



COUNTY OF SAN MATEO
Inter-Departmental Correspondence

DATE: October 22, 2002

BOARD MEETING DATE: October 29, 2002

TO: Honorable Board of Supervisors

FROM: Supervisor Mark Church and Supervisor Mike Nevin

SUBJECT: Introduction of Ordinance Amending Chapter 5.140 of Title 5 of the San Mateo County Ordinance Code Relating to the Disclosure of Confidential Consumer Information by Financial Institutions and Extending the Date Such Chapter Will Become Effective, and Waiver of Reading of the Ordinance in its Entirety

Recommendation

Introduce an ordinance amending Chapter 5.140 of Title 5 of the San Mateo County Ordinance Code relating to the disclosure of confidential consumer information by financial institutions and extending the date such chapter will become effective, and waiver of reading of the ordinance in its entirety.

Background

On August 6, 2002, this Board adopted a consumer information protection ordinance that is the first of its kind in this state. The ordinance was designed to give individual citizens in unincorporated San Mateo County a real voice in decisions as to how their personal information is to be used by financial institutions which operate in the unincorporated County. The County's ordinance has been followed by similar ordinances in the City of Daly City and the County of Contra Costa. As you know, the Bank of America and Wells Fargo Bank and a number of their financial affiliates have filed a lawsuit to overturn the County and Daly City ordinances. The County intends to defend the ordinance vigorously.

Discussion

After reviewing the ordinance with County Counsel, I have concluded that certain amendments to the ordinance are in order. These amendments include limited substantive changes which would clarify the geographical "reach" of the ordinance and a provision extending the effective date of the provisions of the ordinance to September 1, 2003. Specifically, the amending ordinance proposed today would do the following:

1. Add a new subsection (a)(8) to section 5.140.020 (Definitions) to define a consumer's social security number as confidential consumer information protected under the ordinance.
2. Amend subsection (f) of section 5.140.020 (Definitions) to clarify that a "consumer" for purposes of the ordinance is a natural person residing in unincorporated San Mateo County.
3. Add a subsection (l) to section 5.140.020 (Definitions) to clarify that, in order to be covered by the provisions of the ordinance, a disclosure must be from a financial institution located in unincorporated San Mateo County.
4. Amend subsections (b) of section 5.140.040 (Notice and Consent), and add a new subsection (d) to section 5.140.040 (Notice and Consent) to allow notice and consent to be given electronically, as well as in writing, and to allow the required notices to be given at the same time and in the same manner as notices under the Gramm-Leach-Bliley Act.
5. Add a new section 5.140.100 (Effective Date) to make the provisions of Chapter 5.140 effective on September 1, 2003, instead of the current January 1, 2003 date.

The changes are intended to ensure that the provisions of the ordinance do not apply either to persons residing outside the unincorporated area, or to the facilities of financial institutions located outside the unincorporated area, thus ensuring that the ordinance does not offend the Commerce Clause of the United States Constitution. The changes are also intended to simplify the notice and consent provisions, allowing them to be implemented either in writing or electronically, and allowing coordination with the notice provisions now required of financial institutions under the federal Gramm-Leach-Bliley Act.

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Vision Alignment

Adoption of this ordinance ensures basic health and safety for all and supports Goal #7 to maintain and enhance the public safety of all residents and visitors.

Fiscal Impact

Adoption of the ordinance would have no impact to the County. However, litigation surrounding the ordinance and enforcement activities will have unknown costs. The approved administrative fines would offset some of the costs for enforcement.



Supervisor Mark Church



Supervisor Mike Nevin

cc: John L. Maltbie, County Manager