

1 DENNIS J. HERRERA, State Bar #139669
City Attorney
2 WAYNE K. SNODGRASS, State Bar #148137
Deputy City Attorney
3 City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
4 San Francisco, California 94102-4682
Telephone: (415) 554-4675
5 Facsimile: (415) 554-4699
E-Mail: wayne.snodgrass@sfcityatty.org

6 Attorneys for Defendant
7 CITY AND COUNTY OF SAN FRANCISCO

ELECTRONICALLY
FILED

Superior Court of California,
County of San Francisco

10/22/2021
Clerk of the Court
BY: EDNALEEN ALEGRE
Deputy Clerk

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

11 UNLIMITED JURISDICTION

12 HOPE WILLIAMS, NATHAN SHEARD, and
13 NESTOR REYES,

14 Plaintiffs,

15 vs.

16 CITY AND COUNTY OF SAN
FRANCISCO,

17 Defendant.

Case No. CGC-20-587008

**DEFENDANT CITY AND COUNTY OF SAN
FRANCISCO'S OPPOSITION TO
PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT**

Hearing Date: December 17, 2021
Time: 9:30 a.m.
Place: Dept. 302

Date Action Filed: October 7, 2020
Trial Date: February 22, 2022

Attachments:

--Separate Statement of Undisputed Material Facts
--Proof of Service

TABLE OF CONTENTS

1

2 TABLE OF AUTHORITIES3

3 INTRODUCTION4

4 ARGUMENT5

5 I. PLAINTIFFS’ MOTION MUST BE DENIED BECAUSE THE

6 ORDINANCE’S TEXT AND LEGISLATIVE HISTORY EXPRESSLY

7 ALLOW DEPARTMENTS TO CONTINUE USING “EXISTING

8 SURVEILLANCE TECHNOLOGIES” THAT THEY ALREADY WERE

9 USING WHEN THE ORDINANCE TOOK EFFECT5

 A. Plaintiffs Ignore Section 19B.5(d)’s Express Text.6

 B. Plaintiffs Ignore The Ordinance’s Legislative History8

10 CONCLUSION.....9

TABLE OF AUTHORITIES

State Cases

Common Cause v. Board of Supervisors
(1989) 49 Cal.3d 4327

Delaney v. Superior Court
(1990) 50 Cal.3d 7856, 7, 8

Freedom Newspapers, Inc. v. Orange County Employees Retirement System
(1993) 6 Cal.4th 8216, 7

People ex rel. Green v. Grewal
(2015) 61 Cal.4th 5446

San Francisco Statutes, Codes & Ordinances

S.F. Admin. Code

§§ 19B, et seq. [Acquisition of Surveillance Technology Ordinance] *passim*

§ 19B.2(a)4

§ 19B.2(a)(2).....4, 5, 7

§ 19B.2(a)(4).....4, 5, 7

§ 19B.5.....6

§ 19B.5(d).....4, 5, 6, 7, 8

S.F. Charter

§ 2.1056

INTRODUCTION

1
2 When San Francisco’s Board of Supervisors adopted Chapter 19B of the City’s Administrative
3 Code in 2019 to restrain City agencies’ use of surveillance technologies, they made a policy decision
4 to adopt a two-track approach. On the one hand, the Board enacted a general requirement that most
5 City departments must first obtain the Board’s approval, through the adoption of an ordinance
6 approving a “surveillance technology policy,” before the department may “acquir[e] or borrow[],”
7 “us[e],” or “[e]nter[] into agreement with a non-City entity to acquire, share, or otherwise use” any
8 surveillance technology. (S.F. Administrative Code [“SFAC”] Section 19B.2(a), subdivs. (2)-(4).) On
9 the other hand, however, the Board also enacted a transitional section in Chapter 19B, in order to
10 address surveillance technologies that City departments already used before Chapter 19B became
11 effective. That transitional section, found at SFAC Section 19B.5(d), states that “[e]ach Department
12 possessing or using Surveillance Technology before the effective date of this Chapter 19B may
13 continue its use of the Surveillance Technology ... until such time as the Board enacts an ordinance
14 regarding the Department’s Surveillance Technology Policy and such ordinance becomes effective[.]”
15 (*Id.*) Chapter 19B’s legislative history confirms that that Chapter 19B “allow[s] Departments
16 possessing or using Surveillance Technology to continue to use the Surveillance Technology, and
17 share information from the Surveillance Technology, until the Board enacted a Surveillance
18 Technology Policy ordinance.” Therefore, Chapter 19B temporarily grandfathers in departments’
19 ability to continue to use surveillance technologies that they already used before Chapter 19B took
20 effect.

21 Plaintiffs’ motion for summary judgment fails because it ignores the basic canons of statutory
22 interpretation, and seeks to interpret Chapter 19B in a manner that Chapter 19B’s text and legislative
23 show the Board did not intend. Plaintiffs seek to read the transitional provision found at Section
24 19B.5(d) out of Chapter 19B, leaving only the general prohibition found at Section 19B.2(a). But this
25 Court cannot, and should not, do so. The Court must interpret Chapter 19B as a whole, giving
26 meaning, if possible, to every one of its provisions. The Court should give meaning to both the
27 general prohibition *and* to the transitional provision, allowing the latter to control in the specific
28 circumstance – which this case clearly presents – of a surveillance technology that the San Francisco

1 Police Department already used before Chapter 19B took effect in July 2019, and as to which, during
2 the May and June 2020 time period at issue here, the Board had not adopted a Surveillance
3 Technology Policy ordinance. Plaintiffs ask this Court to render Section 19B.5(d) a nullity, but this
4 Court should decline the invitation.

5 The City requests that plaintiffs’ motion for summary judgment be denied, and that the City’s
6 motion be granted.

7 ARGUMENT

8 **I. PLAINTIFFS’ MOTION MUST BE DENIED BECAUSE THE ORDINANCE’S TEXT 9 AND LEGISLATIVE HISTORY EXPRESSLY ALLOW DEPARTMENTS TO 10 CONTINUE USING “EXISTING SURVEILLANCE TECHNOLOGIES” THAT THEY 11 ALREADY WERE USING WHEN THE ORDINANCE TOOK EFFECT**

12 Plaintiffs claim that they are entitled to judgment as a matter of law based on their assertion
13 that the SFPD “acquired, borrowed, and used USBID’s camera network, and entered into an
14 agreement with USBID to do so,” in violation of San Francisco Administrative Code (“SFAC”)
15 Section 19B.2(a), subds. (2)-(4). (Mem. of Pts. & Auth. in Supp. of Plntff. Mtn. for Summ. J.
16 [“Motion”], at 11:6-10.) Plaintiffs contend that because the SFPD “lacked Board [of Supervisors]
17 approval to take any of these actions,” SFPD’s use of USBID’s camera network during the George
18 Floyd protests in late May and early June 2020 violated the Surveillance Technology Ordinance (the
19 “Ordinance”) as a matter of law.

20 For multiple reasons, however, plaintiffs’ Motion relies on a blinkered and selective
21 interpretation of the Ordinance. Plaintiffs ask this Court to interpret the Ordinance as immediately
22 prohibiting each City department from continuing to use any surveillance technologies that the
23 department already used before the Ordinance took effect, and to ignore the Ordinance’s plain text and
24 legislative history – each of which shows that the Board of Supervisors’ intention was more nuanced,
25 and sought to avoid the disruption to departmental operations that would result if all further use of
26 existing surveillance technologies had to immediately cease as soon as the Ordinance came into effect.
27 This Court should reject plaintiffs’ invitation to read into the Ordinance an intention that the Board
28 clearly did not have.

1 **A. Plaintiffs Ignore Section 19B.5(d)'s Express Text.**

2 First, and most importantly, plaintiffs' Motion fails because it ignores the Ordinance's plain
3 language. This Court's inquiry begins with the Ordinance's plain text, because "the language the
4 [Board of Supervisors] chooses best indicates its intent." (*People ex rel. Green v. Grewal* (2015) 61
5 Cal.4th 544, 559; *Freedom Newspapers, Inc. v. Orange County Employees Retirement System* (1993)
6 Cal.4th 821, 826.) "If the language is clear and unambiguous there is no need for construction, nor
7 is it necessary to resort to indicia of the intent of the Legislature (in the case of a statute)..." (*Delaney*
8 *v. Superior Court* (1990) 50 Cal.3d 785, 798.)

9 The Ordinance's plain text requires that plaintiff's Motion be denied. As the City has
10 explained in its own Motion for Summary Judgment, the Ordinance contains a specific section –
11 SFAC Section 19B.5(d) – that expressly addresses how the Ordinance applies to any "existing
12 surveillance technology" that a City department was already "possessing or using" before Chapter 19B
13 took effect. Section 19B.5 sets forth special rules to govern the ongoing use of such "existing
14 surveillance technology," which differ significantly from the Ordinance's general prohibition against
15 the use of surveillance technologies absent Board approval that plaintiffs' Motion relies on.

16 Contrary to plaintiff's Motion, Section 19B.5(d) expressly authorizes City departments to
17 *continue* using any such "existing surveillance technology" that they were already using before the
18 Ordinance became effective. Section 19B.5(d) states that each such "existing" surveillance technology
19 that a City department already possesses or uses is effectively grandfathered in, and the department
20 may continue to use that surveillance technology, until such time as the Board enacts an ordinance
21 concerning that surveillance technology, *and* that ordinance takes legal effect under the Charter. (*Id.*,
22 § 19B.5.) Chapter 19B states that

23 [e]ach Department possessing or using Surveillance Technology before the
24 effective date of this Chapter 19B may continue its use of the Surveillance
25 Technology and the sharing of data from the Surveillance Technology until such
26 time as the Board enacts an ordinance regarding the Department's Surveillance
27 Technology Policy and such ordinance becomes effective under Charter Section
28 2.105.¹

27 ¹ Section 2.105 of the City Charter states the general rule that in order to allow time for the
28 qualification of a referendum as authorized by the California Constitution, "ordinances shall take
effect no sooner than 30 days following the date of passage[.]" (*Id.*)

1 (SFAC § 19B.5(d) [Ex. A to Declaration of Wayne Snodgrass in Support of Defendant’s Motion for
2 Summary Judgment [“Snodgrass Decl.”]] [emphasis added].)

3 In its own Motion for Summary Judgment, the City has already demonstrated that before the
4 Ordinance took effect in July 2019, SFPD already had used USBID’s camera network during the 2019
5 Pride Parade in late June 2019. (*See* Def’s Sep. Stmt. of Undisp. Mat’l Facts in Supp of Mtn. for
6 Summ. J., UMFs 3-6, 8.) Indeed, plaintiffs’ failure to cite Section 19B.5(d) is surprising, because
7 plaintiffs themselves acknowledge in their Motion that the SFPD had already used USBID’s camera
8 network before the Ordinance took effect. (Motion at 16:7-10 [stating that SFPD used USBID’s
9 camera network during the 2019 Pride Parade, before “enactment of the Ordinance”]; Plaintiffs’ UMF
10 No. 4 [stating that the Ordinance “went into effect in July 2019”].)

11 Section 19B.5(d) specifically addresses a City department’s ongoing use of a surveillance
12 technology that that department was already using when the Ordinance took effect. It thus is that
13 section, not the more general prohibition on uses of surveillance technology without Board approval
14 set forth in Section 19B.2(a), subds. (2)-(4), that governs this case. (*Freedom Newspapers, Inc.*,
15 *supra*, 6 Cal.4th at p. 827 [“to the extent a specific statute is inconsistent with a general statute
16 potentially covering the same subject matter, the specific statute must be read as an exception to the
17 more general statute”]; *Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 443.)

18 The text of Section 19B.5(d) is clear and unambiguous in its meaning. As that Section makes
19 clear, until the Board of Supervisors has addressed a department’s use of “existing surveillance
20 technology” by adopting an ordinance concerning that technology, and that ordinance has taken effect,
21 the department is free to continue its use of that particular technology. Because the statutory text is
22 clear, the Court’s statutory interpretation inquiry is at an end. (*Delaney, supra*, 50 Cal.3d at p. 798.)
23 The Court should simply apply Section 19B.5(d) as written.

24 Under Section 19B.5(d)’s plain language, it is the City, not plaintiffs, who is entitled to
25 judgment as a matter of law. The summary judgment record shows that it is undisputed that:

- 26 (1) the 2019 Pride celebration occurred on June 29 and June 30, 2019;
- 27
- 28

- 1 (2) before that celebration occurred, SFPD asked USBID to allow it to access cameras in
2 USBID’s surveillance camera network, and USBID agreed and granted SFPD such
3 access;
- 4 (3) Chapter 19B took effect in July 2019; and
- 5 (4) at the time that the SFPD sought and was given access to the USBID camera network
6 during the George Floyd protests in late May and early June, 2020, the Board of
7 Supervisors had not enacted an ordinance concerning SFPD’s Surveillance Technology
8 Policy with regard to non-city surveillance cameras.

9 Under Section 19B.5(d)’s plain text, therefore, it is the City, not plaintiffs, that is entitled to
10 summary judgment.

11 **B. Plaintiffs Ignore The Ordinance’s Legislative History.**

12 Section 19B.5(d)’s text is clear and unambiguous, making resort to other indicia of the Board
13 of Supervisors’ intent, such as the Ordinance’s legislative history, unnecessary. (*Delaney, supra*, 50
14 Cal.3d at p. 798.) Nevertheless, even if the Court perceived some ambiguity in the Ordinance’s text,
15 the Ordinance’s legislative history further defeats plaintiff’s Motion. That legislative history shows
16 that at the time the Board was considering the adoption of the proposed legislation that became
17 Chapter 19B, the Board was expressly told, and thus understood, that Chapter 19B would allow any
18 City department that already had used or was using a particular kind of surveillance technology before
19 Chapter 19B became effective to continue to use that technology, until such time as the Board adopted
20 an ordinance regulating it. As the Legislative Digest that was provided to all members of the Board in
21 the legislative packet explained,

22 [t]his ordinance would allow Departments possessing or using Surveillance
23 Technology to continue to use the Surveillance Technology, and share
24 information from the Surveillance Technology, until the Board enacted a
Surveillance Technology Policy ordinance, following [the Committee on
Information Technology’s] development of a policy and recommendation.

25 (Legislative Digest [pages numbered 70-71 in Legislative Packet submitted to Board of Supervisors
26 dated June 4, 2019, in Board File No. 190568] [exhibit B to Snodgrass Decl.].)

27 The legislative history of Chapter 19B thus bolsters the conclusion – which is already
28 unavoidable based on the plain text of Section 19B.5(d) – that in enacting the Ordinance, the Board of

1 Supervisors did not intend to shut down or constrict a City department’s ongoing use of a particular
2 surveillance technology that that department already used before the Ordinance took effect in July
3 2019, at least until such time as the Board adopts legislation regulating that technology and that
4 legislation takes effect. Because it is undisputed that the SFPD already used USBID’s camera network
5 before Chapter 19B took effect, and that the Board had not adopted any legislation regulating SFPD’s
6 use of USBID’s camera network at the time of the George Floyd protests in May and June 2020, the
7 SFPD’s use of USBID’s camera network was effectively grandfathered in during that time. As a
8 matter of law, therefore, the City did not violate Chapter 19B through SFPD’s acts concerning
9 USBID’s camera network in May and June 2020.

10 **CONCLUSION**

11 The City respectfully requests that plaintiffs’ motion for summary judgment be denied, and
12 that the City’s motion for summary judgment be granted.

13
14 Dated: October 22, 2021

15 DENNIS J. HERRERA
16 City Attorney
17 WAYNE K. SNODGRASS
18 Deputy City Attorney

19 By: s/Wayne K. Snodgrass
20 WAYNE K. SNODGRASS

21 Attorneys for Defendant
22 CITY AND COUNTY OF SAN FRANCISCO
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