

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

09/16/2021
Clerk of the Court

BY: SANDRA SCHIRO
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
NESTOR REYES,

13 Plaintiff,

14 vs.

15 CITY AND COUNTY OF SAN
16 FRANCISCO,

17 Defendant.

Case No. CGC-20-587008

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANT CITY AND COUNTY OF SAN
FRANCISCO'S 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

TABLE OF CONTENTS

1

2 TABLE OF AUTHORITIES4

3 INTRODUCTION5

4 STATEMENT OF FACTS6

5 I. JUNE 2019: SFPD REQUESTS AND IS GIVEN ACCESS TO THE

6 SURVEILLANCE CAMERA NETWORK OWNED AND OPERATED BY

7 THE UNION SQUARE BUSINESS IMPROVEMENT DISTRICT6

8 A. The Union Square Business Improvement District and Its Surveillance

9 Camera Network.6

10 B. SFPD Requests And Obtains Access To USBID’s Surveillance Camera

11 Network For The 2019 Pride Parade7

12 II. JULY 2019: SAN FRANCISCO’S ACQUISITION OF SURVEILLANCE

13 TECHNOLOGY ORDINANCE TAKES EFFECT7

14 A. Prohibition on Facial Recognition Technology.8

15 B. Process for the Board of Supervisors to Approve “Surveillance

16 Technology Policies” Concerning Each Surveillance Technology.8

17 C. Grandfathering in of Existing Surveillance Technologies until an

18 Ordinance Approving Their Use is Adopted and Becomes Effective.9

19 D. The Legislative Digest States That Departments May Continue To Use

20 Any Surveillance Technology That They Were Already Using When

21 Chapter 19B Took Effect Until The Board Adopts An Ordinance

22 Regulating The Use of That Surveillance Technology.....9

23 III. MAY -- JUNE 2020: AFTER LOOTING OF UNION SQUARE BUSINESSES,

24 SFPD AGAIN REQUESTS AND IS GIVEN ACCESS TO USBID’S

25 SURVEILLANCE CAMERA NETWORK10

26 IV. PLAINTIFFS COMMENCE THIS LAWSUIT SOLELY ALLEGING

27 VIOLATIONS OF CHAPTER 19B12

28 V. THE BOARD OF SUPERVISORS HAS NOT YET ENACTED AN

ORDINANCE REGARDING SFPD’S SURVEILLANCE TECHNOLOGY

POLICY AS TO NON-CITY ENTITY SURVEILLANCE CAMERAS12

ARGUMENT13

I. THE UNDISPUTED EVIDENCE SHOWS THAT SFPD ALREADY USED

USBID’S CAMERA NETWORK BEFORE CHAPTER 19B TOOK EFFECT,

AND IT THUS WAS PERMITTED TO CONTINUE DOING SO UNTIL THE

BOARD ENACTS AN ORDINANCE REGULATING NON-CITY

SURVEILLANCE CAMERAS13

A. The Plain Meaning of Section 19B.5(d) Dictates That The City is

Entitled To Judgment as a Matter of Law.....13

B. Chapter 19B’s Legislative History Bolsters The Conclusion That SFPD,

As A Matter of Law, Did Not Violate That Chapter.15

1 C. Section 19B.2(a) Does Not Apply Here.16
2 CONCLUSION.....18
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

State Cases

Bettencourt v. City and County of San Francisco
(2007) 146 Cal.App.4th 109013

Gualala Festivals Committee v. California Coastal Commission
(2010) 183 Cal.App.4th 6013, 15

Tuolomne Jobs & Small Business Alliance v. Superior Court
(2014) 59 Cal.4th 102917

Turner v. Association of American Medical Colleges
(2011) 193 Cal.App.4th 104717

San Francisco Statutes, Codes & Ordinances

S.F. Admin. Code

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

§ 19B.18

§ 19B.2(a)8, 16, 17

§ 19B.2(a)(2)12, 16, 17

§ 19B.2(a)(3)12, 16, 17

§ 19B.2(a)(4)12, 16, 17

§ 19B.2(d)8

§ 19B.38

§ 19B.3(a)8, 9

§ 19B.49

§ 19B.59, 13, 16, 17

§ 19B.5(a)9

§ 19B.5(b)9

§ 19B.5(d) *passim*

S.F. Charter

§ 2.1059, 14

INTRODUCTION

1
2 This case arises under a San Francisco law, the “Acquisition of Surveillance Technology
3 Ordinance,” that the San Francisco Board of Supervisors enacted in 2019. That law, codified at
4 Chapter 19B of San Francisco’s Administrative Code, generally seeks to regulate most City
5 departments’ use of so-called “surveillance technologies” – a term that the law broadly defines to
6 include, among many other things, surveillance cameras. Concerned about the possible effects of
7 increased use of surveillance technologies upon civil rights and civil liberties, particularly of persons
8 from historically disadvantaged or marginalized communities, the Board of Supervisors sought to
9 bring City departments’ use of surveillance technologies under the Board’s oversight. At the same
10 time, however, the Board sought to avoid unnecessarily upending the manner in which City
11 departments were already conducting their operations at the time Chapter 19B came into effect. For
12 that reason, the law expressly states that where a City department already had used a particular type of
13 surveillance technology before Chapter 19B took effect, the department “may continue its use of the
14 Surveillance Technology ... until such time as the Board enacts an ordinance regarding the
15 Department’s Surveillance Technology Policy” as to that particular type of surveillance technology.
16 (S.F. Admin. Code, § 19B.5(d).) Chapter 19B thus represents a balance of competing legislative
17 goals, reflecting the Board’s desire to regulate City departments’ use of surveillance technologies, but
18 not by immediately depriving City departments of the tools they already had come to use. The balance
19 the Board of Supervisors struck is an exercise of the Board’s legislative judgment, and should be
20 accorded respect by this Court.

21 Plaintiffs are among the thousands of individuals who took to San Francisco streets in protest
22 after the police killing of George Floyd in Minneapolis in late May 2020. They contend that the San
23 Francisco Police Department violated Chapter 19B during the George Floyd protests when, following
24 rioting and looting of commercial businesses in Union Square on May 30, 2020, the SFPD requested
25 and received access to a network of surveillance cameras owned and operated by the Union Square
26 Business Improvement District (“USBID”). SFPD sought that access in case further looting or civil
27 unrest occurred in Union Square in the days immediately following May 30. (It did not.)
28

1 Plaintiffs’ single cause of action is legally untenable, however, because the SFPD’s use of
2 USBID’s surveillance camera network falls squarely within the temporary “safe harbor” established
3 by Section 19B.5(d), quoted above. By the time Chapter 19B took effect in July 2019, SFPD already
4 used USBID’s surveillance cameras to monitor public gatherings occurring in the Union Square area –
5 namely, San Francisco’s 2019 Pride celebration, which took place in June 2019. Section 19B.5(d)
6 thus authorized the SFPD to again use USBID’s camera network, at least until the Board of
7 Supervisors enacted an ordinance regarding SFPD’s Surveillance Technology Policy as to the use of
8 such non-city owned surveillance cameras. And as of May and June 2020, the Board had not enacted
9 any such ordinance. The SFPD’s conduct in requesting and receiving access to USBID’s camera
10 network in late May and early June 2020 did not, and could not, constitute a violation of Chapter 19B.

11 Because plaintiffs’ single cause of action is legally meritless, the City is entitled to summary
12 judgment. This is so not because SFPD’s actual viewing of images captured by USBID’s camera
13 network was minimal, although it was: a single SFPD officer looked at the camera feed only a handful
14 of times over the eight-day period in question, and did so very briefly, because a quick look sufficed to
15 see that there was no further looting or violence taking place in Union Square. Instead, the City is
16 entitled to summary judgment because, under the undisputed facts of this case, SFPD’s use of
17 USBID’s camera network was effectively grandfathered in during the May-June 2020 time period in
18 question. The City respectfully requests that its motion for summary judgment be granted.

19 **STATEMENT OF FACTS**

20 **I. JUNE 2019: SFPD REQUESTS AND IS GIVEN ACCESS TO THE SURVEILLANCE CAMERA NETWORK OWNED AND OPERATED BY THE UNION SQUARE BUSINESS IMPROVEMENT DISTRICT**

21 **A. The Union Square Business Improvement District and Its Surveillance Camera 22 Network.**

23 Business improvement districts, also known as community benefit districts, are “non-city
24 entities formed by a majority of property owners within a certain geographic area, with approval from
25 the Board of Supervisors and in accordance with state and local law.” (Joint Stipulations of Fact
26 [“JSF”] 10; Plaintiffs’ Complaint at ¶ 21.) There are currently 18 such districts in San Francisco.
27 Several of those districts have surveillance camera networks consisting of multiple cameras whose
28 images are streamed to a control room located within the district. (*Id.* at ¶¶ 21, 22.)

1 One such district is the Union Square Business Improvement District (“USBID”). USBID,
2 which is a California nonprofit corporation, is bounded on the north by Bush Street, on the east by
3 Kearny Street, on the south by Market Street, and on the west by Taylor and Mason Streets. (JSF 11;
4 Undisputed Material Fact [“UMF”] 1.) USBID operates a network of high-definition video
5 surveillance cameras, which cover multiple streets within USBID’s area, as well as Union Square
6 itself. (UMF 2; Complaint, ¶ 23.) As a business improvement district, USBID is a non-city entity.

7 (UMF 1.)

8 **B. SFPD Requests And Obtains Access To USBID’s Surveillance Camera Network
9 For The 2019 Pride Parade**

10 The San Francisco Police Department (“SFPD”) monitors the conduct of public gatherings in
11 the City, in order to protect public safety. (JSF 3.) One such public gathering is the City’s annual
12 Pride celebration. In 2019, San Francisco’s Pride celebration took place on June 29 and 30, 2019.

13 (UMF 3.)

14 In advance of the 2019 Pride celebration, SFPD asked USBID to allow SFPD to have access to
15 USBID’s surveillance camera network. USBID agreed, and gave SFPD access to its surveillance
16 camera network. (UMF 5, 6.) The request for access was conveyed to USBID by SFPD Officer
17 Oliver Lim, at the direction of his commanding officer. (UMF 4.) In response to the SFPD’s request,
18 USBID supplied SFPD with log-in credentials which SFPD inputted into commercial software
19 installed on an SFPD laptop. (UMF 6.) By using the log-in credentials provided to it by USBID,
20 SFPD accessed cameras in USBID’s surveillance camera network for a period of up to 24 hours
21 during the 2019 Pride celebration, in order to monitor the safety of the Pride Parade. (*Id.*)

22 **II. JULY 2019: SAN FRANCISCO’S ACQUISITION OF SURVEILLANCE
23 TECHNOLOGY ORDINANCE TAKES EFFECT**

24 In June 2019, when SFPD sought and received access to USBID’s surveillance camera
25 network in order to monitor the Pride celebration, San Francisco’s Acquisition of Surveillance
26 Technology Ordinance (“Chapter 19B”) – the local law plaintiffs claim the City has violated – had

1 been adopted by the Board of Supervisors, but had not yet taken effect. Chapter 19B took effect the
2 following month, in July 2019. (UMF 7.)¹

3 Chapter 19B restricts the ability of City departments to use surveillance technologies in a
4 number of ways.² Among them are the following:

5 **A. Prohibition on Facial Recognition Technology.**

6 First, among other things, Chapter 19B significantly prohibits the use of facial recognition
7 technology, making it unlawful, with certain exceptions, for most City departments
8 to obtain, retain, access, or use: 1) any Face Recognition Technology on City-
9 issued software or a City-issued product or device; or 2) any information
10 obtained from Face Recognition Technology on City-issued software or a City-
11 issued product or device.

(S.F. Admin. Code § 19B.2(d).)

12 **B. Process for the Board of Supervisors to Approve “Surveillance Technology
13 Policies” Concerning Each Surveillance Technology.**

14 Second, Chapter 19B creates a process requiring that City departments that seek to acquire or
15 use a surveillance technology must submit a “Surveillance Impact Report” to a City body, the
16 Committee on Information Technology (“COIT”). The Surveillance Impact Report must describe
17 enumerated aspects of the proposed surveillance technology that the City department wishes to acquire
18 or use. (S.F. Admin. Code §§ 19B.1, 19B.3.)

19 COIT, in turn, is to prepare a proposed “Surveillance Technology Policy” concerning the
20 particular technology in question, which is to be submitted to the Board of Supervisors for approval by
21 the adoption of an ordinance. (*Id.*, §§ 19B.3(a), 19B.2(a).) Until the Board of Supervisors, by
22 ordinance, approves a “Surveillance Technology Policy” concerning a particular surveillance
23 technology, the City department may not “seek funds” for, “acquire or borrow,” “use,” “enter[] into

24 ¹ The Acquisition of Surveillance Technology Ordinance is codified at Chapter 19B of the
25 City’s Administrative Code. Chapter 19B is attached to the Declaration of Wayne Snodgrass in
Support of Defendant’s Motion for Summary Judgment as Exhibit A.

26 ² Chapter 19B defines “surveillance technology” broadly to mean, *inter alia*, “any software,
27 electronic device, system utilizing an electronic device, or similar device used, designed, or primarily
28 intended to collect, retain, process, or share audio, electronic, visual, location, thermal, biometric,
olfactory or similar information specifically associated with, or capable of being associated with, any
individual or group.” (S.F. Admin. Code § 19B.1.) “Surveillance technology” includes “surveillance
cameras.” (*Id.*; JSF 6.)

1 agreement” to acquire, share or use, or enter into an agreement to regularly receive data from, the
2 surveillance technology in question. (*Id.*, § 19B.2(a).) Chapter 19B also sets forth a policy to guide
3 the Board of Supervisors in its consideration of any department’s “Surveillance Technology Policy”
4 for possible approval. (*Id.*, § 19B.4.)

5 **C. Grandfathering in of Existing Surveillance Technologies until an Ordinance**
6 **Approving Their Use is Adopted and Becomes Effective.**

7 Third, Chapter 19B sets forth special rules to govern any “existing surveillance technology”
8 that a City department was already “possessing or using” before Chapter 19B took effect. Under
9 those rules, each such "existing" surveillance technology that a City department already possesses or
10 uses is effectively grandfathered in, and the City department may continue to use that surveillance
11 technology, until the Board enacts an ordinance concerning that surveillance technology, *and* that
12 ordinance takes legal effect under the Charter. (*Id.*, § 19B.5.) Chapter 19B states that

[e]ach Department possessing or using Surveillance Technology before the
13 effective date of this Chapter 19B may continue its use of the Surveillance
14 Technology and the sharing of data from the Surveillance Technology until such
15 time as the Board enacts an ordinance regarding the Department’s Surveillance
Technology Policy and such ordinance becomes effective under Charter Section
2.105.³

16 (*Id.*, § 19B.5(d).) The Board is to enact such an ordinance after the City department submits an
17 inventory of its existing surveillance technologies to COIT; COIT posts that inventory on its website;
18 the department submits a proposed policy concerning that surveillance technology to COIT; and COIT
19 submits its recommendation with respect to the proposed surveillance technology policy to the Board
20 of Supervisors. (*Id.*, §§ 19B.5(a), (b); *id.*, 19B.3(a).)

21 **D. The Legislative Digest States That Departments May Continue To Use Any**
22 **Surveillance Technology That They Were Already Using When Chapter 19B Took**
23 **Effect Until The Board Adopts An Ordinance Regulating The Use of That**
24 **Surveillance Technology.**

25 The Board of Supervisors’ legislative file includes the official Legislative Digest, which was
26 submitted to the Board of Supervisors at the time the Board was considering the proposed legislation
27 that became Chapter 19B. The Legislative Digest confirms that under Chapter 19B, any City

28 ³ Section 2.105 of the City Charter states the general rule that in order to allow time for the
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 department that already had used or was using a particular kind of surveillance technology before
2 Chapter 19B became effective could continue to use that surveillance technology, until the Board
3 adopted an ordinance regulating that technology. As the Legislative Digest explained,

4 [t]his ordinance would allow Departments possessing or using Surveillance
5 Technology to continue to use the Surveillance Technology, and share
6 information from the Surveillance Technology, until the Board enacted a
7 Surveillance Technology Policy ordinance, following COIT’s development of a
8 policy and recommendation.

9 (Legislative Digest [pages numbered 70-71 in Legislative Packet submitted to Board of Supervisors
10 dated June 4, 2019, in Board File No. 190568] [exhibit B to Declaration of Wayne Snodgrass in
11 Support of Defendant’s Motion for Summary Judgment].)

12 **III. MAY -- JUNE 2020: AFTER LOOTING OF UNION SQUARE BUSINESSES, SFPD
13 AGAIN REQUESTS AND IS GIVEN ACCESS TO USBID’S SURVEILLANCE
14 CAMERA NETWORK**

15 Chapter 19B took effect in July 2019. (UMF 7.)

16 In late May 2020, almost a year later, the nation was rocked by the news that a white
17 Minneapolis police officer had knelt on the neck of a Black Minneapolis resident, George Floyd, for
18 nine minutes and 29 seconds, resulting in Mr. Floyd’s death. Protests spread throughout the country,
19 including in San Francisco. (JSF 13.) While the overwhelming majority of protests were peaceful,
20 some people engaged in property destruction. (Complaint, ¶ 25.)

21 In San Francisco, thousands of people participated in protests over Mr. Floyd’s killing during
22 the period from the end of May to early June 2020. (JSF 13.) On May 30 and 31, 2020, protest
23 activity took place around City Hall and east up Market Street, an area where USBID surveillance
24 cameras are located. (JSF 14.)

25 On Saturday, May 30, 2020, protests in San Francisco led to rioting in the Union Square area
26 and the looting of Union Square businesses. In response, the SFPD activated its Department
27 Operations Center (“DOC”), an operations room that contains a wall-mounted video display and
28 laptop computers whose screen images may be displayed on that video display. (Deposition
Transcript of SFPD Officer Tiffany Gunter [“Gunter Depo Trans.”; Ex. C to Snodgrass Decl.] at
78:19-23, 79:3-4, 33:7-13, 33:19-20, 46:8-47:16.)

1 On May 31, 2020, the morning after Union Square businesses had been looted, SFPD Officer
2 Lim emailed USBID's Director of Services at the direction of his commanding officer, requesting that
3 USBID again allow the SFPD to access USBID's surveillance camera network "to monitor the
4 potential violence today for situational awareness and enhanced response." (Complaint, ¶ 35.)
5 USBID again agreed to give SFPD access to its surveillance camera network, initially for a 48-hour
6 period, which was subsequently extended through June 7, 2020. (*Id.*, ¶¶ 36, 37.)

7 SFPD had access to the USBID surveillance cameras on a password-protected laptop computer
8 on a table in the DOC, on which the software linking to the USBID cameras was typically kept
9 minimized during the period of access from May 31 through June 7, 2020. (Gunter Depo Trans. at
10 49:23-25, 50:5-24, 51:16-19.) At no time during that period were any images from the USBID camera
11 network displayed on the DOC's video wall. (*Id.*, at 50:1-3.)

12 During the period from May 31 to June 7, 2020, SFPD Officer Tiffany Gunter, who was
13 responsible for controlling what was displayed on the DOC's video wall, looked at the laptop screen
14 several times "to ensure there were no crowds forming in Union Square," looking for less than a
15 minute each time. (*Id.*, at 52:2-4.) Each time Officer Gunter looked briefly at the laptop screen, there
16 was "no activity" to be seen on the USBID cameras, "so it gave us the awareness that there was no
17 activity in Union Square." (*Id.*, at 60:1-3.) Officer Gunter testified that while there were some
18 demonstrations that entered Union Square, she did not see them on the USBID cameras: "I don't
19 remember seeing a crowd ... I don't remember there being any further civil unrest beyond that
20 Saturday [May 30] in Union Square." (*Id.*, at 60:14-21, 71:6-16.)

21 Officer Gunter did not take any screen shots, video, or other photos of the USBID camera feed.
22 She also did not take notes or otherwise document what she had viewed on the feed. (*Id.*, at 75:3-19.)
23 She did not call or communicate with anyone else about what the feed displayed, nor did she see
24 anyone else doing so. (*Id.*, at 75:20-76:11.) She has no knowledge that anyone at SFPD besides
25 herself viewed the USBID camera feed at any time while SFPD had access to it. (*Id.* at 77:5-7.)
26
27
28

1 **IV. PLAINTIFFS COMMENCE THIS LAWSUIT SOLELY ALLEGING VIOLATIONS OF**
2 **CHAPTER 19B**

3 On October 7, 2020, plaintiffs commenced this action by filing their “Complaint for
4 Declaratory and Injunctive Relief.” Plaintiffs state only a single cause of action, for alleged violations
5 of Sections 19B.2(a)(2), (3), and (4) of Chapter 19B. (Complaint, ¶ 46.) They seek a declaration that
6 the City violated Chapter 19B, an order enjoining the City from acquiring, borrowing, or using any
7 private camera network without prior approval of the Board of Supervisors, and attorney’s fees.

8 **V. THE BOARD OF SUPERVISORS HAS NOT YET ENACTED AN ORDINANCE**
9 **REGARDING SFPD’S SURVEILLANCE TECHNOLOGY POLICY AS TO NON-**
10 **CITY ENTITY SURVEILLANCE CAMERAS**

11 As the SFPD staff member responsible for drafting Surveillance Technology Policies and
12 impact reports required by Chapter 19B, and for submitting such policies and reports to COIT,
13 explains, to date the Board of Supervisors has not enacted any ordinance regarding SFPD’s
14 Surveillance Technology Policy concerning surveillance cameras owned and operated by non-City
15 entities such as USBID. (Declaration of Asja Steeves in Support of Defendant’s Motion for Summary
16 Judgment (“Steeves Decl.”), at ¶ 5; UMF 9.)⁴ COIT, the City body that evaluates each department’s
17 policies and impact reports, “sets the schedule for each City department that possesses or uses one or
18 more forms of surveillance technology to submit draft surveillance technology policies and impact
19 reports concerning its surveillance technologies to COIT’s Privacy and Surveillance Advisory Board
20 for review, after which the Board of Supervisors can consider the adoption of an ordinance approving
21 the surveillance technology policy.” (*Id.*, ¶ 7.) COIT has asked SFPD to submit draft surveillance
22 technology policies and impact reports to COIT’s Privacy and Surveillance Advisory Board between
23 September 24, 2021 and November 12, 2021, concerning several specific types of surveillance
24 technologies SFPD uses, including non-city entity surveillance cameras. (*Id.*) It thus appears
25 reasonably likely that the Board of Supervisors will adopt an ordinance concerning SFPD’s
26 surveillance technology policy with regard to non-city entity surveillance cameras after COIT
27 completes its review of the policy and related impact report that SFPD will submit to COIT.

28 ⁴ The Board of Supervisors has, however, already enacted ordinances concerning SFPD’s
Surveillance Technology Policies with regard to two other such technologies: Automated License
Plate Reader and ShotSpotter. (Steeves Decl., ¶ 5.)

ARGUMENT

I. THE UNDISPUTED EVIDENCE SHOWS THAT SFPD ALREADY USED USBID’S CAMERA NETWORK BEFORE CHAPTER 19B TOOK EFFECT, AND IT THUS WAS PERMITTED TO CONTINUE DOING SO UNTIL THE BOARD ENACTS AN ORDINANCE REGULATING NON-CITY SURVEILLANCE CAMERAS

This case turns solely on the interpretation of Chapter 19B, the City’s Acquisition of Surveillance Technology Ordinance. Plaintiffs do not contend that SFPD’s actions with regard to the USBID camera network in late May and early June 2020 violate any federal or state Constitutional mandate, or any state statute. The only task facing this Court, therefore, is to interpret Chapter 19B and apply it to the facts presented here.

The rules governing this exercise in statutory interpretation are familiar and well-settled. “When we interpret the meaning of statutes, our fundamental task is to ascertain the aim and goal of the lawmakers so as to effectuate the purpose of the statute.” (*Gualala Festivals Committee v. California Coastal Commission* (2010) 183 Cal.App.4th 60, 67.) “Our goal is to interpret the language of the statute—not to insert what has been omitted or omit what has been inserted. We look first to the language of the statute itself, read as a whole, seeking to harmonize parts of a statutory scheme. If the words contained in the statute are reasonably free from ambiguity and uncertainty, we look no further than those words to ascertain the provision’s meaning.” (*Bettencourt v. City and County of San Francisco* (2007) 146 Cal.App.4th 1090, 1100.) “If we find no ambiguity, we presume that the lawmakers meant what they said, and the plain meaning of the language governs.” (*Gualala Festivals Committee, supra*, 183 Cal.App.4th at p. 67.)

A. The Plain Meaning of Section 19B.5(d) Dictates That The City is Entitled To Judgment as a Matter of Law.

Here, the relevant section of Chapter 19B expressly states that if a City department was already using a particular form of surveillance technology before Chapter 19B took effect, Chapter 19B allows that Department to continue to use that surveillance technology until the Board of Supervisors enacts an ordinance approving the department’s Surveillance Technology Policy as to that particular technology, and that approving ordinance has taken legal effect. Section 19B.5, entitled “Compliance for Existing Surveillance Technology,” is clearly intended to set forth the rules that apply to “existing surveillance technologies” – that is, surveillance technologies that a City department already possessed

1 or was already using before 19B took effect. And Section 19B.5(d) makes crystal clear that a
2 department’s use of such an “existing surveillance technology” is effectively grandfathered in, until
3 the Board of Supervisors addresses that department’s use of that technology by the adoption of an
4 ordinance:

5 Each Department possessing or using Surveillance Technology before the
6 effective date of this Chapter 19B may continue its use of the Surveillance
7 Technology and the sharing of data from the Surveillance Technology until such
8 time as the Board enacts an ordinance regarding the Department’s Surveillance
9 Technology Policy and such ordinance becomes effective under Charter Section
10 2.105.

11 (*Id.*, Section 19B.5(d) [emphasis added].)

12 The text of Section 19B.5(d) is clear and unambiguous in meaning: until the Board addresses a
13 department’s use of “existing surveillance technology” by the adoption of an ordinance that has taken
14 legal effect, the department is permitted to continue its use of that particular technology. Because the
15 statutory text is clear, the Court’s statutory interpretation inquiry is at an end, and the Court should
16 simply apply Section 19B.5(d) as written.

17 Under that plain language, the City is entitled to judgment as a matter of law. The following
18 facts are entirely undisputed:

- 19 • The 2019 Pride celebration occurred on June 29 and June 30, 2019.
- 20 • Before that celebration occurred, SFPD asked USBID to allow it to access cameras in
21 USBID’s surveillance camera network, and USBID agreed to the request and granted
22 SFPD access to its camera network.
- 23 • These events occurred – and SFPD was thus using non-city owned surveillance
24 cameras – *before* Chapter 19B took effect in July 2019, making those surveillance
25 cameras “existing surveillance technology” under Section 19B.5(d).
- 26 • At the time that the SFPD sought and was given access to the USBID camera network
27 during the George Floyd protests in late May and early June, 2020, the Board of
28 Supervisors had not enacted an ordinance concerning SFPD’s Surveillance Technology
29 Policy with regard to non-city surveillance cameras.

1 Under the plain meaning of Section 19B.5(d), which the Court must follow, the SFPD’s actions
2 requesting and receiving access to USBID’s camera network in late May and early June 2020 did not
3 give rise to any violation of Chapter 19B. As a matter of law, therefore, the City is entitled to
4 summary judgment.

5 **B. Chapter 19B’s Legislative History Bolsters The Conclusion That SFPD, As A**
6 **Matter of Law, Did Not Violate That Chapter.**

7 Because the language of Section 19B.5(d) is unambiguous in meaning, the Court should simply
8 apply that provision’s plain meaning, rather than also looking to the legislative history of Chapter 19B.
9 (*Gualala Festivals Committee, supra*, 183 Cal.App.4th at p. 67 [“[i]f we find no ambiguity, we
10 presume that the lawmakers meant what they said, and the plain meaning of the language governs.”])

11 But even if the Court were to consider Chapter 19B’s legislative history, that legislative history
12 only further defeats plaintiffs’ claim under Chapter 19B. The Legislative Digest that was part of the
13 Board of Supervisors’ legislative packet at the time it considered and enacted the legislation that
14 became Chapter 19B – and that thus is presumed to reflect the Supervisors’ understanding of the
15 meaning and purpose underlying Chapter 19 – expressly advises the Board that the legislation before it
16 would allow Departments possessing or using Surveillance Technology to
17 continue to use the Surveillance Technology, and share information from the
18 Surveillance Technology, until the Board enacted a Surveillance Technology
19 Policy ordinance, following COIT’s development of a policy and
20 recommendation.

21 (Legislative Digest [pages numbered 70-71 in Legislative Packet submitted to Board of Supervisors
22 dated June 4, 2019, in Board File No. 190568] [exhibit B to Snodgrass Declaration].) The legislative
23 history, therefore, merely confirms what Chapter 19B’s plain text already dictates: when it comes to a
24 particular kind of surveillance technology that a City department already possessed or used, Chapter
25 19B allows that department to continue possessing or using that particular kind of technology, until the
26 Board adopts an ordinance regulating that particular technology’s use.

27 The legislative purpose underlying this result is not hard to discern. In enacting Chapter 19B,
28 the Board of Supervisors clearly sought to bring City departments’ use of surveillance technologies
under the Board’s control and supervision, rather than allowing each department to set its own policies
free of legislative oversight. But rather than immediately terminate each City department’s already

1 ongoing use of existing surveillance technologies, and allow departments to resume using such
2 existing technologies only after the Board had affirmatively blessed them, the Board chose the more
3 moderate approach of allowing City departments to continue using their existing technologies as they
4 already had been doing, until such time as the Board adopted legislation (and that legislation became
5 legally effective) establishing policies that would govern a department’s use of a particular
6 surveillance technology on an ongoing basis. The Board of Supervisors, in other words, sought to
7 strike a balance between its desire to bring City departments’ use of surveillance technologies under
8 the Board’s oversight, and its desire to avoid unnecessary shorter-term disruptions in how City
9 departments were already conducting business. This Court should respect the balance that the Board
10 of Supervisors struck, and reject plaintiffs’ efforts to impose requirements on a City department that
11 the Board could have imposed, but elected not to.

12 **C. Section 19B.2(a) Does Not Apply Here.**

13 In the single cause of action in their complaint, plaintiffs allege that by requesting and being
14 given access to USBID’s camera network during the George Floyd protests in late May and early June
15 2020, the SFPD, and thus the City, violated Section 19B.2(a), subsections (2), (3), and (4).
16 (Complaint at ¶ 46.) Those subsection state that, with specified exceptions, a City department “must
17 obtain Board of Supervisors approval by ordinance of a Surveillance Technology Policy under which
18 the Department will acquire and use Surveillance Technology” before the department may “acquir[e]
19 or borrow[] new Surveillance Technology,” “us[e] new or existing Surveillance Technology for a
20 purpose, in a manner, or in a location not specified in a Surveillance Technology Policy ordinance
21 approved by the Board in accordance with this Chapter 19B,” or “enter[] into agreement with a non-
22 City entity to acquire, share, or otherwise use Surveillance Technology.” (*Id.*)

23 But Section 19B.2(a), subsections (2), (3), and (4), do not apply to this case. Those
24 subsections set forth the general rules that apply to City departments’ possession, use, or acquisition of
25 surveillance technologies on an ongoing basis, without addressing the narrower and more specific
26 question of what happens with surveillance technologies that a City department was already using at
27 the time that Chapter 19B took effect. In contrast, Section 19.B.5 addresses that narrower and more
28 specific issue, by providing transitional rules addressing departments’ use of surveillance technologies

1 that they were already using when Chapter 19B took effect. It is a settled rule of statutory
2 interpretation “that where there is a conflict between a general statute and a more specific one, the
3 specific statute controls and will be treated as an exception to the general statute.” (*Turner v.*
4 *Association of American Medical Colleges* (2011) 193 Cal.App.4th 1047, 1065.) “As courts have
5 explained, ‘Unless repealed expressly or by necessary implication, a special statute dealing with a
6 particular subject constitutes an exception so as to control and take precedence over a conflicting
7 general statute on the same subject. This is the case regardless of whether the special provision is
8 enacted before or after the general one, and notwithstanding that the general provision, standing alone,
9 would be broad enough to include the subject to which the more particular one relates.’” (*Id.* [internal
10 quotes omitted].)

11 Because Section 19B.2(a) and its subsections provide general rules, while Section 19B.5
12 (including its subsection (d)) address the more specific issue that is presented on the facts of this case
13 of surveillance technologies that a department had already used by the time Chapter 19B took effect, it
14 is Section 19B.5(d) that must govern this Court’s statutory analysis. Given the facts of this case,
15 plaintiffs cannot rely on Section 19B.2(a) and its subsections to show that the City has violated
16 Chapter 19B.

17 A further reason why plaintiffs’ reliance on Section 19B.2(a) subsections (2), (3), and (4) is
18 fatally flawed is that if those subsections applied even to a department’s use of a particular kind of
19 surveillance technology that the department was already using even before Chapter 19B came into
20 effect, then Section 19B.5(d) would be rendered a nullity, and would effectively be read out of Chapter
21 19B. A statutory interpretation “that renders statutory language a nullity is obviously to be avoided.”
22 (*Tuolomne Jobs & Small Business Alliance v. Superior Court* (2014) 59 Cal.4th 1029, 1039.) This
23 Court must reject plaintiffs’ interpretation of Chapter 19B, which would render Section 19B.5(d) a
24 dead letter.

25 ///

26 ///

27 ///

CONCLUSION

1
2 Defendant the City and County of San Francisco respectfully requests that its motion for
3 summary judgment be granted.
4

5 Dated: September 16, 2021

6 DENNIS J. HERRERA
7 City Attorney
8 WAYNE K. SNODGRASS
9 Deputy City Attorney

10 By: s/Wayne K. Snodgrass
11 WAYNE K. SNODGRASS

12 Attorneys for Defendant
13 CITY AND COUNTY OF SAN FRANCISCO
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28