

1 DAVID CHIU, State Bar #189542
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

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

**REPLY MEMORANDUM 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 AUTHORITIES3

3 INTRODUCTION4

4 ARGUMENT4

5 I. PLAINTIFFS ASK THIS COURT TO ADD NEW REQUIREMENTS INTO

6 THE SURVEILLANCE TECHNOLOGY ORDINANCE THAT THE BOARD

7 OF SUPERVISORS DID NOT ENACT OR INTEND.....4

8 A. Section 19B.5(D) Contains No Requirement Of “Continuous, Ongoing

9 Use” Or Of “Incorporation Into A Department’s Operations.”4

10 B. By Making Its Grace Period Turn On Possession *Or* Use Of A

11 Surveillance Technology, Section 19B.5(D) Allows The Grace Period

12 Even For Technologies That A Department Had Used Only Episodically

13 Or Intermittently, Or Had Not Used At All.6

14 C. Section 19B.5(d)’s Use Of The Present Participle Does Not Show The

15 Board Intended That Section’s Grace Period To Apply Only To

16 Surveillance Technologies That Were in Ongoing, Continuous Use.8

17 D. The “Legislative Debate” Does Not Show That A Surveillance

18 Technology Must Have Been Used “Continuously” To Qualify For

19 Section 19B.5(d)’s Grace Period.10

20 E. The Ordinance’s Limits On The Use of A Surveillance Technology

21 After The Board Has Adopted An Ordinance Regulating That Use Do

22 Not Apply During The Grace Period Before The Board Adopts Such An

23 Ordinance.11

24 II. THE BOARD WOULD NOT REASONABLY HAVE SOUGHT TO

25 REQUIRE “ONGOING, CONTINUOUS” USE OF A SURVEILLANCE

26 TECHNOLOGY THAT RESPONDS TO CIRCUMSTANCES THAT ARE

27 PRESENT ONLY OCCASIONALLY12

28 III. THE SFPD IS ENTITLED TO RELY ON SECTION 19B.5(d)’s GRACE

PERIOD12

CONCLUSION.....13

TABLE OF AUTHORITIES

State Cases

In re Hoddinott
(1996) 12 Cal.4th 9925

Kinzua Resources, LLC v. Oregon Dept. of Environmental Quality
(Or. 2020) 468 P.3d 4109

People v. Guzman
(2005) 35 Cal.4th 5775, 11

People v. Wells
(1996) 12 Cal.4th 97910

Perkovic v. Zurich American Insurance Company
(Mich. 2017) 893 N.W.2d 322.....9

Security Pacific National Bank v. Wozab
(1990) 51 Cal.3d 9915

Wireless One, Inc. v. Mayor and City Council of Baltimore
(Md. Ct. App. 2019) 214 A.3d 1152.....9

State Statutes & Codes

Cal. Code Civ. Proc. § 18585

San Francisco Statutes, Codes & Ordinances

S.F. Admin. Code

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

§ 19B.16

§ 19B.2.....10

§ 19B.2(a)10

§ 19B.2(a)(3).....11

§ 19B.3.....10

§ 19B.4.....10

§ 19B.5(a)13

§ 19B.5(c)13

§ 19B.5(d)..... passim

1 **INTRODUCTION**

2 Plaintiffs oppose the City’s motion for summary judgment based not on the City’s Acquisition
3 of Surveillance Technology Ordinance (“the Ordinance”) as the Board of Supervisors enacted it, but
4 based, instead, on a far more restricted (and imaginary) version of that legislation that plaintiffs
5 evidently wish the Board had enacted. While plaintiffs repeatedly urge this Court to read additional
6 terms into Section 19B.5(d) of that Ordinance that the Board could have enacted but chose not to, and
7 also ask this Court to ignore the clear terms of that section that the Board *did* enact, they fail to raise
8 any tenable argument defeating the City’s motion. The City respectfully requests that its motion for
9 summary judgment be granted.

10 **ARGUMENT**

11 **I. PLAINTIFFS ASK THIS COURT TO ADD NEW REQUIREMENTS INTO THE
12 SURVEILLANCE TECHNOLOGY ORDINANCE THAT THE BOARD OF
13 SUPERVISORS DID NOT ENACT OR INTEND**

14 **A. Section 19B.5(D) Contains No Requirement Of “Continuous, Ongoing Use” Or Of
15 “Incorporation Into A Department’s Operations.”**

16 Plaintiffs strive to resist the City’s motion for summary judgment by claiming that
17 Administrative Code Section 19B.5(d) – the section of the Ordinance that allows a City department to
18 continue its use of an existing surveillance technology “until such time as the Board enacts an
19 ordinance regarding the Department’s Surveillance Technology Policy and such ordinance becomes
20 effective” under the City Charter – includes multiple limitations and restrictions that the Ordinance, in
21 fact, does not impose.¹ Plaintiffs claim, for example, that Section 19B.5(d) provides a grace period
22 only for a surveillance technology that a city department “had incorporated into its operations” by the
23 time the Ordinance took effect. (Plntff. Mem. of Pts. & Auth. [“MPA”] at 6:10-11.) They also claim
24 that Section 19B.5(d) provides a grace period only for surveillance technologies that a City department
25 “continuously possess[es] and regularly use[s] over an extended period of time that has no firm
26 endpoint,” and that are in “ongoing, continuous use.” (MPA at 7:20-8:1; *id.* at 8:6.) Because the
27 SFPD used the surveillance camera network owned and operated by the Union Square Business

28 ¹ Plaintiffs suggest that the City failed to disclose in discovery the SFPD’s June 2019 use of
USBID’s surveillance camera network before the Ordinance took effect. (See, e.g., MPA at 3:5.) This
is incorrect. The City’s interrogatory responses disclosed and discussed that June 2019 use in detail.
(See Supp. Decl. of Wayne Snodgrass ISO Mtn. for Summ. J. at ¶ 4.)

1 Improvement District to monitor San Francisco’s 2019 Pride celebration for a period of up to 24 hours
2 in June 2019 while that celebration was taking place, but did not continue using that camera network
3 *after* the Pride celebration had ended, plaintiffs claim that the USBID camera network cannot
4 constitute an “existing surveillance technology” under Section 19B.5(d).

5 Plaintiffs’ claims are without merit, however, because the restrictions that plaintiffs claim are
6 found in Section 19B.5(d) find no support in that section’s text. Section 19B.5(d) states, in its entirety,
7 as follows:

8 Each Department possessing or using Surveillance Technology before the
9 effective date of this Chapter 19B may continue its use of the Surveillance
10 Technology and the sharing of data from the Surveillance Technology until such
11 time as the Board enacts an ordinance regarding the Department’s Surveillance
12 Technology Policy and such ordinance becomes effective under Charter Section
13 2.105.

14 (Admin. Code § 19B.5(d) [Ex. A to Decl. of Wayne Snodgrass in Support of Mtn. for Summ. J.].)

15 Plaintiffs thus ask this Court to insert additional, restrictive language into Section 19B.5(d) that
16 the Board of Supervisors could have included in that section, but evidently chose not to. The Court
17 must reject plaintiffs’ invitation, however, because “in construing ... statutory provisions a court is not
18 authorized to insert qualifying provisions not included and may not rewrite the statute to conform to an
19 assumed intention which does not appear from its language.” (*In re Hoddinott* (1996) 12 Cal.4th 992,
20 1002 [internal brackets omitted].) This Court should not “violate[] the cardinal rule of statutory
21 construction that courts must not add provisions to statutes.” (*People v. Guzman* (2005) 35 Cal.4th
22 577, 587.) This cardinal principle of statutory construction “has been codified in California as Code of
23 Civil Procedure section 1858, which provides that a court must not ‘insert what has been omitted’
24 from a statute.” (*Id.* [internal brackets omitted]; *Security Pacific National Bank v. Wozab* (1990) 51
25 Cal.3d 991, 998.) This Court should respect and follow this cardinal rule of statutory construction.

26 The limitations that plaintiffs ask this Court to read into Section 19B.5(d) are entirely of
27 plaintiffs’ own creation. Nowhere in its text does Section 19B.5(d) mention the concept of whether or
28 how much, as of the Ordinance’s effective date, a department has “incorporated [a particular
surveillance technology] into its operations,” much less state that such “incorporation” is required for a
particular surveillance technology to be subject to Section 19B.5(d)’s temporary grandfathering.

1 Similarly, nowhere in its text does Section 19B.5(d) make any mention of whether a department, as of
2 the Ordinance’s effective date, was using a particular surveillance technology “continuously,”
3 “regularly,” or on an “ongoing” basis, rather than intermittently, sporadically, or episodically.

4 The Board of Supervisors was obviously able to include in Section 19B.5(d) the kind of
5 restrictions that plaintiffs urge this Court to read into that section. Many sections of the Ordinance are
6 enormously detailed, and carefully and expressly limit what City departments, the City’s Committee
7 On Information Technology (“COIT”), or the Board itself can do. And the Board knew full well how
8 to include language addressing the frequency with which particular events occur. In Section 19B.1,
9 for example, in the definition of an “Annual Surveillance Report” that a City department must provide
10 to COIT, the Board addressed the required contents of such a report in exhaustive detail, and included
11 a requirement that such a report include “a general description of whether and how often” data
12 obtained from a particular surveillance technology has been shared with outside entities. Plainly, the
13 Board was fully capable of specifying in Section 19B.5(d) that an existing surveillance technology was
14 temporarily grandfathered in only if that technology had been in “continuous” and “ongoing” use, and
15 was “incorporated” into the department’s operations, as of the date the Ordinance took effect. The fact
16 that the Board did not include such limitations in Section 19B.5(d) is powerful evidence that the Board
17 did not intend to restrict what can constitute an “existing surveillance technology,” for purposes of
18 Section 19B.5(d)’s grace period, as plaintiffs claim.²

19 **B. By Making Its Grace Period Turn On Possession Or Use Of A Surveillance**
20 **Technology, Section 19B.5(D) Allows The Grace Period Even For Technologies**
21 **That A Department Had Used Only Episodically Or Intermittently, Or Had Not**
22 **Used At All.**

23 Plaintiffs’ claim that Section 19B.5(d) provides a temporary grace period only for surveillance
24 technologies that were in “ongoing, continuous use” at the time the Ordinance took effect (MPA at

25 ² Plaintiffs’ claims that Section 19B.5(d)’s grace period should be limited to surveillance
26 technologies that a department had “incorporated into its operations” and was using on an “ongoing”
27 basis are so vague as to be meaningless. In what manner, for how long, and how many times, must a
28 department have used a particular technology before the Ordinance took effect, for that technology to
have become “incorporated” into the department’s operations, and for its use to qualify as “ongoing”?
Plaintiffs cannot answer these questions, because the Ordinance does not even mention these concepts,
much less make them a requirement for a surveillance technology to be grandfathered in under Section
19B.5(d).

1 8:6) is also undermined by the fact that in drafting that section, the Board of Supervisors chose to
2 extend that section’s grace period to any particular surveillance technology that a City department was
3 “possessing *or* using.” (Section 19B.5(d) [emphasis added].) The Board’s decision to employ the
4 term “or” is highly significant, and further defeats plaintiffs’ proffered interpretation of Section
5 19B.5(d), for several reasons.³

6 First, because Section 19B.5(d) provides its grace period to a particular surveillance
7 technology that a City department was already “possessing *or* using” when the Ordinance took effect,
8 that grace period is available even if the department *used* a surveillance technology without *possessing*
9 it – in other words, a surveillance technology that the department acquired or gained access to on a
10 temporary basis, such as by borrowing it or receiving temporary access to it from its owner (as in this
11 case). Logically, any surveillance technology that a department was borrowing or temporarily
12 accessing was unlikely to be in “ongoing, continuing use.” Yet the Board of Supervisors nonetheless
13 intended that under those circumstances, when a City department had been “using” a surveillance
14 technology that it did not “possess,” the department may continue to use that technology until the
15 Board enacts an ordinance regarding that technology and that ordinance takes effect.⁴

16 Second, because Section 19B.5(d) provides its grace period to a particular surveillance
17 technology that a City department was already “possessing *or* using” when the Ordinance took effect,
18 the grace period is available for any surveillance technology that, at the time the Ordinance took
19 effect, was already in the department’s *possession*, even if the department had *used* that technology
20 only sporadically, or not at all. Under Section 19B.5(d)’s plain text, “use” – much less “continuing,
21 ongoing use” – of a particular surveillance technology simply is not a prerequisite for that technology
22

23 ³ Notably, plaintiffs’ claim that Section 19B.5(d) affords a temporary safe harbor only for
24 surveillance technologies that a department “continuously possess[es] ... *and* regularly use[s]” (MPA
25 at 7:20-8:1 [emphasis added]) is flatly contradictory to that section’s phrase “possessing *or* using,”
replacing the statutory term “or” with an “and.” This illustrates how plaintiffs’ proffered interpretation
of Section 19B.5(d) is contradictory to, and is undermined by, that section’s plain text.

26 ⁴ Plaintiffs make much of the fact that “the SFPD needed new permission from the USBID
27 each time it sought access to the USBID camera network. (MPA at 8:13-14.) This is correct, but
28 irrelevant, because Section 19B.5(d)’s use of the phrase “possessing *or* using” (emphasis added)
shows that the Board of Supervisors intended that section’s grace period to apply even where the
surveillance technology a department had used was not possessed by the department, but rather was
possessed and controlled by a third party.

1 to be grandfathered in. If, for example, a department had already acquired automated license plate
2 readers (“ALPRs”) by the time the Ordinance took effect, but had used those ALPRs only one day
3 every six months, or indeed had not yet used them at all, that department was still “possessing or
4 using” the ALPRs at the time the Ordinance took effect. Section 19B.5(d) would thus allow the
5 department to use them in the future, until such time as the Board of Supervisors enacted an ordinance
6 regarding the ALPRs’ use.

7 That Section 19B.5(d)’s phrase “possessing *or* using” undermines plaintiffs’ claim of a
8 “continuous, ongoing use” requirement is shown by plaintiffs’ repeated claims that that section’s grace
9 period cannot apply here because SFPD was not “possessing *and* using” the USBID’s camera network.
10 (MPA at 7:20-8:1 [arguing that Section 19B.5(d) affords a temporary safe harbor only for surveillance
11 technologies that a department “continuously possess[es] ... *and* regularly use[s]” [emphasis added];
12 *id.* at 8:26 [arguing that Section 19B.5(d)’s grace period cannot apply because “the SFPD was not
13 ‘possessing *and* using’” the camera network continuously] [emphasis added].) Plaintiffs evidently
14 cannot state their position without significantly distorting the actual text of Section 19B.5(d). This
15 illustrates how plaintiffs’ proffered interpretation of Section 19B.5(d) is contradictory to, and is
16 undermined by, the actual text that the Board of Supervisors enacted.

17 For these reasons, the fact that the Board of Supervisors chose to extend Section 19B.5(d)’s
18 temporary grace period to a department “possessing *or* using” a surveillance technology shows that the
19 Board did not intend to restrict Section 19B.5(d)’s temporary grandfathering to those surveillance
20 technologies that had been in “ongoing, continuous use,” or that the department had “incorporated into
21 [its] operations on an ongoing basis.” (MPA at 8:6; *id.* at 7:11-12.) Plaintiffs’ request that this Court
22 read a requirement of “ongoing, continuous use” into Section 19B.5(d) should be rejected because it
23 would contradict that section’s express terms.

24 **C. Section 19B.5(d)’s Use Of The Present Participle Does Not Show The Board**
25 **Intended That Section’s Grace Period To Apply Only To Surveillance**
Technologies That Were in Ongoing, Continuous Use.

26 In an effort to sidestep the lack of textual support for their claim that only those surveillance
27 technologies that were in “ongoing, continuous use” at the time the Ordinance took effect can be
28 grandfathered in under Section 19B.5(d), plaintiffs urge that Section 19B.5(d)’s terms “possessing”

1 and “using” should be read to “have an element of continuity,” because those terms are in the “present
2 participle” verb tense. (MPA at 6:21-7:9.) Other courts, according to plaintiff, have interpreted “other
3 statutes that use this verb form to have an element of continuity.” (*Id.*)

4 This argument, however, relies on a strained overreading of Section 19B.5(d)’s use of the
5 present participle tense, placing far more weight on that happenstance than it can bear. None of the
6 cases plaintiffs cite use the fact of a present participle tense to distinguish between a use occurring
7 continuously and a use that is episodic, as plaintiffs attempt to do here. In fact, one of the cases
8 plaintiffs cite – *Kinzua Resources, LLC v. Oregon Dept. of Environmental Quality* (Or. 2020) 468 P.3d
9 410 (Opp. MPA at 7:4-6) – actually discredits plaintiffs’ argument. The court there held it was “not
10 persuaded” by the argument advanced by the petitioners in that case, who, like plaintiffs here, asserted
11 that “it is textually significant that the legislature used the term ‘controlling,’ rather than the term
12 ‘control,’” and that the legislature’s choice of the present participle tense “indicates ‘some current
13 action.’” (*Id.*, 468 P.3d at p. 414.)

14 Moreover, other courts have rejected the argument that a statute’s use of the present participle
15 tense shows that the legislative body intended to mean a present and contemporaneous action, rather
16 than an action occurring in the past. (*See, e.g., Perkovic v. Zurich American Insurance Company*
17 (Mich. 2017) 893 N.W.2d 322, 327-28 [holding that statute providing that notice of injury may be
18 given to an insurer by a person “claiming to be entitled to benefits therefor” “contains no temporal
19 requirement that the insured be claiming benefits at the time the notice of injury is transmitted to the
20 insurer”]; court expressly rejects dissent’s attempt to “read[] such a temporal requirement” into the
21 statute by “arguing that the use of the present participle ‘claiming’ means that the insured must be
22 making a claim at the time that notice is sent to the insurer”]; *Wireless One, Inc. v. Mayor and City*
23 *Council of Baltimore* (Md. Ct. App. 2019) 214 A.3d 1152, 621, 640 [holding that ““nothing in the
24 plain language of [statute defining “displacing agency”] includes a temporal element” requiring that
25 displacement be currently occurring, despite “the repeated use of the present participle in the sentence
26 (‘displacing agency’ and ‘carrying out’).”].)

27 Plaintiffs’ efforts to inject meaning into the Board of Supervisors’ use of the present participle
28 tense in Section 19B.5(d) are also defeated by the fact that the Board also chose to repeatedly use the

1 present participle tense in Section 19B.2(a), the section of the Ordinance that plaintiffs claim the SFPD
2 violated by acquiring a link to the USBID’s camera network during the George Floyd protests in 2020.
3 Section 19B.2(a) contains multiple examples of the present participle tense, stating that a City
4 department must obtain the approval of the Board of Supervisors before “acquiring or borrowing” new
5 surveillance technology, “using” new or existing surveillance technology for purposes beyond those
6 approved by the Board, or “entering into [an] agreement” with a non-City entity to share or use
7 surveillance technology. (*Id.*, subds. (2), (3), and (4).) If the Board’s use of the present participle
8 tense in Section 19B.2(a) does not show that that section only prohibits “continuous and ongoing”
9 conduct (as plaintiffs logically must contend), then the Board’s use of the present participle tense in
10 Section 19B.5(d) should also be presumed not to show that that section’s grace period applies only
11 where the department made “continuous and ongoing” use of the surveillance technology in question.
12 (*People v. Wells* (1996) 12 Cal.4th 979, 986 [absent evidence of a contrary intent, courts “presume the
13 Legislature intended that we accord the same meaning to similar phrases”].)

14 **D. The “Legislative Debate” Does Not Show That A Surveillance Technology Must**
15 **Have Been Used “Continuously” To Qualify For Section 19B.5(d)’s Grace Period.**

16 Plaintiffs claim that because members of the Board of Supervisors discussed Section
17 19B.5(d)’s grace period on May 14, 2019 and spoke of four specific surveillance technologies –
18 Shotspotter, body worn cameras, ALPRs, and cameras on MUNI buses – that City departments
19 “continuously possess ... and regularly use,” the Board must have intended such “ongoing, continuous
20 use” to be *required* for Section 19B.5(d)’s grace period to apply. (MPA at 7:10-8:5.) But plaintiffs
21 cannot, and do not, claim that anyone stated at that meeting that only surveillance technologies that
22 were in “ongoing, continuous use” could be subject to Section 19B.5(d)’s grace period. And as we
23 have explained, Section 19B.5(d)’s use of the phrase “possessing *or* using” defeats any claim that
24 “ongoing, continuous use” was required. Moreover, it is unremarkable that the discussion at the Board
25 should focus on the handful of surveillance technologies that were particularly in the public eye and
26 that were familiar to most people. It also is unremarkable that the discussion at the Board on May 14,
27 2019 did not include mention of USBID’s surveillance camera network, which as of that date, SFPD
28

1 had never sought or acquired access to. The Board’s May 14, 2019 discussion does not support
2 plaintiffs’ efforts to rewrite, and significantly narrow, Section 19B.5(d)’s grace period.

3 **E. The Ordinance’s Limits On The Use of A Surveillance Technology After The**
4 **Board Has Adopted An Ordinance Regulating That Use Do Not Apply During The**
5 **Grace Period Before The Board Adopts Such An Ordinance.**

6 The Ordinance states that *after* the Board of Supervisors has adopted a Surveillance
7 Technology Policy ordinance, the department may not, without prior Board approval, use that
8 technology “for a purpose, in a manner, or in a location” other than what the Board’s approved
9 Surveillance Technology Policy ordinance allows. (Section 19B.2(a)(3).) Plaintiffs claim that
10 because the Ordinance thus carefully restricts a department’s use of surveillance technology *after* the
11 Board has legislatively regulated that technology, the same restrictions on the “purpose,” “manner,”
12 and “location” in or for which a surveillance technology can be used *before* the Board has acted to
13 regulate that technology, must be read into Section 19B.5(d)’s grace period. (MPA at 10:1-11:16.)
14 But this argument, too, asks the Court to read into Section 19B.5(d) restrictions that the Board
15 obviously knew how to enact – because it *did* enact them, in Section 19B.2(a)(3) – but that it evidently
16 chose not to enact in Section 19B.5(d). The Court should decline plaintiffs’ invitation to “violate[] the
17 cardinal rule of statutory construction that courts must not add provisions to statutes.” (*People v.*
18 *Guzman, supra*, 35 Cal.4th at p. 587.)⁵

19 This Court should respect the balance that the Board struck. The Board clearly wanted to
20 assume regulatory control over City departments’ use of surveillance technologies, and it thus placed
21 meaningful limits on how a department could use surveillance technologies that the Board had already
22 acted to regulate. But the Board’s choice to not place any similar restrictions on a department’s use of
23 existing surveillance technologies during Section 19B.5(d)’s temporary grace period – which only
24 lasts until the Board adopts a Surveillance Technology Policy ordinance and that ordinance takes
25 effect – shows that the Board did not wish to similarly restrict a department’s use of a particular

26 ⁵ The Legislative Digest, which was before the Board at the time it considered the Ordinance,
27 stated that the Ordinance “would allow Departments possessing or using Surveillance Technology to
28 continue to use the Surveillance Technology” until the Board adopted an ordinance regulating that
technology, without mentioning any limits on how the department could continue to use the
technology during that interim period. (Snodgrass Decl. ISO Mtn. for Summ. J. at pp. 70-71.)

1 surveillance technology during that grace period. During that grace period, therefore, a department
2 that previously had used ALPRs to only read license plates of cars in one area of the City could begin
3 using ALPRs to also read license plates of cars in another area. And a department that previously used
4 the USBID’s surveillance cameras could use them again, including to monitor portions of the Union
5 Square area it had not monitored the first time. This Court should respect the policy choice the Board
6 made.

7 **II. THE BOARD WOULD NOT REASONABLY HAVE SOUGHT TO REQUIRE**
8 **“ONGOING, CONTINUOUS” USE OF A SURVEILLANCE TECHNOLOGY THAT**
9 **RESPONDS TO CIRCUMSTANCES THAT ARE PRESENT ONLY OCCASIONALLY**

10 Plaintiffs’ claim that Section 19B.5(d)’s grace period requires “ongoing, continuous use” of the
11 surveillance technology in question makes little sense in the context of the particular surveillance
12 technology at issue here, and the circumstances in which SFPD used it. SFPD acquired a link to the
13 USBID’s camera network in 2019 and 2020 because large gatherings of revelers or protestors in the
14 Union Square area created the potential for criminal activity or security problems. Such large
15 gatherings of revelers or protestors occur only occasionally, not continuously. The SFPD’s use of
16 USBID’s camera network naturally ceased once the celebration or other large gathering of people was
17 over, and the crowd dispersed. Thus, even if some Section 19B.5(d)’s terms “possessing” and “using”
18 implied some “element of continuity,” SFPD’s use of USBID’s surveillance camera network would
19 still constitute an “existing surveillance technology” entitled to that section’s grace period. The SFPD
20 obtained access to USBID’s camera network for a period of up to 24 hours, which was the entirety of
21 the 2019 Pride celebration for which residents and visitors to San Francisco were expected to
22 congregate and potentially create security issues. The SFPD had no need to continue its access to the
23 camera network when the crowds in the Union Square area had dispersed.

24 **III. THE SFPD IS ENTITLED TO RELY ON SECTION 19B.5(d)’s GRACE PERIOD**

25 Plaintiffs argue that even if SFPD’s use of USBID’s camera network during the 2019 Pride
26 celebration triggered Section 19B.5(d)’s grace period, SFPD cannot rely on that grace period here,
27 because it “failed to comply with key grace period requirements.” (MPA at 12:3-5.) This claim, like
28 the rest of plaintiffs’ opposition, misstates Section 19B.5(d)’s requirements, seeks to add terms to that
section that the Board of Supervisors did not enact, and is insufficient to defeat summary judgment.

1 First, nothing in the text of the ordinance, or its legislative history, links compliance with the
2 requirements of subdivisions (a) – (c) of Section 19B.5 by a department or by COIT to the
3 department’s ability to continue using existing surveillance technology during the grace period
4 afforded by Section 19B.5(d). It would have been a simple matter for the Board of Supervisors to add
5 the words “provided that that department meets the deadlines contained in subdivisions (a) through (c),
6 above” to Section 19B.5(d), but the Board did not do so, suggesting that it viewed the grace period as
7 an independent provision. The Legislative Digest, similarly, does not tie subdivision (d)’s grace
8 period to the procedures listed in subdivisions (a) through (c), but instead simply states that [t]his
9 ordinance would allow Departments possessing or using Surveillance Technology to continue to use
10 the Surveillance Technology ... until the Board enacted a Surveillance Technology Policy ordinance,
11 following COIT’s development of a policy and recommendation.” (Snodgrass Decl. ISO Mtn. for
12 Summ. J. at pp. 70-71.) Plaintiffs’ claim that the grace period has been waived by SFPD here, or
13 indeed is even waivable, flies in the face of the Ordinance’s express terms and its legislative history.

14 Second, and equally important, the summary judgment record shows that as the City has
15 implemented the Ordinance, it is COIT, not the SFPD, that “sets the schedule for each City department
16 that possesses or uses one or more forms of surveillance technology to submit draft surveillance
17 technology policies and impact reports concerning its surveillance technologies” to COIT for review,
18 after which the Board of Supervisors can consider the adoption of an ordinance approving the
19 surveillance technology policy. (Steeves Decl. ISO Mtn. for Summ. J., ¶ 7.) As Ms. Steeves explains,
20 COIT has instructed SFPD to submit draft surveillance technology policies and impact reports
21 covering SFPD’s use of non-City entity surveillance cameras by November 12, 2021. (*Id.*) Any claim
22 that SFPD has “shirked the legal obligations necessary to obtain” Section 19B.5(d)’s grace period,
23 based on a schedule imposed by COIT rather than by SFPD, is without merit.

24 CONCLUSION

25 Defendant the City and County of San Francisco respectfully requests that its motion for
26 summary judgment be granted.

Dated: November 19, 2021

DAVID CHIU
City Attorney
WAYNE K. SNODGRASS
Deputy City Attorney

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

Attorneys for Defendant
CITY AND COUNTY OF SAN FRANCISCO

1
2
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