



September 9, 2022

Mayor London Breed
Supervisor Connie Chan
Supervisor Catherine Stefani
Supervisor Aaron Peskin
Supervisor Gordon Mar
Supervisor Dean Preston
Supervisor Matt Dorsey
Supervisor Myrna Melgar
Supervisor Rafael Mandelman
Supervisor Hillary Ronen
Supervisor Shamann Walton
Supervisor Ahsha Safai
San Francisco Board of Supervisors
City Hall, 1 Dr. Carlton B. Goodlett Place
San Francisco, California

Re: Continued Opposition to SFPD Proposal for Live Surveillance Using Private Cameras

Dear Members of the Board of Supervisors,

We are a coalition of community-based civil and human rights groups writing to express our continued opposition to the San Francisco Police Department’s (“SFPD”) proposed ordinance to expand surveillance through the exploitation of private, or non-city entity, cameras. **We urge you to significantly amend this ordinance, or at minimum, delay the Rules Committee vote on this policy to allow time to sufficiently vet its potential**

public safety and civil liberties impacts and ensure there are metrics for assessing the efficacy of the program. Passing this ordinance as-is will allow for widespread surveillance of San Francisco residents based on an unsubstantiated claim that cameras increase public safety.

The amendments that recently have been proposed by the Mayor’s office, which include a one-year pilot for the SFPD to conduct live surveillance, do not address our concerns that thousands of private cameras will be used to surveil constitutionally protected speech and blanket entire neighborhoods under pre-emptive, indefinite live surveillance. We remain deeply concerned that SFPD’s proposal, whether approved as written or with the Mayor’s amendments, threatens the privacy and safety of people going to work and school, accessing safe housing and seeking social services that make our city healthy and safe. **San Francisco residents overwhelmingly agree — a recent independent poll shows 60% of likely November 2022 voters, across major demographic and partisan lines, oppose giving the SFPD live access to surveillance cameras at private businesses, in public streets and spaces, and people’s homes,**¹ including a majority of voters in each of your districts. San Franciscans also turned out in droves at previous hearings on SFPD’s proposal to voice their opposition, with dozens of residents providing public comment against the proposal and nearly 700 people signing an opposition letter. The San Francisco Chronicle Editorial Board shared the public’s concerns, warning that “anger over S.F. property crimes isn’t worth throwing away our privacy rights.”²

If the SFPD asked the city to buy thousands of new cameras for live surveillance, residents and the Board would be rightly alarmed. The SFPD’s proposal to exploit private surveillance cameras should be met with the same skepticism. It massively expands police surveillance, but instead of using city owned cameras, the SFPD can quickly appropriate thousands of private feeds focused on homes, medical clinics, non-profit groups, and even places of worship. The SFPD could also access the hundreds of networked cameras that are part of Business Improvement Districts across the city.

¹ Ben Tulchin & Corey Teter, “Recent Polling Finds Strong Majority of San Francisco Voters Opposes Expanding the SFPD’s Surveillance Powers,” Tulchin Research (May 3, 2022) https://www.aclunc.org/sites/default/files/Tulchin_Poll_SF_Police_Surveillance_Powers.pdf.

² Editorial Board, “Editorial: Anger over S.F. proper crimes isn’t worth throwing away our privacy rights,” S.F. Chronicle (July 24, 2022), available at <https://www.sfchronicle.com/opinion/editorials/article/Anger-SF-property-crime-privacy-17323807.php>.

The city's Surveillance Technology Ordinance states that the Board may approve a surveillance technology proposal only if its benefits outweigh its costs, if the proposed policy will safeguard civil liberties and civil rights, and if the technology's use will not have a disparate impact on any community or protected class.³ Despite the new amendments, the SFPD has failed to present evidence that its proposal meets this high standard. We urge you to withhold approval for this ordinance unless it is significantly amended to prevent unprecedented live surveillance; require robust auditing and reporting on the SFPD's camera pilot program if implemented; protect free expression; limit access, retention, and sharing of camera footage; and clarify the process of how the SFPD accesses cameras.

1. The Board must prevent the SFPD from using private cameras to monitor people and stockpile footage of people going about their daily lives.

Our foremost concern is that the proposal would allow the SFPD to engage in unprecedented live surveillance of San Francisco residents and visitors engaged in everyday activities.

The proposal broadly permits the SFPD to monitor people engaged in a wide array of peaceful activities. Specifically, the proposal dramatically lowers the standard needed for live surveillance by permitting the SFPD to tap into private cameras in response to any violation of criminal law, including misdemeanors. This would encourage the SFPD to cast an extremely large surveillance net to monitor activities completely unrelated to public safety. For example, under the proposal the SFPD could conduct sweeping surveillance for non-dangerous unlawful activities like railroad fare evasions,⁴ posting an advertisement on city or county property without authorization,⁵ or disturbing a religious service with "rude or indecent behavior,"⁶ all of which are misdemeanors under California law. This broad authority invites the constant activation of live camera surveillance that will not only further criminalize Black people, activists, immigrants, LGBTQ people, Muslims, and other communities frequently targeted by the police and government, but will also expose thousands of San Franciscans to live camera

³ S.F. Admin Code §19.B4 ("Standard for Approval").

⁴ Ca. Penal Code §587(c),

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN§ionNum=587c.

⁵ Ca. Penal Code §556,

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN§ionNum=556.

⁶ Ca. Penal Code §302,

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN§ionNum=302.

surveillance as they commute to work and school, seek social services, and attend houses of worship.

The SFPD's proposal would also permit the department to request camera footage from a private camera owner if the SFPD believes it to be relevant to a criminal investigation. However, the proposal places no limits on how much video the SFPD can obtain. The proposal fails to specify the need for the SFPD to retain and disclose exculpatory evidence, as well as the need to delete any data unrelated to a criminal investigation or exculpatory evidence within 90 days. Because of this lack of clarity, the SFPD may still be able to request and save large troves of footage, including of peaceful activity, as it did when it obtained 12 hours of video of the 2020 George Floyd protests.⁷

The Board must amend the proposed policy to a) limit live camera surveillance to situations involving a threat of injury or death, also known as exigent circumstances; b) ensure there is a meaningful time limitation on any live surveillance; and c) only allow the SFPD to access the specific portions of footage that contain evidence relevant to evidence of a crime or exculpatory information, and if it ultimately does not, to delete it within 90 days.

2. The Board must prevent the SFPD from using private cameras to track people exercising First Amendment rights.

The SFPD's proposal would allow officers to monitor in real-time any "significant event," which is vaguely defined to include any "large or high-profile event[]." Using this broad authority, the SFPD could surveil any large gathering of people in San Francisco, including the crowds that gather for the Pride Parade, street markets, and other political and civic events. This is not a hypothetical threat — the SFPD has a long history of spying on protests for justice and equality, including the George Floyd protests in 2020. While the proposed policy purports to limit surveillance of First Amendment activity, it does not actually do so, and would allow such surveillance wherever there is a need for "placement of police personnel due to crowd sizes," a near certainty during any political protest or large civic event.

Surveillance of protests increases the likelihood of police intimidation, suppression, and retaliation against organizers. It also threatens to chill the exercise of core First

⁷ Dave Maass & Matthew Guariglia, "San Francisco Police Accessed Business District Camera Network to Spy on Protestors," EFF Deeplinks (July 27, 2020), <https://www.eff.org/deeplinks/2020/07/san-francisco-police-accessed-business-district-camera-network-spy-protestors>.

Amendment rights in San Francisco, a city with a celebrated decades-long history of protest. The Board must amend the policy to strictly limit the SFPD from using live camera surveillance during First Amendment activities.

3. The Board must limit the SFPD's ability to share video footage with law enforcement agencies whose policies and laws are at odds with San Francisco's values.

The SFPD's proposal allows for entanglement with law enforcement agencies and prosecutors in other states. The Mayor's proposed amendments restrict the SFPD's ability to share video footage with other California law enforcement agencies, but places no limitation on that footage from being further shared with law enforcement agencies outside of California, including federal agencies. This would allow the SFPD to share footage with federal government agencies involved in immigration enforcement or out-of-state prosecutors seeking to enforce bans on reproductive or gender-affirming care.

A person in San Francisco should not have to worry that the SFPD will disclose video footage of them exercising fundamental rights in the city to another California agency that could pass along information to out-of-state or federal agencies for potential use in an unjust prosecution. Despite the Mayor's amendments, the SFPD's proposal presents a threat to people seeking refuge in the city. The Board must amend the proposal to prohibit the SFPD from sharing camera footage with California agencies unless they agree to prohibit further sharing with out-of-state and federal agencies.

4. The Board must clarify how the SFPD will request and access private cameras.

The SFPD's proposal does not define any process by which an officer will contact the camera owner, request access, provide the justification, or obtain meaningful consent on a case-by-case basis. Without any such process, the policy will incentivize arbitrary and potentially coercive requests, placing undue pressure on camera owners and leading to public confusion. Requiring the SFPD to clearly and consistently explain its requests will also avoid placing additional pressure on a camera owner, especially a homeowner with a doorbell camera, to consent.

5. If the Board decides to enact the proposed one-year pilot, it must ensure the program safeguards civil rights and civil liberties, and require the SFPD to identify metrics for how success will be determined.

San Franciscans should not have to give up their basic liberties for a one-year experiment: there is no such thing as a “no civil rights pilot program.” If the Board approves a one-year pilot, it still must limit authorization for live surveillance to exigency; protect First Amendment activity; and limit access, retention, and sharing of camera footage.

The Board also must require robust auditing and reporting on the frequency and efficacy of the SFPD’s use of private cameras, and require the SFPD to identify metrics for how success will be determined. Despite the SFPD’s claims that broader access to camera surveillance will resolve public safety concerns in neighborhoods like the Tenderloin, there is scant evidence that surveillance cameras actually reduce crime. In fact, a UC Berkeley study of a previous SFPD camera surveillance pilot program found it ineffective and invasive, with cameras failing to prevent or reduce violent crime, including homicides, while having *no* effect on drug offenses.⁸ If the SFPD is permitted to move forward with its proposal, it is critical that robust auditing and reporting mechanisms are put in place to allow independent researchers to assess the impact of the program on the public, including any civil rights and civil liberties impacts and whether the program has any effect on crime rates.

Conclusion

We urge the Board to take seriously the opposition of San Francisco voters to increased live police surveillance, and we appreciate the Board’s thoughtful consideration of our concerns as the Surveillance Technology Ordinance requires. At bottom, the SFPD’s proposal is not a public safety solution, as the department claims, but an expansion of police power that history and common sense demonstrates will fuel inequality and criminalization without a justifiable public safety benefit. The SFPD’s proposal does not meet the high standard for approval required by the Surveillance Technology Ordinance. The Board should not approve it without amendments that address the above concerns, or at minimum, delay vote to allow time to vet the proposal’s potential public safety and

⁸ Jennifer King et al., *CITRIS Report: The San Francisco Community Safety Camera Program - An Evaluation of the Effectiveness of San Francisco's Community Safety Cameras* (Dec. 17, 2008), available at <https://ssrn.com/abstract=2183381>.

civil liberties impacts and ensure there are metrics for assessing the efficacy of the pilot program.

Signed,

Accountability Associates
ACLU of Northern California
All of Us or None
Asian Americans Advancing Justice – Asian Law Caucus
Aztlan Media
California Immigrant Policy Center
Causa Justa :: Just Cause
Central American Resource center of Northern California – CARECEN SF
Chinese for Affirmative Action
Community Resource Initiative
Council on American-Islamic Relations, San Francisco Bay Area
Electronic Frontier Foundation
Freedom Archives
GLIDE
La Raza Community Resource Center
Lawyers’ Committee for Civil Rights of the San Francisco Bay Area
Media Alliance
National Center for Lesbian Rights
National Lawyers Guild - Bay Area Chapter
Oakland Privacy
Racial Justice Committee
San Francisco Public Defender’s Office
Tech Workers Coalition Bay Area
United to Save the Mission

CC: David Chiu, San Francisco City Attorney
Chief William Scott, San Francisco Police Department
Brooke Jenkins, San Francisco District Attorney
Manohar Raju, San Francisco Public Defender