SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

HOPE WILLIAMS, et al.,

Plaintiffs,

vs.

CITY AND COUNTY OF SAN FRANCISCO,

Defendant.

Case No. CGC-20-587008

ORDERS ON SUMMARY JUDGMENT MOTIONS

Defendant City and County of San Francisco's summary judgment motion is granted.

Plaintiffs seek declaratory and injunctive relief on a claim that the City's police department violated a local ordinance regarding surveillance technology.[1] However, the ordinance's plain language is to the contrary.

The key facts are undisputed. During San Francisco's Pride celebration in June 2019, the Union Square Business Improvement District – a non-City entity – gave City police access to USBID's outdoor camera network. (UMF ¶1, 4.) In July 2019, the at-issue ordinance – Administrative Code 19B – took effect. (UMF ¶8.) In February 2020, the USBID again offered the police access to its cameras – for football's Super Bowl. (PUMF p. 15.) In May and June 2020, there were protests in San Francisco of George Floyd's murder. With access to USBID's camera network on a laptop computer, a police officer looked several times "to ensure there were no crowds forming in Union Square" and found "no activity." (Gunter Dep. 52-61.) Again, for July 4th 2020, the USBID offered police access to its camera network. (PUMF p. 15.)

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[1] Plaintiffs are Hope Williams, Nathan Sheard and Nestor Reyes.

Section 19B.2(a) of the ordinance provides that a City department (e.g., the police) must obtain board of supervisor approval by a separate ordinance before "[e]ntering into agreement with a non-City entity to acquire, share, or otherwise use Surveillance Technology." No such ordinance has been passed. However, §19B.5(d) of the ordinance provides: "Each Department possessing or using Surveillance Technology before the effective date of this Chapter 19B may continue its use of the Surveillance Technology and the sharing of data from the Surveillance Technology until such time as the Board enacts an ordinance regarding the Department's Surveillance Technology Policy."

Section 19B.5(d)'s purpose is further stated in its legislative history: "This ordinance would allow Departments possessing or using Surveillance Technology to continue to use the Surveillance Technology, and share information from the Surveillance Technology, until the Board enacted a Surveillance Technology Policy ordinance..." (Snodgrass Dec. Ex. B p. 71.)

"Courts interpret ordinances in the same way as they construe statutes." (*Stolman v. City of Los Angeles* (2003) 114 Cal.App.4th 916, 928; *H.N. & Frances C. Berger Foundation v. City of Escondido* (2005) 127 Cal.App.4th 1, 12 ("construction of an ordinance is a pure question of law for the court").) First, the law's language is examined, giving words their ordinary, everyday meaning. (*Halbert's Lumber, Inc. v. Lucky Stores, Inc.* (1992) Cal.App.4th 1233, 1238.) If the words are reasonably free from ambiguity and uncertainty, the language controls and the analysis ends. (Id. at 1239.) If the words' meaning is not clear, the next step is to review legislative history. (Id.)

Here, the ordinance's language is clear. Section 19B.5(d) says a department "possessing or using" surveillance technology before the ordinance's effective date, may "continue its use." Thus, the police's prior use of USBID's surveillance technology allowed the department to continue its use.

Plaintiffs say the terms "possessing or using" require the police department to have used USBID's surveillance technology "continuously." (See, e.g., Opp. 3:9-10.) However, as seen above, this argument finds no support in the ordinance's plain language or its legislative history. Nor can the ordinance be reasonably read to require existing surveillance technologies to have been "incorporated

into" department operations, as plaintiffs assert. (Id.) These are concepts the board of supervisors could have included in the ordinance had it so intended. (*People v. Sheehy* (2014) 225 Cal.App.4th 445, 451.)

Plaintiffs further focus on a "single" use of USBID surveillance technology. (Opp. 6:14-15.) However, as shown above, USBID offered the police use of its cameras repeatedly, both before and after the George Floyd protests. In an apparent resort to legislative history, plaintiffs also say the "legislative debate" focused on four other surveillance technologies. (Id. at 7:10.) But the absence of debate on USBID cameras does not remove them from §19B.5(d)'s ambit.

Finally, plaintiffs assert that the police violated §19B.5(a)-(c) by not meeting timetables. (Opp. 12:1-13.) The City responds that a committee on information technology (COIT) – and not the police – is responsible for the timetables. In any event, plaintiffs pled only that §19B.2 – and not §19B.5 – was violated. (Cmplt. 10:5-14.) Moreover, §19B.5's plain language belies plaintiffs' notion that subsection (d) is conditioned by (a-c). Again, this is a concept the board of supervisors could readily have included in §19B.5 had it so intended. (*Sheehy*, 225 Cal.App.4th at 451.)

Plaintiffs' summary judgment motion is denied for the same reasons stated in this ruling on the City's summary judgment motion. The parties have agreed that the issues raised in the two motions are the same.

Dated: February 9, 2022

Richard B. Ulmer Jr.
Judge of the Superior Court

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I, the undersigned, certify that I am an employee of the Superior Court of California, County Of San Francisco and not a party to the above-entitled cause and that on February 09, 2022 I electronically served the foregoing order on the following counsel of record by causing a copy thereof to be sent by email to the email addresses indicated below.

Date: February 09, 2022 By: SEAN KANE

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