please contact J. Guevara, Broadband Manager, Office of Civic Innovation, at (408) 535-8123 or Sarah Zárate, Assistant to the City Manager, Office of Administration, Policy, and Intergovernmental Affairs, at (408) 535-5601.

Attachments:

A. Privacy Policy Workplan FY 2019-2020

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Privacy Policy Workplan FY 2019-2020



Last updated: 08/21/2019