COMMISSION
AGENDA MEMORANDUM   **Item No.**

       BRIEFING ITEM   **Date of Meeting**   September 10, 2019

DATE: August 5, 2019

TO: Stephen P. Metruck, Executive Director

FROM: Eric Schinfeld, External Relations; Veronica Valdez, Commission Office

SUBJECT: Biometrics Technology Study Session

EXECUTIVE SUMMARY

The purpose of this study session is to provide the Commission an overview of the state of biometrics and facial recognition technology. The advantages of these innovations for the Port of Seattle are clear: a faster, seamless, more convenient passenger processing experience, and access control for sensitive areas of Port facilities. Yet there are also many perceived concerns from the public and certain stakeholders: privacy, racial equity, cybersecurity and unforeseen uses that raise ethical questions.

Biometrics are already being used at Port facilities – by the Port and by its private sector and federal partners – and these technologies are on track for broader implementation, particularly with regard to travelers and passengers. For example, U.S. Customs and Border Protection (CBP) is working toward implementation of facial recognition technology for all international commercial air travelers within the next four years. Delta Air Lines and Royal Caribbean Cruises are some of the private sector leaders bringing this technology to their airport and cruise terminal passengers.

Therefore, it is incumbent on the Port to have a strategic and comprehensive understanding of how this technology works, how it might be used and key policy and regulatory issues that might need to be addressed. The study session will include expert panelists who will present on these aspects of biometrics and answer Commissioner questions.

BACKGROUND

"Biometric authentication" – otherwise known as "biometrics" – uses biological measurements or physical characteristics to identify individuals. Commonly biometrics include fingerprint mapping, facial recognition and voice recognition, but it also encompasses retina scans, the way someone sits and walks, unique body odors, and even facial contortions that can serve as unique identifiers.

Biometrics at Other Ports

As of April 2019, 19 airports were conducting some form of biometric exit implementation and 15 airports had implemented biometric entry; similarly, CBP has partnered with three major cruise lines (Royal Caribbean, Norwegian and MSC) at various ports throughout the country.

Local, State and Federal Policy
Strong policy frameworks and limitations around the use of biometrics are few and far between. Only a few individual jurisdictions at the local and state level have, or are considering, such interventions. However, there is clearly growing unease among certain lawmakers and interest groups about unregulated use of this technology.

A majority of those concerns center around the use of this technology in public spaces, where governments and law enforcement are using biometrics to monitor travelers and tracking movements of local residents without their awareness or consent. However, additional concerns also exist, including:
- How biometric data is stored, for how long and with what protections against cybercrimes or non-consensual selling of personal information;
- What access individuals should have to data collected and stored about themselves;
- How accurate the technology is related to non-white and/or non-male individuals, including women, people of color and transgender individuals; and
- The consequences in a wide variety of contexts of such misidentification.

Locally, the City of Seattle has an ordinance, passed in 2017, that requires the Seattle City Council to approve City departments' use of technologies that could be used for surveillance purposes, and set up a Community Surveillance Working Group to review and assess the technologies before they come up for the Council's approval. Recently, however, San Francisco took regulation much further by becoming the first major city to ban the use of facial recognition technology by city staff and departments; their legislation also required formal approval for acquisition and use of any other "surveillance technology". Several other smaller jurisdictions around the country are considering similar legislation.

At the state level, the 2019 Washington State legislative session saw consideration in the House and Senate of multiple proposals on biometric and facial recognition regulation – as part of a broader discussion of consumer and data privacy regulation. One of the initial legislative proposals was to ban local and state governments from using facial recognition until certain conditions were met, including a report by the state attorney general certifying that systems are equally accurate for people of differing races, skin tones, ethnicities, genders, or age. Ultimately, no legislation was passed, but there will be continuing momentum for at least a state-funded study of biometrics and facial recognition that includes suggestions for proposed policy and regulation.

The Washington Legislature's deliberation on this topic followed the California Legislature's 2018 passage of a data privacy law that is widely considered to be the most comprehensive in the country. The bill gives California residents new rights with regards to the ownership of their

data, including the right to be informed about what kinds of personal data companies collect, and why they have collected it. Consumers can also request deletion of personal information and opt out of its sale.

It is worth noting that airports and seaports are often cited as exempt from any local and state legislation because of federal pre-emption, but that is only true for the federal functions such as TSA and CBP; local governments still have the ability to restrict their own staff from either using or facilitating such technology.

Many advocacy nonprofits are taking strong positions that are aligned with San Francisco's efforts. For example, the American Civil Liberties Union – at both the Washington state level and nationally – have taken the position that there should be a moratorium on the use of facial recognition by governments until the technology has been fully proven to address all privacy and equity concerns; they also believe that more technology providers should stop selling such technology to governments until those same conditions have been met. Washington state is also home to a number of technology companies – such as Microsoft and Amazon – that are both in the business of developing biometric technologies and simultaneously calling for proper regulation of them.

ATTACHMENTS TO THIS BRIEFING

   None.

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

   None.