REVISED AGENDA MATERIAL
for Supplemental Packet 1

Meeting Date: **July 26, 2022**

Item Number: **29**

Item Description: **Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers**

Submitted by: **Vice Mayor Harrison**

RECOMMENDATION

Adopt the updated BPD Policy 1302, the legally enforceable Surveillance Use Policy for Automated License Plate Readers (ALPR) pursuant to BMC 2.99.

BACKGROUND

The proposed Policy 1302 represents near complete agreement between BPD, the City Manager's Office, and Vice Mayor Harrison's Office.

Council originally financed and authorized ALPR technology to help automate BPD's parking and scofflaw enforcement, but through BPD policy development, usage expanded to criminal enforcement. To date, due to the pandemic and policy concerns regarding data retention, sharing, and civil liberties protections, Council deferred adoption of a Surveillance Use Policy pursuant to BMC Sections 2.99.020 and 2.99.050 of the Surveillance Ordinance for ALPR.

BPD Administrative Order #001-2016, prepared in 2016 before adoption of the Surveillance Ordinance, has served as a de facto ALPR policy, yet Administrative Order #001-2016 is out of date with local and state law and does not satisfy the specific requirements of the Surveillance Ordinance. Most recently, adoption of a proposed update to the use policy for ALPRs (Policy 1302) was deferred by Council in 2020 and 2021. In November 2021, Councilmembers Harrison and Hahn, and separately Councilmember Taplin, submitted proposed revisions. Council referred the matter to the Agenda Committee for future scheduling to allow for further policy development.

Since the referral to the Agenda Committee, Vice Mayor Harrison and Councilmember Hahn have been working diligently with BPD, the City Manager, City Attorney, the Information Technology and Public Works Departments, and City Contractors to craft a sensible policy that (1) fully addresses the requirements of the Surveillance Ordinance, (2) clarifies the purpose and scope of collection, (3) enacts various safeguards to protect sensitive data, and (4) provides clarity on the circumstances when parking enforcement and analysis ALPRs and associated data can be used to support criminal investigations.

Use Policy Updates Overview:

Definitions

- Provides key new definitions related to the City's ALPR equipment, vendors, and data types. Also provides definitions for Parking Enforcement Operations and Parking Analysis as part of the goBerkeley system.

- Enumerates the specific authorized uses of ALPR technology associated with Parking Enforcement and Parking Analysis.

Authorized and Prohibited Uses

- Allows BPD to query ALPR data retroactively to support a specific BPD criminal investigation when an officer has a good faith belief that an emergency involving the danger of, or imminent threat of death or serious physical injury to any person requires such a query or use, and the officer reasonably believes there is a nexus between a vehicle and the alleged crime scene. Approval to query the data must be granted by the Chief of Police and City Manager. The City Manager shall log any queries or use of such information pursuant to this subsection in its Annual Surveillance Technology Report pursuant to BMC 2.99.

- Provides that officers may investigate hits based on reasonable suspicion resulting from apparent matches, discovered in the regular course of work of Parking Enforcement Operations, between the Genetec ALPR System and the following databases: Stolen Vehicles System, Amber, Silver, and Blue Alerts, local missing persons, scoff law violator, gig car, general permit, or other non-criminal local lists.

- Explicitly prohibits ALPR use that invades privacy and during crowd control.

- Limits the use of ALPR in conjunction with lists or databases to the: Stolen Vehicles System, Amber, Silver and Blue Alerts, local missing persons, scoff law violator, gig car, general permit, or other non-criminal local lists.

Data Collection and Retention

- *ALPR Reads Not Resulting in ALPR Hits* - All ALPR Read Images and ALPR Read Metadata transmitted to and stored in the Genetec ALPR System shall be purged within fourteen (14) days to allow for the City's enforcement of its

72- Hour Rule (BMC Section 14.36.050).

ALPR Read Metadata in the form of license plate data or other non-PII data may be transmitted to and stored in the Passport Automatic Data Collection System for Parking Analysis purposes and retained pursuant to applicable retention policies.

- *ALPR Hits* - All ALPR Hits and related metadata resulting from ALPR Reads should be uploaded daily to the Genetec server and shall be purged from Genetec within fourteen (14) days to allow for the City's enforcement of its 72-Hour Rule (BMC Section 14.36.050).

- *Unenforced ALPR Hits* - All erroneous and unenforced ALPR Hit data shall be purged locally at least nightly.

- *Enforced ALPR Hits* - Only ALPR Read Images and Metadata associated with Enforced ALPR Hits shall be downloaded to the Passport Parking Management System servers, with a maximum retention period of one (1) year in Passport and in accordance with the established records retention schedule.

Third Party Data Sharing

- The ALPR data may be shared only with other law enforcement or prosecutorial agencies as pursuant to a valid court order, subpoena, or a search warrant, Cal. Civ. Code §1798.90.5(f), and as limited by this Policy, and shall not be shared with federal immigration enforcement officials consistent with this policy and other applicable City policy.

- Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided by this policy and the Records Maintenance and Release Policy.

- Aggregated ALPR data not related to specific criminal or civil investigations authorized by a court order, subpoena, or search warrant shall not be released to any local, or state agency or entity without the express written consent of the City Manager and only in accordance with this Use Policy.

Policy
1302

Surveillance Use Policy - ~~ALPR~~- Automated License Plate Reader

1302.1   PURPOSE
This Surveillance Use Policy is ~~issued in compliance with BMC 2.99, and incorporates by reference language from the Berkeley Police Department ALPR Policy #422 and adds elements as required by~~legally-enforceable pursuant to BMC 2.99.

The policy of the Berkeley Police Department is to utilize ALPR technology to capture and store digital license plate data and images for Parking Enforcement Operations, Parking Analysis, and limited criminal enforcement purposes associated with Parking Enforcement Operations while recognizing the established privacy rights of the public.

1302.2   DEFINITIONS
"**Alleged Parking Violation**" means an alleged violation of time limits in parking areas designated by state and local law, or a violation of time limits and/or non-permit parking in the City's RPP zones.

"**ALPR Read Image**" means images of license plates, vehicles, wheels or any other incidentally captured image.

"**ALPR Read**" means computer-readable data captured by an ALPR Reader, including ALPR Read Image and associated ALPR Read Metadata. ALPR Reads are transient means to create potential government records, to include Parking Analysis data and Enforced Citations.

"**ALPR Hit**" means an Alleged Parking Violation or Stolen Vehicle System alert resulting from computer generated analysis of ALPR Reads by the Genetec ALPR System resulting in an apparent:

1.   match between an ALPR Read and ALPR Read Metadata stored in the Genetec ALPR System, to include the Stolen Vehicle System; or

2.   cross checking between ALPR Read and permit information which is stored on the Genetec ALPR System.

"**ALPR Read Metadata**" means any image-based or other metadata, including but not limited to, global positioning system coordinates, block face information, tire position information, digitized license plates in alphanumeric characters, and timestamps.

"**Automated License Plate Reader**" or "**ALPR**" means one or more Genetec AutoVu mobile cameras affixed to Parking Enforcement Vehicles and combined with computer software and algorithms to read and convert images of license plates, the characters they contain, and associated ALPR Read Metadata related to Parking Enforcement Operations or Parking Analysis into computer-readable data.

"**Deploy**" or "**Deployment**" means any operation or use of ALPR Readers affixed to Parking Enforcement Vehicles.

"**Enforced ALPR Hit**" means an Alleged Parking Violation confirmed by a Parking Enforcement

Officer that results in the transmission of associated ALPR Read Image and ALPR Read Metadata to the Passport Parking Management System for storage in a database as a government record for the purpose of citation processing.

"**Genetec ALPR System**" means the computerized Genetec server and database that stores all ALPR Reads, metadata and hits, and also pushes an Enforced ALPR Hit metadata to the Passport Parking Management System.

"**Residential Parking Permits**" or "**RPP**" means an annual, visitor, merchant or in-home care parking permit, typically represented by a vehicle's license plate, and associated with the City's Residential Parking Permit program across designated zones.

"**Parking Enforcement Vehicle**" means the GO-4 three-wheeled parking enforcement vehicle.

"**Parking Enforcement Officers**" means employees of the City who work weekly rotations on Parking Enforcement Operations beats throughout the City and are properly trained to operate ALPRs and access the Genetec ALPR System.

"**Parking Enforcement Operations**" means Parking Enforcement Officer enforcement of parking regulations associated with local ordinances, the California Vehicle Code, and Stolen Vehicle System enforcement through Parking Enforcement Vehicle-based automated (ALPR) and non-automated means.

"**Personally Identifiable Information**" or "PII" means information:

1. that directly identifies an individual (e.g., name, address, telephone number, email address, etc.) or

2. by which the City or other agency intends to identify specific individuals in conjunction with other data elements, i.e., indirect identification.

"**Parking Analysis**" means ongoing computational or algorithmic analyses performed by the City of Berkeley on ALPR Read Metadata regarding the occupancy of total parking spaces across commercial districts as part of goBerkeley, the City's data-driven, demand-responsive parking management program. ALPR Read Metadata data associated with Parking Analysis may include non-randomized license plates, to be maintained by Public Works for Parking Analysis.

"**Parking Permit Application**" means an application submitted to the City for RPP or other permit that may include but is not limited to PII such as names, address, photo identification, vehicle registration (license plate and vehicle identification number), phone number and email address.

"**Passport Automatic Data Collection System**" means the server and database whereby the Passport Parking Management System vendor, on behalf of the City, downloads, stores and transfers Parking Analysis ALPR Read Metadata stripped of any and all PII before being transferred to the goBerkeley program.

"**Passport Parking Management System**" means the servers and databases maintained by Passport Labs Incorporated, containing the database of the license plate numbers and other PII associated with Parking Permit Applications and Residential Parking Permits, and including historic parking citation data, to include Enforced Hits.

"**OPSMan Mobile**" means a mobile device providing handheld ticket issuance and ALPR data reference capabilities.

"**Stolen Vehicle System**" or "**SVS**" means information from the California Law Enforcement Telecommunications System's (CLETS) Department of Justice (DOJ) Stolen Vehicle System (SVS) database providing data regarding wanted and stolen vehicles.

1302.3   AUTHORIZED AND PROHIBITED USES
Use of an ALPR is restricted to the purposes outlined below.

All data and images gathered by the ALPR are for ~~the~~ official use ~~of~~ by the Berkeley Police Department (BPD) for Parking Enforcement Operations and may be retroactively queried in limited circumstances only as specified by this ~~department. Because such data may contain~~policy and/or federal, state, local law.

ALPR data may be used by the Finance, Information Technology (IT), Customer Service, and Public Works Departments only as specified in this policy, and consistent with Parking Enforcement Operations and Parking Analysis. Data that is considered confidential ~~information, it~~pursuant to case law, state statutes, and BPD Policy 804 Records Release Management and/or applicable federal, state, or local law is not open to public review. ~~(Ref. policy 422.2)~~

Berkeley Police

~~1302.~~2 AUTHORIZED AND PROHIBITED ~~USES~~ USE

~~Use of an ALPR is restricted to the purposes outlined below.~~ Department members or other Departments shall not use, or allow others to use the equipment or database records for any unauthorized purpose ~~(Civil Code § 1798.90.51; Civil Code § 1798.90.53). (Ref. policy 422.4)~~, and will enforce this policy pursuant to Section 1302.11(1).

(a) An ALPR shall only be Deployed and used for ~~official law enforcement business~~Parking Enforcement Operations, and Parking Analysis.

(b) ALPR data obtained from Parking Enforcement Operations and retained pursuant to this use policy, including data and metadata associated with ALPR Reads and Hits, may be queried and used to support a specific BPD criminal investigation when an officer has a good faith belief that an emergency involving the danger of, or imminent threat of death or serious physical injury to any person requires such a query or use, and the officer reasonably believes there is a nexus between a vehicle and the alleged crime scene. Approval to query or use the data must be granted by the Chief of Police and City Manager. The City Manager shall log any queries or use of such information pursuant to this subsection in its Annual Surveillance Technology Report pursuant to BMC 2.99.

(c) Notwithstanding subsection (b), officers may investigate hits based on reasonable suspicion resulting from apparent matches, discovered in the regular course of work of Parking Enforcement Operations, between the Genetec ALPR System and the following databases: Stolen Vehicles System, Amber, Silver, and Blue Alerts, local missing persons, scoff law violator, gig car, general permit, or other non-criminal local lists.

(d) Data obtained from Parking Analysis shall not be queried or used for criminal investigations.

(e) The following uses of the Genetec ALPR System are specifically prohibited:

1. Invasion of Privacy

(a) It is a violation of this Policy to utilize the Genetec ALPR System to capture license plates not on a public road or street, or in a place not accessible to the public.

2. Crowd Control

(a) ALPRs shall not be deployed in crowd control operations except strictly for the purposes of Parking Enforcement Operations.

3. Criminal Enforcement

(a) It is a violation of this Policy to use or Deploy ALPRs to scan or canvass license plates in connection with any crime scene, patrol operation, or investigation except pursuant to Section 1302.3(c) of this Policy.

4. Use of Lists and Databases

(a) It is a violation of this Policy to use the Genetec ALPR System or

associated ALPR Read data in conjunction with any list or database other than those specified pursuant to Section 1302.3(c) of this Policy, or for any personal use.

~~1302.4~~An ALPR may be used to support a patrol operation or criminal investigation. Reasonable suspicion or probable cause is not required before using an ALPR.

(a) While an ALPR may be used to canvass license plates around any crime scene, particular consideration should be given to using ALPR-equipped cars to canvass areas around homicides, shootings and other major incidents. Partial license plates reported during major crimes should be entered into the ALPR system in an attempt to identify suspect vehicles.

1302.3 ~~DATA COLLECTION~~

~~All data and images gathered by an ALPR are for the official use of the Berkeley Police Department. Such data may~~ **DATA COLLECTION AND RETENTION**

The Investigations Division Captain, or their designee, is responsible for ensuring proper collection and retention of ALPR data. Technical support and assistance shall be provided by the City of Berkeley's Information Technology (IT) Department and associated Genetec ALPR system providers/vendors as identified below.

IT's role will be limited to providing initial infrastructure set-up and accessing or viewing individual records or reports (potentially including PII or CLETS information as authorized by the Chief of Police), and testing the accuracy of the equipment. Genetec ALPR System data provided to Parking Control Officers may also contain confidential CLETS information and is not open to public review.

(a) ALPR ~~information gathered and retained by this department may be used~~Read Images

ALPR Reads Images are license plate images which are uploaded daily Genetec server and shall be purged pursuant to the retention guidelines in subsection (b).

(b) ALPR Reads Not Resulting in ALPR Hits

All ALPR Read Images and ~~shared with prosecutors~~ALPR Read Metadata transmitted to and stored in the Genetec ALPR System shall be purged within fourteen (14) days to allow for the City's enforcement of its 72- Hour Rule (BMC Section 14.36.050).

ALPR Read Metadata in the form of license plate data or other non-PII data may be transmitted to and stored in the Passport Automatic Data Collection System for Parking Analysis purposes and retained pursuant to applicable retention policies.

(c) ALPR Hits

All ALPR ~~law~~Hits and related metadata resulting from ALPR Reads should be uploaded daily to the Genetec server and shall be purged from Genetec within fourteen (14) days to allow for the City's enforcement ~~agencies only as permitted by law. (Ref. policy 422~~of its 72-Hour Rule (BMC Section 14.36.050).

(d) Unenforced ALPR Hits

All erroneous and unenforced ALPR Hit data shall be purged locally at least nightly.

(e) Enforced ALPR Hits

Only ALPR Read Images and Metadata associated with Enforced ALPR Hits shall be downloaded to the Passport Parking Management System servers, with a maximum retention period of one (1) year in Passport and in accordance with the established records retention schedule.

1302.5)

~~1302.4~~DATA ACCESS

(a)   Only properly trained Parking Enforcement Officers, Sworn Officers as selected by the Investigation's Division Captain, and Information Technology personnel are allowed access to the Genetec ALPR system or to collect ALPR information.

~~(a)~~(b) No member of ~~this department~~the BPD shall operate ALPR equipment or access ALPR data without first completing department-approved training, which shall include compliance with this use policy.

~~(b)~~(c) No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so.

~~(c)~~(d) ~~If~~If a Sworn officer is called to verify a stolen vehicle, if practicable, the officer should verify an ALPR response through ~~the California Law Enforcement Telecommunications System (~~CLETS~~)~~ before taking enforcement action that is based solely on an ALPR ~~alert~~Hit.

(e)   Sworn Officers shall visually verify that the license plate of interest matches identically with the ALPR Read Image of the license plate number captured (ALPR Read) by the ALPR, including both the alphanumeric characters of the license plate, state of issue, and vehicle descriptors before proceeding. BPD members alerted to the fact that an observed motor vehicle's license plate is entered as an ALPR Hit in a specific Stolen Vehicle System list are required to make a reasonable effort to confirm that a wanted person is actually in the vehicle and/or that a reasonable basis exists before a Department member would have a lawful basis to stop the vehicle.

1302.

~~1302.5~~ 6 DATA PROTECTION

All saved data will be safeguarded and protected by both procedural and technological means. The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data ~~(Civil Code § 1798.90.51; Civil Code § 1798.90.53) (Ref. policy 422.6):~~:

(a) All ALPR data downloaded to any workstation or server shall be accessible only through a login~~/~~ and/or password-protected system capable of documenting all access of information by name, date and time ~~(Civil Code § 1798.90.52).~~.

(b) Berkeley Police Department members approved to access ALPR data under these guidelines are permitted to access the data for ~~legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action and parking enforcement.~~Parking Enforcement Operations or

~~Aggregated ALPR data not related to~~ specific BPD criminal or civil investigations ~~shall not be released to any local, state or federal agency~~authorized by a court order, subpoena, or ~~entity without the express written consent of the City Manager~~search warrant.

(c) Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units shall be marked, corrected or deleted in accordance with the type and severity of the error in question. If a Berkeley Police Department member becomes aware of an inaccurate manual entry into the ALPR databases, that member shall immediately contact the originating agency or officer to notify the agency of the inaccuracy. The member shall then notify both the Investigations Division Captain and the Inspections and Audit Sergeant of the data error for appropriate follow up and tracking.

1302.~~6~~7 CIVIL LIBERTIES AND RIGHTS PROTECTION~~:~~

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal, state, and ~~state~~local law. The procedures described within this policy (Data Access, Data Protection, Data Retention, Public Access and Third-Party Data Sharing) protect against the unauthorized use of ALPR data. These policies ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to impacts that may violate the First and Fourth Amendments and other potentially disparate or adverse impacts on any communities or groups.

~~1302.7   DATA RETENTION~~

~~The Investigations Division Captain, or his/her designee, is responsible for ensuring proper collection and retention of ALPR data. Technical support and assistance shall be provided by the City of Berkeley's Information Technology (IT) department and associated ALPR system providers/vendors as identified below. IT staff will not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT's role will be limited to providing initial infrastructure set-up, unless particular IT staff members have been cleared by DOJ background checks and authorized by the Chief of Police to receive ALPR records.~~The Berkeley Police Department does not permit the sharing of ALPR data gathered by the City or its contractors/subcontractors for the purpose of federal immigration

enforcement, pursuant to the California Values Act (Government Code § 7282.5; Government Code § 7284.2 et seq) – these federal immigration agencies include Immigrations and Customs Enforcement (ICE) and Customs and Border Patrol (CPB).

All ALPR data downloaded to the server should be stored for a minimum of one year (Government Code § 34090.6) and in accordance with the established records retention schedule. Thereafter, ALPR data should be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media and booked into evidence. (Ref. policy 422.5)

( )   Collected images and metadata of hits will not be stored for more than 365 days. Metadata of reads will not be stored for more than 30 days. Images of reads will not be transferred to the server.

1302.8   PUBLIC ACCESS

(a)   Non-law enforcement requests for access to stored ALPR data shall be processed according to the Records Maintenance and Release Policy in accordance with applicable law. (Ref. policy 422.6 (a))

Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requester in such cases must provide acceptable proof of his or hertheir identity and of ownership of the vehicle in question. (Ref. policy 422.6 (b))All requests will be evaluated on a case-by-case basis to ensure they conform to the requirements and limitations of public records requests and other applicable law.

1302.9   THIRD -PARTY DATA-SHARING

(a)   Non-law enforcement requests for anonymized ALPR bulk data related to parking enforcement and access to stored ALPR data related to parking management shall be processed according to this policy, the Records Maintenance and Release Policy and applicable federal, state, and local law.

(a)(b) The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposesas pursuant to a valid court order, subpoena, or as otherwisea search warrant, Cal. Civ. Code § 1798.90.55(b), and as permitted by law. ALPR data is subject to the provisions of BPD Policy 415, and hence maythis policy and shall not be shared with federal immigration enforcement officials consistent with this policy and other applicable City policy.

Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in by this policy and the Records Maintenance and Release Policy (Civil Code§ 1798.90.55)..

Aggregated ALPR data not related to specific criminal or civil investigations authorized by a court

order, subpoena, or search warrant shall not be released to any local, or state or federal agency or entity without the express written consent of the City Manager. (Ref. policy 422.6 (e)) and only in accordance with this Use Policy.

Such third-party data-sharing shall be subject to non-privileged and non-confidential City Council notification pursuant to BMC 2.99.020 (2) (a).

The Berkeley Police Department is prohibited from selling any ALPR data.

1302.10   TRAINING AND ALPR ADMINISTRATOR

Training for the operation of ALPR Technologytechnology shall be provided by BPD personnel. All BPD employees who utilize ALPR Technologytechnology shall be provided a copy of this Surveillance Use Policy.

(1) The Investigations Division Captain shall be responsible for compliance with the requirements of Civil Code § 1798.90.5 et seq. This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

(i) Ensuring that training requirements are completed for authorized users. The Administrator shall ensure that members receive department-approved training for those authorized to use or access ALPRs (Civil Code § 1798.90.51; Civil Code § 1798.90.53).

(ii) Procedures for system operators to maintain records of access in compliance with Civil Code§ 1798.90.52 and this Use Policy

(i)(iii)   Ensuring this policy and related procedures are conspicuously posted on the City's website.

1302.11   AUDITING AND OVERSIGHT

Genetec ALPR systemSystem audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant on a regular basis, at least biannually. (Ref. policy 422.6 (g))

1.   Any unauthorized access or data breach shall be reported immediately to the City Manager. BPD will enforce against prohibited uses of the Genetec ALPR system, associated ALPR Read and Hit metadata, and lists and databases pursuant to Policy P-26, or other applicable law or policy.

2.   The audit shall be documented in the form of an internal department memorandum to the Chief of Police. The memorandum shall include any data errors found so that such errors can be corrected. After review by the Chief of Police, the memorandum and any associated documentation shall be placed into the annual report filed with the City Council pursuant to BMC Section 2.99.020 2. d., published on the City of Berkeley website in an appropriate location, and retained within Professional Standards Bureau.

1302.12   MAINTENANCE

Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain. The Investigations Division Captain will assign members under his/hertheir command to administer the day-to-day operation of the ALPR equipment and data. (Ref. policy 422.3)

1302.12.1 ALPR ADMINISTRATOR

The Investigations Division Captain, or his/her designee, shall be responsible for developing guidelines and procedures to comply with the requirements of Civil Code§ 1798.90.5 et seq. This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53) (Ref. policy 422.3.1):

(a) A description of the job title or other designation of the members and independent contractors who are authorized to use or access the ALPR system or to collect ALPR information.

(b) Training requirements for authorized users.

(c) A description of how the ALPR system will be monitored to ensure the security of the information and compliance with applicable privacy laws.

(d) Procedures for system operators to maintain records of access in compliance with Civil Code § 1798.90.52.

(e) The title and name of the current designee in overseeing the ALPR operation.

Ensuring this policy and related procedures are conspicuously posted on the City's website.

Policy **1302**	Berkeley Police Department Law Enforcement Services Manual

Surveillance Use Policy- Automated License Plate Reader

1302.1   PURPOSE
This Surveillance Use Policy is legally-enforceable pursuant to BMC 2.99.

The policy of the Berkeley Police Department is to utilize ALPR technology to capture and store digital license plate data and images for Parking Enforcement Operations, Parking Analysis, and limited criminal enforcement purposes associated with Parking Enforcement Operations while recognizing the established privacy rights of the public.

1302.2   DEFINITIONS
"**Alleged Parking Violation**" means an alleged violation of time limits in parking areas designated by state and local law, or a violation of time limits and/or non-permit parking in the City's RPP zones.

"**ALPR Read Image**" means images of license plates, vehicles, wheels or any other incidentally captured image.

"**ALPR Read**" means computer-readable data captured by an ALPR Reader, including ALPR Read Image and associated ALPR Read Metadata. ALPR Reads are transient means to create potential government records, to include Parking Analysis data and Enforced Citations.

"**ALPR Hit**" means an Alleged Parking Violation or Stolen Vehicle System alert resulting from computer generated analysis of ALPR Reads by the Genetec ALPR System resulting in an apparent:

    1.   match between an ALPR Read and ALPR Read Metadata stored in the Genetec ALPR System, to include the Stolen Vehicle System; or

    2.   cross checking between ALPR Read and permit information which is stored on the Genetec ALPR System.

"**ALPR Read Metadata**" means any image-based or other metadata, including but not limited to, global positioning system coordinates, block face information, tire position information, digitized license plates in alphanumeric characters, and timestamps.

"**Automated License Plate Reader**" or "**ALPR**" means one or more Genetec AutoVu mobile cameras affixed to Parking Enforcement Vehicles and combined with computer software and algorithms to read and convert images of license plates, the characters they contain, and associated ALPR Read Metadata related to Parking Enforcement Operations or Parking Analysis into computer-readable data.

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Enforcement Vehicles.

"**Enforced ALPR Hit**" means an Alleged Parking Violation confirmed by a Parking Enforcement Officer that results in the transmission of associated ALPR Read Image and ALPR Read Metadata to the Passport Parking Management System for storage in a database as a government record for the purpose of citation processing.

"**Genetec ALPR System**" means the computerized Genetec server and database that stores all ALPR Reads, metadata and hits, and also pushes an Enforced ALPR Hit metadata to the Passport Parking Management System.

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"**Stolen Vehicle System**" or "**SVS**" means information from the California Law Enforcement Telecommunications System's (CLETS) Department of Justice (DOJ) Stolen Vehicle System (SVS) database providing data regarding wanted and stolen vehicles.

1302.3   AUTHORIZED AND PROHIBITED USES
Use of an ALPR is restricted to the purposes outlined below.

All data and images gathered by the ALPR are for official use by the Berkeley Police Department (BPD) for Parking Enforcement Operations and may be retroactively queried in limited circumstances only as specified by this policy and/or federal, state, local law.

ALPR data may be used by the Finance, Information Technology (IT), Customer Service, and Public Works Departments only as specified in this policy, and consistent with Parking Enforcement Operations and Parking Analysis. Data that is considered confidential pursuant to case law, state statutes, and BPD Policy 804 Records Release Management and/or applicable federal, state, or local law is not open to public review.

Berkeley Police Department members or other Departments shall not use, or allow others to use the equipment or database records for any unauthorized purpose, and will enforce this policy pursuant to Section 1302.11(1).

(a)   An ALPR shall only be Deployed and used for Parking Enforcement Operations, and Parking Analysis.

(b)   ALPR data obtained from Parking Enforcement Operations and retained pursuant to this use policy, including data and metadata associated with ALPR Reads and Hits, may be queried and used to support a specific BPD criminal investigation when an officer has a good faith belief that an emergency involving the danger of, or imminent threat of death or serious physical injury to any person requires such a query or use, and the officer reasonably believes there is a nexus between a vehicle and the alleged crime scene. Approval to query or use the data must be granted by the Chief of Police and City Manager. The City Manager shall log any queries or use of such information pursuant to this subsection in its Annual Surveillance Technology Report pursuant to BMC 2.99.

(c)   Notwithstanding subsection (b), officers may investigate hits based on reasonable suspicion resulting from apparent matches, discovered in the regular course of work of Parking Enforcement Operations, between the Genetec ALPR System and the following databases: Stolen Vehicles System, Amber, Silver, and Blue Alerts, local missing persons, scoff law violator, gig car, general permit, or other non-criminal local lists.

(d)   Data obtained from Parking Analysis shall not be queried or used for criminal investigations.

(e)   The following uses of the Genetec ALPR System are specifically prohibited:

1.   Invasion of Privacy

(a)   It is a violation of this Policy to utilize the Genetec ALPR System to capture license plates not on a public road or street, or in a place not accessible to the public.

2. Crowd Control

    (a) ALPRs shall not be deployed in crowd control operations except strictly for the purposes of Parking Enforcement Operations.

3. Criminal Enforcement

    (a) It is a violation of this Policy to use or Deploy ALPRs to scan or canvass license plates in connection with any crime scene, patrol operation, or investigation except pursuant to Section 1302.3(c) of this Policy.

4. Use of Lists and Databases

    (a) It is a violation of this Policy to use the Genetec ALPR System or associated ALPR Read data in conjunction with any list or database other than those specified pursuant to Section 1302.3(c) of this Policy, or for any personal use.

1302.4 DATA COLLECTION AND RETENTION

The Investigations Division Captain, or their designee, is responsible for ensuring proper collection and retention of ALPR data. Technical support and assistance shall be provided by the City of Berkeley's Information Technology (IT) Department and associated Genetec ALPR system providers/vendors as identified below.

IT's role will be limited to providing initial infrastructure set-up and accessing or viewing individual records or reports (potentially including PII or CLETS information as authorized by the Chief of Police), and testing the accuracy of the equipment. Genetec ALPR System data provided to Parking Control Officers may also contain confidential CLETS information and is not open to public review.

(a) ALPR Read Images

ALPR Reads Images are license plate images which are uploaded daily Genetec server and shall be purged pursuant to the retention guidelines in subsection (b).

(b) ALPR Reads Not Resulting in ALPR Hits

All ALPR Read Images and ALPR Read Metadata transmitted to and stored in the Genetec ALPR System shall be purged within fourteen (14) days to allow for the City's enforcement of its 72-Hour Rule (BMC Section 14.36.050).

ALPR Read Metadata in the form of license plate data or other non-PII data may be transmitted to and stored in the Passport Automatic Data Collection System for Parking Analysis purposes and retained pursuant to applicable retention policies.

(c) ALPR Hits

All ALPR Hits and related metadata resulting from ALPR Reads should be uploaded daily to the Genetec server and shall be purged from Genetec within fourteen (14) days to allow for the City's enforcement of its 72-Hour Rule (BMC Section 14.36.050).

(d) Unenforced ALPR Hits

All erroneous and unenforced ALPR Hit data shall be purged locally at least nightly.

(e) Enforced ALPR Hits

Only ALPR Read Images and Metadata associated with Enforced ALPR Hits shall be downloaded to the Passport Parking Management System servers, with a maximum retention period of one (1) year in Passport and in accordance with the established records retention schedule.

1302.5 DATA ACCESS

(a) Only properly trained Parking Enforcement Officers, Sworn Officers as selected by the Investigation's Division Captain, and Information Technology personnel are allowed access to the Genetec ALPR system or to collect ALPR information.

(b) No member of the BPD shall operate ALPR equipment or access ALPR data without first completing department-approved training, which shall include compliance with this use policy.

(c) No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so.

(d) If a Sworn officer is called to verify a stolen vehicle, if practicable, the officer should verify an ALPR response through CLETS before taking enforcement action that is based solely on an ALPR Hit.

(e) Sworn Officers shall visually verify that the license plate of interest matches identically with the ALPR Read Image of the license plate number captured (ALPR Read) by the ALPR, including both the alphanumeric characters of the license plate, state of issue, and vehicle descriptors before proceeding. BPD members alerted to the fact that an observed motor vehicle's license plate is entered as an ALPR Hit in a specific Stolen Vehicle System list are required to make a reasonable effort to confirm that a wanted person is actually in the vehicle and/or that a reasonable basis exists before a Department member would have a lawful basis to stop the vehicle.

1302.6 DATA PROTECTION

All saved data will be safeguarded and protected by both procedural and technological means. The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data:

(a) All ALPR data downloaded to any workstation or server shall be accessible only through a login and/or password-protected system capable of documenting all access of information by name, date and time.

(b) Berkeley Police Department members approved to access ALPR data under these guidelines are permitted to access the data for Parking Enforcement Operations or

specific BPD criminal or civil investigations authorized by a court order, subpoena, or search warrant.

(c)   Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units shall be marked, corrected or deleted in accordance with the type and severity of the error in question. If a Berkeley Police Department member becomes aware of an inaccurate manual entry into the ALPR databases, that member shall immediately contact the originating agency or officer to notify the agency of the inaccuracy. The member shall then notify both the Investigations Division Captain and the Inspections and Audit Sergeant of the data error for appropriate follow up and tracking.

1302.7 CIVIL LIBERTIES AND RIGHTS PROTECTION

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal, state, and local law. The procedures described within this policy (Data Access, Data Protection, Data Retention, Public Access and Third-Party Data Sharing) protect against the unauthorized use of ALPR data. These policies ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to impacts that may violate the First and Fourth Amendments and other potentially disparate or adverse impacts on any communities or groups.

The Berkeley Police Department does not permit the sharing of ALPR data gathered by the City or its contractors/subcontractors for the purpose of federal immigration enforcement, pursuant to the California Values Act (Government Code § 7282.5; Government Code § 7284.2 et seq) – these federal immigration agencies include Immigrations and Customs Enforcement (ICE) and Customs and Border Patrol (CPB).

1302.8 PUBLIC ACCESS

Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requester in such cases must provide acceptable proof of their identity and of ownership of the vehicle in question. All requests will be evaluated on a case-by-case basis to ensure they conform to the requirements and limitations of public records requests and other applicable law.

1302.9 THIRD PARTY DATA-SHARING

(a) Non-law enforcement requests for anonymized ALPR bulk data related to parking enforcement and access to stored ALPR data related to parking management shall be processed according to this policy, the Records Maintenance and Release Policy and applicable federal, state, and local law.

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(b) The ALPR data may be shared only with other law enforcement or prosecutorial agencies as pursuant to a valid court order, subpoena, or a search warrant, Cal. Civ. Code § 1798.90.55(b), and as permitted by this policy and shall not be shared with federal immigration enforcement officials consistent with this policy and other applicable City policy.

Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided by this policy and the Records Maintenance and Release Policy.

Aggregated ALPR data not related to specific criminal or civil investigations authorized by a court order, subpoena, or search warrant shall not be released to any local, or state agency or entity without the express written consent of the City Manager and only in accordance with this Use Policy.

Such third-party data-sharing shall be subject to non-privileged and non-confidential City Council notification pursuant to BMC 2.99.020 (2) (a).

The Berkeley Police Department is prohibited from selling any ALPR data.

1302.10 TRAINING AND ALPR ADMINISTRATOR
Training for the operation of ALPR technology shall be provided by BPD personnel. All BPD employees who utilize ALPR technology shall be provided a copy of this Surveillance Use Policy.

(1) The Investigations Division Captain shall be responsible for compliance with the requirements of Civil Code § 1798.90.5 et seq. This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

(i) Ensuring that training requirements are completed for authorized users. The Administrator shall ensure that members receive department-approved training for those authorized to use or access ALPRs (Civil Code § 1798.90.51; Civil Code § 1798.90.53).

(ii) Procedures for system operators to maintain records of access in compliance with Civil Code§ 1798.90.52 and this Use Policy

(iii) Ensuring this policy and related procedures are conspicuously posted on the City's website.

1302.11 AUDITING AND OVERSIGHT
Genetec ALPR System audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant on a regular basis, at least biannually.

1. Any unauthorized access or data breach shall be reported immediately to the City Manager. BPD will enforce against prohibited uses of the Genetec ALPR system, associated ALPR Read and Hit metadata, and lists and databases pursuant to Policy P-26, or other applicable law or policy.

2. The audit shall be documented in the form of an internal department memorandum to the Chief of Police. The memorandum shall include any data errors found so that such errors can be corrected. After review by the Chief of Police, the memorandum and any associated documentation shall be placed into the annual report filed with the City Council pursuant to BMC Section 2.99.020 2. d., published on the City of Berkeley

website in an appropriate location, and retained within Professional Standards Bureau.

1302.12   MAINTENANCE

Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain. The Investigations Division Captain will assign members under their command to administer the day-to-day operation of the ALPR equipment and data.

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