



**BERKELEY CITY COUNCIL PUBLIC SAFETY COMMITTEE
SPECIAL MEETING**

**Tuesday, June 20, 2023
10:00 AM**

2180 Milvia Street, 6th Floor, Berkeley, CA 94704 – Redwood Room

1404 Le Roy Ave, Berkeley, CA 94708 – Teleconference Location

Committee Members:

Councilmembers Rashi Kesarwani, Terry Taplin, and Susan Wengraf
Alternate: Councilmember Rigel Robinson

This meeting will be conducted in a hybrid model with both in-person attendance and virtual participation. For in-person attendees, face coverings or masks that cover both the nose and the mouth are encouraged. If you are feeling sick, please do not attend the meeting in person.

Remote participation by the public is available through Zoom. To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL - <https://cityofberkeley-info.zoomgov.com/j/1604903901>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon on the screen. To join by phone: Dial **1-669-254-5252** or **1-833-568-8864 (Toll Free)** and Enter Meeting ID: **160 490 3901**. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized by the Chair.

To submit a written communication for the Committee's consideration and inclusion in the public record, email policycommittee@berkeleyca.gov.

Written communications submitted by mail or e-mail to the Public Safety Policy Committee by 5:00 p.m. the Friday before the Committee meeting will be distributed to the members of the Committee in advance of the meeting and retained as part of the official record.

AGENDA

Roll Call

Public Comment on Non-Agenda Matters

Minutes for Approval

Draft minutes for the Committee's consideration and approval.

1. Minutes - May 15, 2023

Committee Action Items

The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.

Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.

2. Review and Recommendations Requested on Surveillance Ordinance Item Related to Fixed Automated License Plate Readers (ALPRs)

From: City Manager

Recommendation: Qualified positive recommendation to Council.

Financial Implications: See report

Contact: Jennifer Louis, Police, (510) 981-5900

Unscheduled Items

These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.

3. Audit Recommendation Status - Data Analysis of the City of Berkeley's Police Response

From: City Manager

Referred: May 23, 2023

Due: November 7, 2023

Contact: Jennifer Louis, Police, (510) 981-5900

Unscheduled Items

4. Information Report Request: Alternatives to Chemical Agents for Response to Violent Large-Scale Crowd Scenarios

From: Councilmember Taplin (Author)

Referred: August 29, 2022

Due: July 30, 2023

Recommendation: Direct the City Manager to study alternatives to chemical agents to improve the Berkeley Police Department's ability and capacity to respond to and de-escalate large-scale crowd scenarios, including violent militias, and return a report to the City Council by the end of Fiscal Year 2023. Report should include but not be limited to the following factors: -BPD intelligence-gathering capabilities on potentially violent large crowd scenarios; - BPD response protocols including procedures for protecting bystanders, peaceful protesters, and businesses; -Tools and tactics available for crowd control in potentially violent scenarios; -Mutual aid and support from other local/state/federal agencies; -Applicable state and federal laws on crowd control and First Amendment rights.

Financial Implications: Staff time

Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

Items for Future Agendas

- Requests by Committee Members to add items to future agendas

Adjournment

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*Written communications addressed to the Public Safety Committee and submitted to the City Clerk Department will be distributed to the Committee prior to the meeting.*

*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953 and applicable Executive Orders as issued by the Governor that are currently in effect. Members of the City Council who are not members of the standing committee may attend a standing committee meeting even if it results in a quorum being present, provided that the non-members only act as observers and do not participate in the meeting. If only one member of the Council who is not a member of the committee is present for the meeting, the member may participate in the meeting because less than a quorum of the full Council is present. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900.*



### COMMUNICATION ACCESS INFORMATION:

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date. Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.

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I hereby certify that the agenda for this meeting of the Standing Committee of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on Thursday, June 15, 2023.



Mark Numainville, City Clerk

Communications

Communications submitted to City Council Policy Committees are on file in the City Clerk Department at 2180 Milvia Street, 1st Floor, Berkeley, CA, and are available upon request by contacting the City Clerk Department at (510) 981-6908 or policycommittee@berkeleyca.gov.

**BERKELEY CITY COUNCIL PUBLIC SAFETY COMMITTEE
REGULAR MEETING MINUTES**

**Monday, May 15, 2023
10:30 AM**

2180 Milvia Street, 6th Floor, Berkeley, CA 94704 – Redwood Room

1404 Le Roy Ave, Berkeley, CA 94708 – Teleconference Location

Committee Members:

Councilmembers Rashi Kesarwani, Terry Taplin, and Susan Wengraf

Alternate: Councilmember Rigel Robinson

This meeting will be conducted in a hybrid model with both in-person attendance and virtual participation. For in-person attendees, face coverings or masks that cover both the nose and the mouth are encouraged. If you are feeling sick, please do not attend the meeting in person.

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MINUTES

Roll Call: 10:36 a.m.

Present: Kesarwani, Wengraf

Absent: Taplin

Public Comment on Non-Agenda Matters – 1 speaker.

Minutes for Approval

Draft minutes for the Committee's consideration and approval.

1. Minutes - April 24, 2023

Action: M/S/C (Kesarwani/Wengraf) to approve the April 24, 2023 minutes.

Vote: Ayes – Kesarwani, Wengraf; Noes – None; Abstain – None; Absent – Taplin.

Committee Action Items

The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.

Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.

2. January 16, 2023 Berkeley Hills Mudslide

From: City Manager

Contact: Jordan Klein, Planning and Development, (510) 981-7400; David Sprague, Fire, (510) 981-3473; Liam Garland, Public Works, (510) 981-6300

Action: 1 speaker. Discussion held. No action taken.

3. Dispatch Needs Assessment Presentation

From: City Manager

Contact: David Sprague, Fire, (510) 981-3473

Action: M/S/C (Wengraf/Kesarwani) to recommend that this item be scheduled as a City Council worksession.

Vote: Ayes – Kesarwani, Wengraf; Noes – None; Abstain – None; Absent – Taplin.

Unscheduled Items

These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.

4. **Information Report Request: Alternatives to Chemical Agents for Response to Violent Large-Scale Crowd Scenarios**

From: Councilmember Taplin (Author)

Referred: August 29, 2022

Due: June 30, 2023

Recommendation: Direct the City Manager to study alternatives to chemical agents to improve the Berkeley Police Department's ability and capacity to respond to and de-escalate large-scale crowd scenarios, including violent militias, and return a report to the City Council by the end of Fiscal Year 2023. Report should include but not be limited to the following factors: -BPD intelligence-gathering capabilities on potentially violent large crowd scenarios; - BPD response protocols including procedures for protecting bystanders, peaceful protesters, and businesses; -Tools and tactics available for crowd control in potentially violent scenarios; -Mutual aid and support from other local/state/federal agencies; -Applicable state and federal laws on crowd control and First Amendment rights.

Financial Implications: Staff time

Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

Items for Future Agendas

- None

Adjournment

Action: M/S/C (Kesarwani/Wengraf) to adjourn the meeting.

Vote: Ayes – Kesarwani, Wengraf; Noes – None; Abstain – None; Absent – Taplin.

Adjourned at 12:34 p.m.

I hereby certify that the foregoing is a true and correct record of the Public Safety Committee meeting held on May 15, 2023.

Rose Thomsen, Deputy City Clerk

Communications

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Office of the City Manager

ACTION CALENDAR

June 20, 2023

To: Public Safety Policy Committee

From: Dee Williams-Ridley, City Manager

Submitted by: Jennifer Louis, Chief of Police

Subject: Review and recommendations requested on Surveillance Ordinance item related to Fixed Automated License Plate Readers (ALPRs)

RECOMMENDATION

Qualified positive recommendation to Council.

INTRODUCTION

The City of Berkeley enacted the Surveillance Ordinance in 2018 to establish a thoughtful process regarding the procurement and use of Surveillance Technology that carefully balances the City's interest in protecting public safety with its interest in protecting the privacy and civil rights of its community members. To ensure that our general policies maintained consistent format with other department policies the Department developed parallel 'use' policies where appropriate so that the 'Surveillance Use Policy' could directly follow all the requirements explicitly set forth in BMC 2.99.020(4). Both policies are equally important, and all members are required to abide by the legal parameter of both policies. Thereby in nearly every piece of equipment that the Department has that is reportable under BMC 2.99, there are generally two nearly identical policies, a Use Policy and a Surveillance Use Policy. Recognizing the important of the Surveillance Use Policies, the Department has a chapter in our Departmental Policies dedicated to the Surveillance Use Policies.

CURRENT SITUATION AND ITS EFFECTS

There is one existing piece of technology, however under a different use and effective purpose of surveillance technology that is undergoing the process of the Surveillance Ordinance in order to obtain City Council approval. This technology is the fixed automated license plate readers (ALPRs). As part of the Surveillance Ordinance process the department must complete acquisition and use policies which must undergo review by the Public Safety Policy Committee, Police Accountability Board and ultimately receive Council approval.

The Department is bringing this item forward in response to the Council's approved budget referral on automated license plate readers for community safety improvement on November 30th, 2021. The Department was tasked with the creation of policies and process costs associated with such program.

The Department has identified and provided of several examples in the Acquisition Report wherein this technology could have potentially benefited the Department in its efforts of precision-based policing, and potentially aided the Community in the mutual efforts to keep the City of Berkeley safe.

The City of Berkeley has ALPR technology with the Department's Parking Enforcement currently. However, this technology is highly focused on the mission as it relates to parking enforcement operations. The proposed fixed ALPR policies and acquisition are aimed at improving community safety and aiding the Department in its efforts of precision-based policing.

Crime trends regionally and in the City of Berkeley indicate there has been a steady increase in shootings in the City the last five years and Part 1 Crimes reached their highest level in ten years in 2022. The Department believes that fixed ALPRs support our mission to safeguard our diverse community through proactive law enforcement and problem solving, treating all people with dignity and respect. This law enforcement tool enhances policing practices and create greater safeguards toward fair and impartial policing and safer outcomes during law enforcement interactions.

The Fixed Automated License Plate Reader Policies are covered by three policies:

1. Policy 422 – The policy that will establish guidelines for the Police Department on the use of Fixed Automated License Plate Readers
2. Policy 1305 - The Surveillance Use Policy related to Fixed Automated License Plate Readers
3. Surveillance Acquisition Report – Citywide Report regarding Fixed Automated License Plate Readers

These policies are attached to this report.

The Fixed Automated License Plate Reader Policy is currently undergoing review by the City Attorney's Office, and was shared on May 12th, 2023.

Pursuant to the Surveillance Ordinance, BMC Section 2.99.030.2, upon receipt of acquisition and use policies from the Police Department, the Police Accountability Board (PAB) has a 30-day deadline "to recommend approval of the policy, object to the proposal, recommend modifications, or take no action." BPD shared the policies with DPA on May 11th, 2023.

Review and recommendations requested on Surveillance Ordinance item related to Fixed Automated License Plate Readers (ALPRs)

ACTION CALENDAR
June 20, 2023

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None identified.

CONTACT PERSON

Captain Mike Durbin, Police, Professional Standards Division (510) 981-5760

Attachments:

1. Policy 422- Fixed Automated License Plate Reader (ALPRs)
2. 1305- Surveillance Use Policy Fixed Automated License Plate Reader (ALPRs)
3. Acquisition Report- Fixed Automated License Plate Reader (ALPRs)
4. Budget Referral: Automated License Plate Readers for community safety improvement

Fixed Automated License Plate Readers (ALPRs)-

422.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance for the capture, storage and use of digital data obtained through the use of Automated License Plate Reader (ALPR) technology. Department Personnel shall adhere to the requirements of Fixed ALPRs in this policy as well as the corresponding Surveillance Use-Fixed ALPRs policy-1305.

422.2 POLICY

The policy of the Berkeley Police Department is to utilize ALPR technology to capture and store digital license plate data and images while recognizing the established privacy rights of the public.

All data and images gathered by the ALPR are for the official use of this department. Because such data may contain confidential information, it is not open to public review.

The Berkeley Police Department does not permit the sharing of ALPR data gathered by the City or its contractors/subcontractors for 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 (CBP).

422.3 DEFINITIONS

- (a) Automated License Plate Reader (ALPR): A device that uses cameras and computer technology to compare digital images to lists of known information of interest.
- (b) ALPR Operator: Trained Department members who may utilize ALPR system/equipment. ALPR operators may be assigned to any position within the Department, and the ALPR Administrator may order the deployment of the ALPR systems for use in various efforts.
- (c) ALPR Administrator: The Investigations Bureau Captain or the Chief's designee, serves as the ALPR Administrator for the Department.
- (d) Hot List: A list of license plates associated with vehicles of interest compiled from one or more databases including, but not limited to, NCIC, CA DMV, Local BOLO's, etc.
- (e) Vehicles of Interest: Including, but not limited to vehicles which are reported as stolen, display stolen license plates or tags; vehicles linked to missing and/or wanted persons and vehicles flagged by the Department of Motor Vehicle Administration or law enforcement agencies.

- (f) Detection: Data obtained by an ALPR of an image (such as a license plate) within public view that was read by the device, including potential images (such as the plate and description of vehicle on which it was displayed), and information regarding the location of the ALPR system at the time of the ALPR's read.
- (g) Hit Alert from the ALPR system that a scanned license plate number may be in the National Crime Information Center (NCIC) or other law enforcement database for a specific reason including, but not limited to, being related to a stolen car, wanted person, missing person, domestic violation protective order or terrorist-related activity.

422.4 ADMINISTRATION

The ALPR technology, also known as License Plate Recognition (LPR), allows for the automated detection of license plates. It is used by the Berkeley Police Department to convert data associated with vehicle license plates for official law enforcement purposes, including identifying stolen or wanted vehicles, stolen license plates and missing persons. It may also be used to gather information related to active warrants, suspect apprehension and stolen property recovery. 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/her command to administer the day-to-day operation of the ALPR equipment and data.

422.4.1 ALPR ADMINISTRATOR

The Investigations Division Captain, or his/her designee, 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):

- (a) Only properly trained sworn officers, crime analysts, communication operators, records clerks, parking enforcement officers, and police assistants are allowed access to the ALPR system or to collect ALPR information.
- (b) Ensuring that training requirements are completed for authorized users.
- (c) ALPR system monitoring to ensure the security of the information and compliance with applicable privacy laws.
- (d) Ensuring procedures are followed 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.
- (f) Working with the Custodian of Records, or vendor on the retention and destruction of ALPR data.ensuring this policy and related procedures are conspicuously posted on the City's website.

422.5 OPERATIONS

An ALPR shall only be used for official law enforcement business.

Use of an ALPR is restricted to the purposes outlined below. Department members 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).

- (a) An ALPR shall only be used for official law enforcement business.
- (b) An ALPR may be used in conjunction with any routine patrol operation or to support criminal investigations. Reasonable suspicion or probable cause is not required before using an ALPR.
- (c) Partial license plates and unique vehicle descriptions reported during crimes may be entered into the ALPR system in an attempt to identify suspect vehicles.
- (d) No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.
- (e) 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. Once an alert is received, the operator should confirm that the observed license plate from the system matches the license plate of the observed vehicle. Before any law enforcement action is taken because of an ALPR alert, the alert will be verified through a CLETS inquiry via MDT or through Dispatch. Members will not take any police action that restricts the freedom of any individual based solely on an ALPR alert unless it has been validated. Because the ALPR alert may relate to a vehicle and may not relate to the person operating the vehicle, officers are reminded that they need to have reasonable suspicion and/or probable cause to make an enforcement stop of any vehicle. (For example, if a vehicle is entered into the system because of its association with a wanted individual, Officers should attempt to visually match the driver to the description of the wanted subject prior to making the stop or should have another legal basis for making the stop.)
- (f) Hot Lists. Designation of hot lists to be utilized by the ALPR system shall be made by the ALPR Administrator or his/her designee. Hot lists shall be obtained or compiled from sources as may be consistent with the purposes of the ALPR system set forth in this Policy. Hot lists utilized by the Department's LPR system may be updated by agency sources more frequently than the Department may be uploading them and thus the Department's LPR system will not have access to real time data. Occasionally, there may be errors in the LPR system's read of a license plate. Therefore, an alert alone shall not be a basis for police action (other than following the vehicle of interest). Prior to initiation of a stop of a vehicle or other intervention based on an alert, Department members shall undertake the following:
 - (1) Verification of status on a Hot List. An officer must receive confirmation, from a Berkeley Police Department Communications Dispatcher or other department computer device, that the license plate is still stolen, wanted, or otherwise of interest before proceeding (absent exigent circumstances).
 - (2) Visual verification of license plate number. Officers shall visually verify that the license plate of interest matches identically with the image of the license plate number captured (read) by the LPR, including both the alphanumeric characters of the license plate, state of issue, and vehicle descriptors before proceeding. Department members alerted to the fact that an observed motor vehicle's license plate is entered as a Hot Plate (hit) in a specific BOLO (be on the lookout) 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.

(3) Department members will clear all stops from hot list alerts by indicating the positive ALPR Hit, i.e., with an arrest or other enforcement action. If it is not obvious in the text of the call as to the correlation of the ALPR Hit and the arrest, then the Department member shall update with the Communications Dispatcher and original person and/or a crime analyst inputting the vehicle in the hot list (hit).

(4) General Hot Lists (SVS, SFR, and SLR) will be automatically downloaded into the ALPR system a minimum of once a day with the most current data overwriting the old data.

(5) All entries and updates of specific Hot Lists within the ALPR system will be documented by the requesting Department member within the appropriate general offense report. As such, specific Hot Lists shall be approved by the ALPR Administrator.

(6) Administrator (or his/her designee) before initial entry within the ALPR system. The updating of such a list within the ALPR system shall thereafter be accomplished pursuant to the approval of the Department member's immediate supervisor. The hits from these data sources should be viewed as informational; created solely to bring the officers attention to specific vehicles that have been associated with criminal activity.

All Hot Plates and suspect information entered into the ALPR system will contain the following information as a minimum:

- Entering Department member's name
- Related case number.
- Short synopsis describing the nature of the originating call

(g) Login/Log-Out Procedure. To ensure proper operation and facilitate oversight of the ALPR system, all users will be required to have individual credentials for access and use of the systems and/or data, which has the ability to be fully audited.

Permitted/Impermissible Uses. The ALPR system, and all data collected, is the property of the Berkeley Police Department. Department personnel may only access and use the ALPR system for official and legitimate law enforcement purposes consistent with this Policy. The following uses of the ALPR system are specifically prohibited:

1. Invasion of Privacy: Except when done pursuant to a court order such as a search warrant, is a violation of this Policy to utilize the ALPR to record license plates except those of vehicles that are exposed to public view (e.g., vehicles on a public road or street, or that are on private property but whose license plate(s) are visible from a public road, street, or a place to which members of the public have access, such as the parking lot of a shop or other business establishment).
2. Harassment or Intimidation: It is a violation of this Policy to use the ALPR system to harass and/or intimidate any individual or group.
3. Use Based on a Protected Characteristic. It is a violation of this policy to use the LPR system or associated scan files or hot lists solely because of a person's, or group's

race, gender, religion, political affiliation, nationality, ethnicity, sexual orientation, disability, or other classification protected by law.

4. Personal Use: It is a violation of this Policy to use the ALPR system or associated scan files or hot lists for any personal purpose.
 5. First Amendment Rights. It is a violation of this policy to use the LPR system or associated scan files or hot lists for the purpose or known effect of infringing upon First Amendment rights.
- (h) Anyone who engages in an impermissible use of the ALPR system or associated scan files or hot lists may be subject to administrative sanctions, up to and including termination, pursuant to and consistent with the relevant collective bargaining agreements and departmental policies. Partial license plates reported during crimes may be entered into the ALPR system in an attempt to identify suspect vehicles.

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

422.6 DATA COLLECTION AND RETENTION

The Investigations Division Captain is responsible for ensuring systems and processes are in place for the proper collection and retention of ALPR data. Data will be transferred from vehicles to the designated storage in accordance with department procedures. The Department should if feasible find a solution to transfer evidentiary hit data into it's digital evidence repository through secure integration.

All ALPR data downloaded to the ALPR server should be stored for no longer than 30 days, 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 discovery request or other lawful action to produce records. In those circumstances the applicable data should be downloaded from the server and uploaded into BPD's digital evidence repository.

ALPR vendor, will store the data (data hosting) and ensure proper maintenance and security of data stored in their data towers. The ALPR vendor will purge their data at the end of the 30 days of storage. However, this will not preclude Berkeley Police Department from maintaining any relevant vehicle data obtained from the system after that period pursuant to the established City of Berkeley retention schedule mentioned above or outlined elsewhere. Relevant vehicle data are scans corresponding to the vehicle of interest on a hot list. The ALPR vendor and Department shall ensure that the necessary data is captured and stored to accurately report the relevant data required in the Annual Surveillance Technology report. Once the City Council approves the Annual Surveillance Technology report all said data may be purged so long as it doesn't violate the Retention guidelines.

Restrictions on use of vendor Data: Information gathered or collected, and records retained by the vendor's cameras or any other Berkeley Police Department ALPR system will not be sold, accessed, or used for any purpose other than legitimate law enforcement or public safety

purposes.

422.7 ACCOUNTABILITY

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):

- (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.
- (b) All ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code § 1798.90.52).
- (c) 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.
- (d) Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the consent of the Chief of Police or City Manager (i.e. If transportation department requested volume of vehicular traffic associated with specific events, it could conceivably be provided with the count of vehicles, but not the specific license plates with appropriate permissions).
- (e) 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.
- (f) ALPR system audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant on a regular basis, at least biennial.
- (g) Such ALPR data may be released to other authorized and verified law enforcement officials and agencies for legitimate law enforcement purposes.
- (h) Every ALPR Detection Browsing Inquiry must be documented by either the associated Berkeley Police case number or incident number, and/or a reason for the inquiry

For security or data breaches, see the Records Release and Maintenance Policy.

422.8 ALPR DATA DETECTION BROWSING AUDITS

It is the responsibility of the Sergeant of Audit and Inspections or the Chief's designee to ensure that an audit is conducted of ALPR detection browsing inquiries at least biennial. The Department will audit a sampling of the ALPR system utilization from the prior 24-month period to verify proper use in accordance with the above- authorized uses. The audit shall randomly select at least 10 detection browsing inquiries conducted by department employees during the preceding 24-month period and determine if each inquiry meets the requirements established in policy section 462.6(e).

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 filed and retained by the Professional Standards Bureau Captain. This audit should be shared in the Surveillance Ordinance reporting.

422.9 RELEASING ALPR DATA

The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law.

(a) A supervisor at the requesting agency will sign an acknowledgement letter stating that the shared data will only be used for the purposes that are aligned with the Berkeley Police Department's policy. The Berkeley Police Department does not permit the sharing of ALPR data gathered by the City or its contractors/subcontractors for purpose of federal immigration enforcement, these federal immigration agencies include Immigrations and Customs Enforcement (ICE) and Customs and Border Patrol (CBP). *See attached letter.*

(b) The signed letter is retained on file. Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55).

(c) All signed letters shall be routed to the Audit and Inspection Sergeant for compliance and reporting.

ALPR data is subject to the provisions of the Berkeley Police Department's Immigration Law Policy, and hence may not be shared with federal immigration enforcement officials.

422.10 TRAINING

The Personnel and Training Sergeant shall ensure that members receive department-approved training in order to be authorized to use or access the ALPR system (Civil Code § 1798.90.51; Civil Code § 1798.90.53

Surveillance Use Policy-Fixed ALPRs

1305.1 PURPOSE

The purpose of this policy is to provide guidance for the capture, storage and use of digital data obtained through the use of Automated License Plate Reader (ALPR) technology. Department Personnel shall adhere to the requirements of the Surveillance Use-Fixed ALPRs in this policy as well as the corresponding Use Policy -422.

The policy of the Berkeley Police Department is to utilize ALPR technology to capture and store digital license plate data and images while recognizing the established privacy rights of the public.

All data and images gathered by the ALPR are for the official use of this department. Because such data may contain confidential information, it is not open to public review.

The Berkeley Police Department does not permit the sharing of ALPR data gathered by the City or its contractors/subcontractors for 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 (CBP).

1305.2 DEFINITIONS

- (a) Automated License Plate Reader (ALPR): A device that uses cameras and computer technology to compare digital images to lists of known information of interest.
- (b) ALPR Operator: Trained Department members who may utilize ALPR system/equipment. ALPR operators may be assigned to any position within the Department, and the ALPR Administrator may order the deployment of the ALPR systems for use in various efforts.
- (c) ALPR Administrator: The Investigations Bureau Captain or the Chief's designee, serves as the ALPR Administrator for the Department.
- (d) Hot List: A list of license plates associated with vehicles of interest compiled from one or more databases including, but not limited to, NCIC, CA DMV, Local BOLO's, etc.
- (e) Vehicles of Interest: Including, but not limited to vehicles which are reported as stolen, display stolen license plates or tags; vehicles linked to missing and/or wanted persons and vehicles flagged by the Department of Motor Vehicle Administration or law enforcement agencies.
- (f) Detection: Data obtained by an ALPR of an image (such as a license plate) within public view that was read by the device, including potential images (such as the plate and description of vehicle on which it was displayed), and information regarding the location of the ALPR system at the time of the ALPR's read.

- (g) Hit Alert from the ALPR system that a scanned license plate number may be in the National Crime Information Center (NCIC) or other law enforcement database for a specific reason including, but not limited to, being related to a stolen car, wanted person, missing person, domestic violation protective order or terrorist-related activity.

1305.3 AUTHORIZED AND PROHIBITED USES

An ALPR shall only be used for official law enforcement business.

Use of an ALPR is restricted to the purposes outlined below. Department members 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).

- (a) An ALPR shall only be used for official law enforcement business.
- (b) An ALPR may be used in conjunction with any routine patrol operation or to support criminal investigations. Reasonable suspicion or probable cause is not required before using an ALPR.
- (c) Partial license plates and unique vehicle descriptions reported during crimes may be entered into the ALPR system in an attempt to identify suspect vehicles.
- (d) No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.
- (e) 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. Once an alert is received, the operator should confirm that the observed license plate from the system matches the license plate of the observed vehicle. Before any law enforcement action is taken because of an ALPR alert, the alert will be verified through a CLETS inquiry via MDT or through Dispatch. Members will not take any police action that restricts the freedom of any individual based solely on an ALPR alert unless it has been validated. Because the ALPR alert may relate to a vehicle and may not relate to the person operating the vehicle, officers are reminded that they need to have reasonable suspicion and/or probable cause to make an enforcement stop of any vehicle. (For example, if a vehicle is entered into the system because of its association with a wanted individual, Officers should attempt to visually match the driver to the description of the wanted subject prior to making the stop or should have another legal basis for making the stop.)
- (f) Hot Lists. Designation of hot lists to be utilized by the ALPR system shall be made by the ALPR Administrator or his/her designee. Hot lists shall be obtained or compiled from sources as may be consistent with the purposes of the ALPR system set forth in this Policy. Hot lists utilized by the Department's LPR system may be updated by agency sources more frequently than the Department may be uploading them and thus the Department's LPR system will not have access to real time data. Occasionally, there may be errors in the LPR system's read of a license plate. Therefore, an alert alone shall not be a basis for police action (other than following the vehicle of interest). Prior to initiation of a stop of a vehicle or other intervention based on an alert, Department members shall undertake the following:
- (1) Verification of status on a Hot List. An officer must receive confirmation, from a Berkeley Police Department Communications Dispatcher or other department

computer device, that the license plate is still stolen, wanted, or otherwise of interest before proceeding (absent exigent circumstances).

(2) Visual verification of license plate number. Officers shall visually verify that the license plate of interest matches identically with the image of the license plate number captured (read) by the LPR, including both the alphanumeric characters of the license plate, state of issue, and vehicle descriptors before proceeding. Department members alerted to the fact that an observed motor vehicle's license plate is entered as a Hot Plate (hit) in a specific BOLO (be on the lookout) 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.

(3) Department members will clear all stops from hot list alerts by indicating the positive ALPR Hit, i.e., with an arrest or other enforcement action. If it is not obvious in the text of the call as to the correlation of the ALPR Hit and the arrest, then the Department member shall update with the Communications Dispatcher and original person and/or a crime analyst inputting the vehicle in the hot list (hit).

(4) General Hot Lists (SVS, SFR, and SLR) will be automatically downloaded into the ALPR system a minimum of once a day with the most current data overwriting the old data.

(5) All entries and updates of specific Hot Lists within the ALPR system will be documented by the requesting Department member within the appropriate general offense report. As such, specific Hot Lists shall be approved by the ALPR Administrator.

(6) Administrator (or his/her designee) before initial entry within the ALPR system. The updating of such a list within the ALPR system shall thereafter be accomplished pursuant to the approval of the Department member's immediate supervisor. The hits from these data sources should be viewed as informational; created solely to bring the officers attention to specific vehicles that have been associated with criminal activity.

All Hot Plates and suspect information entered into the ALPR system will contain the following information as a minimum:

- Entering Department member's name
- Related case number.
- Short synopsis describing the nature of the originating call

(g) Login/Log-Out Procedure. To ensure proper operation and facilitate oversight of the ALPR system, all users will be required to have individual credentials for access and use of the systems and/or data, which has the ability to be fully audited.

Permitted/Impermissible Uses. The ALPR system, and all data collected, is the property of the Berkeley Police Department. Department personnel may only access and use the ALPR system for official and legitimate law enforcement purposes consistent with this Policy. The following uses of the ALPR system are specifically prohibited:

1. Invasion of Privacy: Except when done pursuant to a court order such as a search warrant, is a violation of this Policy to utilize the ALPR to record license plates except those of vehicles that are exposed to public view (e.g., vehicles on a public road or street, or that are on private property but whose license plate(s) are visible from a public road, street, or a place to which members of the public have access, such as the parking lot of a shop or other business establishment).

2. Harassment or Intimidation: It is a violation of this Policy to use the ALPR system to harass and/or intimidate any individual or group.
 3. Use Based on a Protected Characteristic. It is a violation of this policy to use the LPR system or associated scan files or hot lists solely because of a person's, or group's race, gender, religion, political affiliation, nationality, ethnicity, sexual orientation, disability, or other classification protected by law.
 4. Personal Use: It is a violation of this Policy to use the ALPR system or associated scan files or hot lists for any personal purpose.
 5. First Amendment Rights. It is a violation of this policy to use the LPR system or associated scan files or hot lists for the purpose or known effect of infringing upon First Amendment rights.
- (h) Anyone who engages in an impermissible use of the ALPR system or associated scan files or hot lists may be subject to administrative sanctions, up to and including termination, pursuant to and consistent with the relevant collective bargaining agreements and departmental policies. Partial license plates reported during crimes may be entered into the ALPR system in an attempt to identify suspect vehicles.

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

1305.4 DATA COLLECTION

The Investigations Division Captain is responsible for ensuring systems and processes are in place for the proper collection and retention of ALPR data. Data will be transferred from vehicles to the designated storage in accordance with department procedures. The Department should if feasible find a solution to transfer evidentiary hit data into its digital evidence repository through secure integration.

All ALPR data downloaded to the ALPR server should be stored for no longer than 30 days, 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 discovery request or other lawful action to produce records. In those circumstances the applicable data should be downloaded from the server and uploaded into BPD's digital evidence repository.

ALPR vendor, will store the data (data hosting) and ensure proper maintenance and security of data stored in their data towers. The ALPR vendor will purge their data at the end of the 30 days of storage. However, this will not preclude Berkeley Police Department from maintaining any relevant vehicle data obtained from the system after that period pursuant to the established City of Berkeley retention schedule mentioned above or outlined elsewhere. Relevant vehicle data are scans corresponding to the vehicle of interest on a hot list. The ALPR vendor and Department shall ensure that the necessary data is captured and stored to accurately report the relevant data required in the Annual Surveillance Technology report. Once the City Council approves the Annual Surveillance Technology report all said data may be purged so long as it doesn't violate the Retention guidelines.

Restrictions on use of vendor Data: Information gathered or collected, and records retained by the vendor's cameras or any other Berkeley Police Department ALPR system will not be sold,

accessed, or used for any purpose other than legitimate law enforcement or public safety purposes.

1305.5 DATA ACCESS

- (a) No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.
- (b) No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so.
- (c) If practical, an operator 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.

1305.6 DATA PROTECTION

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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):

- (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.
- (b) All ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code § 1798.90.52).
- (c) 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.
- (d) Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the consent of the Chief of Police or City Manager (i.e. If transportation department requested volume of vehicular traffic associated with specific events, it could conceivably be provided with the count of vehicles, but not the specific license plates with appropriate permissions).
- (e) 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.
- (f) ALPR system audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant on a regular basis, at least biennial.
- (g) Such ALPR data may be released to other authorized and verified law enforcement officials and agencies for legitimate law enforcement purposes.
- (h) Every ALPR Detection Browsing Inquiry must be documented by either the associated Berkeley Police case number or incident number, and/or a reason for the inquiry

For security or data breaches, see the Records Release and Maintenance Policy.

1305.7 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 and state 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 potentially disparate or adverse impacts on any communities or groups.

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1305.8 DATA RETENTION

All ALPR data belongs to the Department. All ALPR data downloaded to the ALPR server should be stored for no longer than 30 days, 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 discovery request or other lawful action to produce records. In those circumstances the applicable data should be downloaded from the server and uploaded into BPD's digital evidence repository.

ALPR vendor, will store the data (data hosting) and ensure proper maintenance and security of data stored in their data towers. The ALPR vendor will purge their data at the end of the 30 days of storage. However, this will not preclude Berkeley Police Department from maintaining any relevant vehicle data obtained from the system after that period pursuant to the established City of Berkeley retention schedule mentioned above or outlined elsewhere. Relevant vehicle data are scans corresponding to the vehicle of interest on a hot list. The ALPR vendor and Department shall ensure that the necessary data is captured and stored to accurately report the relevant data required in the Annual Surveillance Technology report. Once the City Council approves the Annual Surveillance Technology report all said data may be purged so long as it doesn't violate the Retention guidelines.

1305.9 PUBLIC ACCESS

All data and images gathered by the ALPR are for the official use of this department. Because such data may contain confidential information, it is not open to public review.

The Department shall to the extent feasible aim to offer a transparency portal wherein the number of scans, hits, and queries is available to the public in real-time, or as near as real-time as feasible. All data shall be reported in the Annual Surveillance Technology Report.

1305.10 THIRD PARTY DATA-SHARING

The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law.

(a) A supervisor at the requesting agency will sign an acknowledgement letter stating that the shared data will only be used for the purposes that are aligned with the Berkeley Police Department's policy. The Berkeley Police Department does not permit the sharing of ALPR data gathered by the City or its contractors/subcontractors for purpose of federal immigration enforcement, these federal immigration agencies include Immigrations and Customs Enforcement (ICE) and Customs and Border Patrol (CBP). *See attached letter.*

(b) The signed letter is retained on file. Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55).

(c) All signed letters shall be routed to the Audit and Inspection Sergeant for compliance and reporting.

ALPR data is subject to the provisions of the Berkeley Police Department's Immigration Law Policy, and hence may not be shared with federal immigration enforcement officials.

1305.11 TRAINING

Training for the operation of ALPR Technology shall be provided by BPD personnel. All BPD

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employees who utilize ALPR Technology shall be provided a copy of this Surveillance Use Policy.

1305.12 AUDITING AND OVERSIGHT

ALPR system audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant on a regular basis, at least biannually. The data from the fixed ALPRs shall be reported annually in the Surveillance Technology Report.

1305.13 MAINTENANCE

Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain or his or her designee. The Investigations Division Captain will assign members under his/her command to administer the day-to-day operation of the ALPR equipment and data. Equipment maintenance shall be provided by the vendor.

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BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT – FIXED AUTOMATED LICENSE PLATE READERS

FIXED AUTOMATED LICENSE PLATE READERS (ALPR)

A. DESCRIPTION

Fixed Automated License Plate Readers (ALPRs) are cameras systems with software designed for license plate recognition. The camera systems are typically mounted on street poles, street lights, and highway overpasses.

ALPRs are designed to capture license plate numbers which come into view, along with the location, date and time. The data, which includes an image of the front or the back of the car displaying the license plate, is then uploaded to a central server operated by the vendor. The license plate data is cross referenced with systems such as Stolen Vehicle Systems (SVS), and other lists like Amber alerts to notice police of vehicles with hits.

This technology does not have facial recognition, and is not tied to any personal identifying information or used for traffic enforcement.

B. PURPOSE

Berkeley Police Department will utilize a network of fixed automated license plate readers. The ALPRs will be affixed to street poles, street lights, or other similar objects that are either owned by the City of Berkeley or wherein a right-of-way agreement has been established.

The use of ALPRs to alert police of a wanted or vehicle of interest entering into their respective jurisdiction has become increasingly more commonplace. This technology is being utilized on our local freeways, bridges, and in some instances in private parking lots.

Berkeley Police Department investigators have identified the following instances wherein the use of an effective deployment of ALPRs could have aided the Berkeley Police Department in it's efforts to focus on the wanted vehicle prior to a crime occurring in the City of Berkeley, and potentially avoided an instance of victimization from happening.

RECENT CASES OF INTEREST

- 1.) BPD had an armed robbery in which the victim was pistol-whipped. The suspects fled in a vehicle. BPD officers located the vehicle and a pursuit ensued. The license plate on the vehicle was reported as a wanted vehicle for an armed robbery in San Ramon. Had this vehicle entered the City of Berkeley, and the vehicle passed an ALPR- BPD Officers could have been focused on finding this offender in an advance of this violent robbery.
- 2.) Victim was carjacked of his Toyota Rav-4. The suspect vehicle two days later was used in a murder that occurred in a nearby East Bay City. This same vehicle was used in a robbery in Oakland. The stolen property in the Oakland robbery was tracked back into Berkeley. Then this same vehicle was used to commit a robbery in Berkeley at Woolsey

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and Telegraph. The vehicle was listed as a car-jacking vehicle from the initial crime, ALPRs could have alerted BPD prior to the property being discarded in Berkeley, as well as the final robbery listed in this synopsis.

3.) Home invasion robbery in Berkeley wherein the suspect came in a stolen vehicle, listed in SVS as a wanted vehicle. The suspect violently attacked the resident. The suspect was arrested shortly after in San Pablo due to an ALPR hit. Suspect was unknown but identified due to having the victims stolen property.

4.) An armed robbery occurred in Berkeley the suspects fled in a cold plated stolen vehicle, meaning the vehicle was listed as wanted in SVS. San Pablo PD stopped the suspect vehicle due to the want associated to the license plate. Suspect was arrested and was in possession of a firearm. Suspect was eventually also linked to a stranger sexual assault case.

5.) A robbery of Valero in Berkeley occurred. The suspect arrived in stolen vehicle. The suspect was subsequently arrested by San Mateo PD due to an ALPR hit.

6.) A Victim called BPD to report his carjacked/stolen vehicle (from Union City), was tracking in South Berkeley. The victim was originally carjacked via gun by a group of suspects in Union City a few days prior. Moreover, Officers responded to South Berkeley but were unable to locate the victim's vehicle. The victim later tracked his carjacked/stolen vehicle to 1370 University Ave. Officers responded to this location and located the victim's vehicle. Three juveniles and one adult fled from the vehicle but were captured by the Officers. A search of the vehicle yielded a concealed/loaded firearm.

CATALYTIC CONVERTER THEFTS WITH GUNFIRE

7.) A theft of a catalytic converter took place at 5th and Hearst. The suspect vehicle's license plate was captured on video surveillance. BPD put a felony stop on the vehicle. San Pablo PD located the vehicle using their ALPR system and arrested the driver who was in possession of a loaded handgun.

8.) A catalytic converter theft occurred at 145 Hillcrest Road. The suspect vehicle's license plate was captured on video surveillance. BPD put a felony stop on the vehicle. Pinole PD located the vehicle. During a search of the vehicle, BPD located an assault rifle (ghost gun) and arrested the suspect.

9.) A pickup truck, wanted in SVS due to it being reported as a stolen vehicle, entered Berkeley. The aforementioned was caught in the act of cutting a catalytic converter

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from a vehicle on the 1800 block of 4th Street. Witnesses and a Security guard confronted the suspects. The suspects fled, and then immediately returned to shoot at the witness and security guard.

PROPERTY CRIME

10.) An auto burglary occurred at 1316 San Pablo Avenue and the victim obtained a license plate. A felony entry was made on the license plate. Pittsburg PD located the suspect vehicle due to an ALPR hit. The vehicle failed to yield and crashed. The driver was arrested for the failure to yield and Pittsburg PD located a loaded handgun in her purse.

11.) A suspect drove into Berkeley in a stolen vehicle, listed in SVS. The suspect drove to the driveway of 1626 Berkeley Way and proceeded to steal that resident's vehicle.

12.) Two suspects drove a reported stolen auto to Berkeley Bowl West. The suspects then burglarized a victim's vehicle. The suspect then proceeded to Emeryville where they used the Victim's identity to commit identity theft.

13.) A series of auto burglaries were committed in the area of San Pablo and Gilman. The suspects were seen getting into a vehicle which was listed in SVS as a stolen vehicle. Two days later a nearby city reported the same vehicle was used in a murder in that city. ALPR system could have notified officers of that wanted vehicle and helped in the capture of the suspects, and potentially intervened before the subsequent murder.

HOMICIDE

14.) Another agency reported a vehicle used in a murder, with a known license plate was entered into SVS with a felony want (associated with a murder). On 08/02/22 the vehicle was located in Berkeley. The associated suspects were located after fleeing from officers.

15.) BPD officers responded to a report of a person casing a house. Upon their arrival the suspects fled in a white sedan. That sedan was determined to be a reported stolen auto. The sedan fled from officers after they activated their emergency lights and sirens. The same vehicle was reported to be involved in a road rage incident in an adjacent city wherein the suspects shot and killed the victim on the freeway.

SEX/DV CRIMES

16.) This is a DV case in which the suspect fought with his adult girlfriend causing visible injury and then chased his girlfriend's 12 year old daughter down the street and shot at

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her with a firearm. San Pablo PD had an ALPR hit from this Berkeley PD case. The suspect ran from San Pablo PD and a gun was recovered from him.

17.) This is a series of peeping and prowling incidents against female UC Berkeley students. The suspect was driving for a ride share service and was in and out of Berkeley for the several months. The suspect was homeless, and thereby conventional methods of locating the suspect weren't fruitful.

C. LOCATION

BPD proposes to install 52 fixed ALPRs in the City of Berkeley. While the cameras are permanent installations, if found ineffective in the installed location, the Department can elect to move the camera to another location at nominal cost. It's preferred to leave cameras installed in locations for periods of minimally a year. Locations will be determined using crime data, known locations of ingress or egress into the City of Berkeley, and commonly known direction of travel after criminal acts based on information provided from investigators. The Department will balance the need to deploy the camera systems equitably across the City of Berkeley with the need to deploy the cameras in an effective manner. BPD will solicit input from the vendor for an effective deployment.

D. IMPACT

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 and state law. The procedures utilized with ALPR Units will help to ensure unauthorized use of its data. The procedures will 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 potentially disparate or adverse impacts on any communities or groups.

E. MITIGATION

All saved data will be safeguarded and protected by both procedural and technological means which are implemented to safeguard the public from any impacts identified in subsection (D). See subsection (G) for further.

F. DATA TYPES AND SOURCES

Images of license plates and location metadata may be obtained through the use of ALPR cameras. The vendor's system may have searching capabilities due to technology from machine learning

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that allow officers to search by vehicle type, make, color, license plate state, bumper sticker (the presence of a bumper sticker, not the image or content), decals (again the presence of a decal, not the image or content) and roof racks. All data stored in the vendor's servers shall be securely protected with end-to-end encryption.

G. DATA SECURITY

BPD takes data security seriously. 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):

- (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.
- (b) All ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code § 1798.90.52).
- (c) 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.
- (d) Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the consent of the Chief of Police or City Manager.
- (e) 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.
- (f) ALPR system audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant on a regular basis, at least biennial.
- (g) Such ALPR data may be released to other authorized and verified law enforcement officials and agencies for legitimate law enforcement purposes.
- (h) Every ALPR Detection Browsing Inquiry must be documented by either the associated Berkeley Police case number or incident number, and/or a reason for the inquiry

For security or data breaches, see the Records Release and Maintenance Policy.

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H. FISCAL COST

Since the City of Berkeley has not acquired the specific cameras, the costs can only be estimated. BPD expects the individual camera costs to range from \$2500-\$5000 each, with the installation to vary. BPD believes that for the proposed 52 camera deployment the cost to purchase and install to not exceed an initial cost of \$250,000. The yearly subscription cost may fluctuate but is expected to range from \$125,000 to \$175,000 a year.

I. THIRD-PARTY DEPENDENCE AND ACCESS

ALPR vendor would store the data (data hosting) and ensure proper maintenance and security of data stored in their data towers. The vendor will purge their data at the end of 30 days of storage. However, this will not preclude Berkeley Police Department from maintaining any relevant vehicle data obtained from the system after that period pursuant to the established City of Berkeley retention schedule (i.e. if detectives establish a hit results in evidentiary value it should be incorporated into the digital evidence of that specific case, and thereby would be kept longer than the aforementioned 30 days).

Restrictions on use of fixed ALPR Data: Information gathered or collected, and records retained by the Vendor will not be sold, accessed, or used for any purpose other than legitimate law enforcement or public safety purpose unless allowed by policy (i.e. metadata will be permissible use for annual surveillance reporting).

An ALPR shall only be used for official law enforcement business.

Use of an ALPR is restricted to the purposes outlined below. Department members 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).

- (a) An ALPR shall only be used for official law enforcement business.
- (b) An ALPR may be used in conjunction with any routine patrol operation or to support criminal investigations. Reasonable suspicion or probable cause is not required before using an ALPR.
- (c) Partial license plates and unique vehicle descriptions reported during major crimes should be entered into the ALPR system in an attempt to identify suspect vehicles.

The ALPR system, and all data collected, is the property of the Berkeley Police Department. Department personnel may only access and use the ALPR system for official and legitimate law enforcement purposes consistent with this Policy. The following uses of the ALPR system are specifically prohibited:

- (1) Invasion of Privacy: Except when done pursuant to a court order such as a search warrant, is a violation of this Policy to utilize the ALPR to record license plates except

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those of vehicles that are exposed to public view (e.g., vehicles on a public road or street, or that are on private property but whose license plate(s) are visible from a public road, street, or a place to which members of the public have access, such as the parking lot of a shop or other business establishment).

(2) Harassment or Intimidation: It is a violation of this Policy to use the ALPR system to harass and/or intimidate any individual or group.

(3) Use Based on a Protected Characteristic. It is a violation of this policy to use the ALPR system or associated scan files or hot lists solely because of a person's, or group's race, gender, religion, political affiliation, nationality, ethnicity, sexual orientation, disability, or other classification protected by law.

(4) Personal Use: It is a violation of this Policy to use the ALPR system or associated scan files or hot lists for any personal purpose.

(5) First Amendment Rights. It is a violation of this policy to use the LPR system or associated scan files or hot lists for the purpose or known effect of infringing upon First Amendment rights.

Anyone who engages in an impermissible use of the ALPR system or associated scan files or hot lists may be subject to administrative sanctions, up to and including termination, pursuant to and consistent with the relevant collective bargaining agreements and departmental policies.

The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law.

(a) A supervisor at the requesting agency will sign an acknowledgement letter stating that the shared data will only be used for the purposes that are aligned with the Berkeley Police Department's policy. The Berkeley Police Department does not permit the sharing of ALPR data gathered by the City or its contractors/subcontractors for purpose of federal immigration enforcement, these federal immigration agencies include Immigrations and Customs Enforcement (ICE) and Customs and Border Patrol (CBP).

(b) The signed letter is retained on file. Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55).

J. ALTERNATIVES

An alternative is the deployment of additional police resources. The inherent problems with this alternative is that it is difficult to hire and train additional police officers and the cost would be

1305 APPENDIX A

BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT – FIXED AUTOMATED LICENSE PLATE READERS

significantly higher than adding technology. Furthermore, this technology furthers the Department's goal in protecting and safeguarding our community through precision based policing strategies.

K. EXPERIENCE OF OTHER ENTITIES

Currently, in Alameda County, the following cities have ALPR programs, The Alameda County Sheriff's Office, Alameda PD, Emeryville PD, Fremont PD, Hayward PD, Livermore PD, Newark PD, Oakland PD, Piedmont PD, Pleasanton PD, San Leandro PD, Union City PD, and the California Highway Patrol. The only agency in Alameda County to not utilize ALPRs is Albany PD.

Representatives from Newark indicated success with their program. No notable issues have arisen as a result of this program. Additionally, no unexpected expenditures have come from this program that were unforeseen.

Representatives from indicated similar to the above, success with their program. No notable issues have arisen as a result of this program. Additionally, no unexpected expenditures have come from this program that were unforeseen.



Action CALENDAR
DATE: November 30, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Taplin, Vice Mayor Droste (co-sponsor), Councilmember Wengraf (co-sponsor)

Subject: Budget referral: Automated license plate readers for community safety improvement

RECOMMENDATION

That the Berkeley City Council take the following actions to enable and deploy tactical technologies in strategic public spaces and the public ROW for the improvement of community safety and determent, intervention, prevention of illegal dumping and/or investigation of violent crime and traffic violations:

- Authorize the City Manager to install Automatic License Plate Readers (ALPRs) at strategic locations including public facilities, entrances to the city and the public right-of-way in areas impacted by violent crime, traffic violations including infractions pertaining to bicycle and pedestrian safety, illegal dumping, Schedule II drug offenses, and other criminal activity; **and refer to the FY 23-24 budget process cost of ALPRs.**
- Refer to the City Manager the development of a policy pursuant and subject to City of Berkeley Surveillance Ordinance and Sanctuary City Contracting Ordinance enabling the use of ALPRs in fixed locations, mobile trailers, and vehicles by the Berkeley Police Department; consider a data retention period of no greater than one year, no less than sixty days to account for reporting lag, and study the feasibility of shorter data retention periods for non-hit scans with final discretion resting with the City Manager; consider comparable and applicable standards in the ALPRs policies of local governments including: the City of Alameda, The city of Emeryville, The City of Hayward, The City of Oakland, The City of Piedmont, The City of Richmond, The City of San Leandro, and The City of Vallejo; and consider provisions to safeguard efficacy against plate counterfitting, plate switching, and other methods of detection evasions.

POLICY COMMITTEE RECOMMENDATION

On November 1, 2021, the Public safety Policy Committee took the following action: M/S/C (Kesarwani/Bartlett) to refer the item to Council with a qualified positive recommendation of the item to reflect the Policy Committee's desire for consideration of the costs and benefits of this proposed expenditure against other public safety investments in the two-year FY 2022-23 &

2023-24 budget and the need to first develop a policy related to addressing data retention and other issues in accordance with the City of Berkeley Surveillance Ordinance and Sanctuary City Contracting Ordinance.

CURRENT SITUATION AND ITS EFFECTS

According to the Berkeley Police Department's 2019/2020 Crime Report, Berkeley has seen marked increases in aggravated assault, homicides, auto theft and larceny over the past two years.¹ While the overall crime rate remained relatively flat, specific categories of property crimes increased sharply—especially vehicle thefts, which increased by 66% in 2020. Homicides decreased to zero in 2021, but reports of gunfire and auto theft increased.

Currently, the police department's Parking Enforcement Bureau uses Automated License Plate Readers (ALPRs)² for time zone parking and scofflaw enforcement, replacing the practice of physically "chalking" car tires, but ALPR technology has not been implemented in the city for other law enforcement purposes. According to the City Manager's 2020 Surveillance Technology Report, there were an average of 12,059 successful license plate "reads" per day in the month of September, 2020. From October 2019 to October 2020, there were 44,068 "hits" detecting a positive violation, roughly 25% (14,945) of which resulted in enforcement by citation issuance.³

Pursuant to Berkeley Municipal Code Chapter 2.99 Section 2.99.070, the City Manager's office is required to report on surveillance technology on an annual basis.

BACKGROUND

According to a 2018 study⁴ by the Center for Policing Equity, Black people comprise only 8% of Berkeley's population, but a disproportionate 46% of people subject to police uses of force. In light of this evidence, and in the wake of the national outcry over the death of George Floyd, the City Council adopted a resolution⁵ on July 14, 2020 directing the City Manager in part to "identify elements of police work that could be achieved through alternative programs, policies, systems, and community investments."

Some research has found that ALPRs contribute to marginal improvements in public safety outcomes with respect to vehicle thefts and traffic safety. The use of LPR technology has

¹ https://www.cityofberkeley.info/Clerk/City_Council/2020/10_Oct/Documents/2020-10-13_Presentations_Item_19__Pres_Police_pdf.aspx

²

³ https://www.cityofberkeley.info/Clerk/City_Council/2020/11_Nov/Documents/2020-11-10_Item_19_Resolution_Accepting_the_Surveillance.aspx

⁴ Buchanan, K.S., Pouget, E., Goff, P.A. (2018). The Science of Justice: Berkeley Police Department. *Center for Policing Equity*. Retrieved from <https://www.berkeleyside.org/wp-content/uploads/2018/05/Berkeley-Report-May-2018.pdf>

⁵ https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-14_Item_18d_Transform_Community_Safety_pdf.aspx

increased significantly in law enforcement agencies across the US in the past decade, but outcomes have been inconsistently tracked, which limits available research.⁶ One qualitative case study found that criminal investigators adapted LPR technology to a broader range of investigative work, such as rapid responses and corroborating suspect alibis.⁷

An analysis of a randomized control trial in the City of Vallejo found that ALPRs attached to police vehicles enabled a 140% increase in detection of stolen vehicles, while arrests were more efficient with stationary ALPRs in fixed locations.⁸ A study on LPR technology in Mesa, AZ found that LPRs resulted in an eightfold increase in the number of plates scanned, more positive scans, arrests and recovery of stolen vehicles, and a reduction in calls for drug offenses. However, the study did not find a statistically significant reduction in vehicle thefts in hot spots compared to manual checks, possibly because the presence of law enforcement officers performing manual checks had a more preventative effect.⁹ Another study of the Charlotte-Mecklenburg Police Department found that “LPR use may have contributed to modest improvements in case closures for auto theft and robbery”—the former in the long term, and the latter both short- and long term.¹⁰

According to recent analysis by the National Highway Traffic Safety Administration, one law enforcement agency found that drivers with suspended, revoked, or restricted licenses were 2.2 times more likely to be involved in serious or fatal crashes than other drivers, and that identifying these drivers with ALPRs “could affect traffic safety positively by targeting violator vehicles that are more prone to crash risk.”¹¹ A quasi-experimental survey of data from Buffalo, NY found a reduction in violent crime and traffic accidents associated with roadblocks using LPRs.¹²

RATIONALE FOR RECOMMENDATION

Reimagining public safety necessitates significant improvements in public safety outcomes, including practical solutions to traffic safety and property crime. California law currently

⁶ Lum, C., Koper, C.S., Willis, J., Happeny, S., Vovak, H. and Nichols, J. (2019). The rapid diffusion of license plate readers in US law enforcement agencies. *Policing: An International Journal*, (42)3, pp. 376-393. <https://doi.org/10.1108/PIJPSM-04-2018-0054>

⁷ James J. Willis, Christopher Koper & Cynthia Lum (2018). The Adaptation of License-plate Readers for Investigative Purposes: Police Technology and Innovation Re-invention, *Justice Quarterly*, 35:4, 614-638, DOI: 10.1080/07418825.2017.1329936

⁸ Potts, J. (2018). Research in brief: assessing the effectiveness of automatic license plate readers. *POLICE CHIEF*. Retrieved from <http://www.theiacp.org/sites/default/files/2018-08/March%202018%20RIB.pdf>

⁹ Taylor, B., Koper, C. S., & Woods, D. J. (2012). Combatting auto theft in Arizona: A randomized experiment with license plate recognition technology. *Criminal Justice Review*, 37, 24-50.

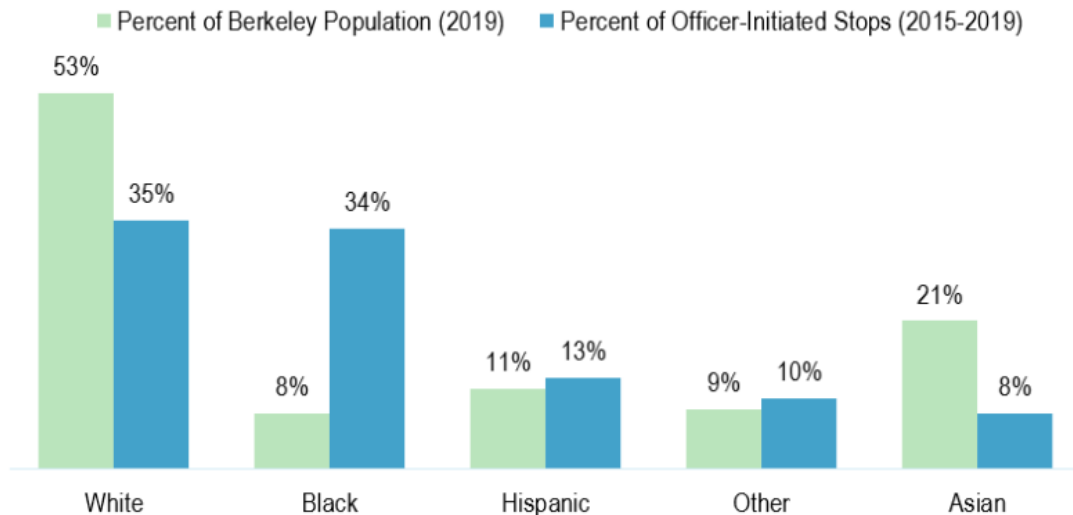
¹⁰ Koper, C. S., & Lum, C. (2019). The Impacts of Large-Scale License Plate Reader Deployment on Criminal Investigations. *Police Quarterly*, 22(3), 305–329. <https://doi.org/10.1177/1098611119828039>

¹¹ Zmud, J., Walden, T., Ettelman, B., Higgins, L. L., Graber, J., Gilbert, R., & Hodges, D. (2021). State of Knowledge and Practice for Using Automated License Plate Readers for Traffic Safety Purposes. Retrieved from https://rosap.ntl.bts.gov/view/dot/55586/dot_55586_DS1.pdf

¹² Wheeler, A.P., Phillips, S.W. (2018). A quasi-experimental evaluation using roadblocks and automatic license plate readers to reduce crime in Buffalo, NY. *Secur J* 31, 190–207. <https://doi.org/10.1057/s41284-017-0094-1>

preempts municipalities from transferring traffic enforcement to civilian duties or automated speed cameras.

While auto thefts in Berkeley increased by 64% from 2019 to 2020, and increased 54% year-over-year in the first half of 2021¹³, a 2021 City Auditor analysis¹⁴ of the Berkeley Police Department found that Officer-Initiated Stops disproportionately target Black and Latino drivers relative to their share of the city’s population.



Note: For the purposes of this figure for Berkeley populations, the U.S. Census categories of American Indian and Alaska Native alone, Native Hawaiian and Other Pacific Islander alone, and Two or More Races are summed for Other; White is White alone, not Hispanic or Latino.

Source: Auditor’s analysis of Berkeley Police Department Computer Aided Dispatch data and 2019 US Census data

ALPRs therefore present an opportunity to reduce property crimes and improve traffic safety while also reducing civilian encounters with police officers conducting ad hoc traffic enforcement, which the 2021 audit found to have a significant racial bias against Black and Latino drivers. ALPRs could make enforcement more fair, impartial, and effective.

In 2015, the Berkeley Police Department used ALPR technology on a mobile trailer to investigate five attempted kidnappings by Willard Middle School.¹⁵

However, ALPR data storage gives rise to several privacy concerns. In *Carpenter v. United States*, the U.S. Supreme Court ruled that accessing location data tracking an individual’s

¹³ https://www.cityofberkeley.info/Clerk/City_Council/2021/10_Oct/Documents/2021-10-19_Item_01_BPD_Annual_Report_pdf.aspx

¹⁴ Berkeley City Auditor. (2021, Apr. 22). Data Analysis of the City of Berkeley’s Police Response. Retrieved from https://www.cityofberkeley.info/uploadedFiles/Auditor/Level_3_-_General/Data%20Analysis%20of%20the%20City%20of%20Berkeley's%20Police%20Response.pdf

¹⁵ Raguso, E. (2015, Oct. 30). Berkeley police use license plate reader in kidnapping attempt investigations. Berkeleyside. Retrieved from <https://www.berkeleyside.org/2015/10/30/berkeley-police-use-license-plate-reader-in-kidnapping-attempt-investigation>

movements from their cell phone constitutes a search under the Fourth Amendment and requires a search warrant.¹⁶ While ALPR scans are subject to reasonableness standards for searches under Fourth Amendment jurisprudence, state courts have found that ALPR alerts are sufficient to establish a reasonable suspicion, though there are situations that require further intervention to establish reasonableness or avoid error.¹⁷

In *Neal v. Fairfax County Police Department*, the Virginia Supreme Court ruled that GPS data and images associated with license plate numbers were private personal information (PPI), but license plate numbers themselves stored in ALPR databases were not.¹⁸ The California Supreme Court has also underscored such a distinction between “bulk data collection” of license plate numbers that did not “produce records of investigations” for particular crimes.¹⁹ By contrast, U.S. Supreme Court Justice Sotomayor argued in *United States v. Jones* that government agencies collecting “private aspects of identity” could be “susceptible to abuse.”²⁰ This calls into question the so-called third party doctrine of the Fourth Amendment—the longstanding precedent that individuals may be reasonably considered to waive their right to privacy and assume any information provided to third parties may eventually be accessed by the government—given the vast array of information government agencies can now access through surveillance technology. To carefully balance privacy and policing efficacy under this new paradigm, Newell (2013) recommends strictly limiting data retention for non-“hit” scans, and maintaining anonymized ALPR data subject to public disclosure laws.²¹

California Vehicle Code Section 2413(b) restricts the California Highway Patrol (CHP)’s retention LPR data for 60 days unless it is being used as evidence in a felony investigation. Subsection (c) restricts the distribution of this data strictly to law enforcement agencies or officers and “only for purposes of locating vehicles or persons when either are reasonably suspected of being involved in the commission of a public offense.”

In 2015, Senate Bill 34 imposed additional security and privacy requirements on the use of ALPR data.²² Unfortunately, a State Auditor report in 2020 surveying four local law enforcement agencies in California found that ALPR policies were out of compliance with SB34, retained images for far longer than needed or allowed, and had no processes in place to safeguard local compliance. For example, the State Auditor “did not find evidence that the agencies had always

¹⁶ *Carpenter v. United States*, 138 S. Ct. 2206 (2018).

¹⁷ Fash, L. (2018). Automated License Plate Readers: The Difficult Balance of Solving Crime and Protecting Individual Privacy. *Md. L. Rev. Endnotes*, 78, 63.

¹⁸ *Neal v. Fairfax County Police Dept.*, 812 S.E.2d 444, 295 Va. 334 (2018).

¹⁹ *Am. Civil Liberties Union Found. of S. Cal. v. Super. Ct. of L.A. Cty.*, 400 P.3d 432 (Cal. 2017).

²⁰ *United States v. Jones*, 565 U.S. 400, 415 (2012) (Sotomayor, J., concurring);

²¹ Newell, B. C. (2013). Local law enforcement jumps on the big data bandwagon: Automated license plate recognition systems, information privacy, and access to government information. *Me. L. Rev.*, 66, 397.

²² https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB34

determined whether an entity receiving shared images had a right and a need to access the images or even that the entity was a public agency.”²³

In 2018, a lawsuit by the American Civil Liberties Union of Northern California revealed that Immigration and Customs Enforcement (ICE) had purchased access to private databases containing ALPR data with 5 billion individual data points for civil immigration enforcement, and had obtained ALPR data from over 80 local law enforcement agencies.²⁴ However, in 2017, Senate Bill 54 greatly restricted the ability of California law enforcement agencies to share information with ICE.²⁵

Berkeley Parking Enforcement uses PCS Mobile ALPR units using Genentech ALPR technology regulated by BPD Administrative Order #001-2016, which limits storage of reads to 30 days and hits to 365 days. Images of reads are not stored on the server, and data may only be used for legitimate law enforcement purposes. Police Departments in the cities of Vallejo and Piedmont utilize the Flock Safety Operating System, which comes with a transparency portal listing permitted and prohibited uses, data storage, access provided to outside agencies, numbers of hits and scans, and other relevant metadata.^{26,27}

ALTERNATIVES CONSIDERED

1. Gun buyback programs have not demonstrated significant efficacy except in limited circumstances within more holistic community-based violence prevention programs.²⁸
2. With the stalling of Assembly Bill 550²⁹ in this year’s legislative session, automated speeding cameras are not currently permitted in the state of California.
3. On October 27, 2020, the City Council referred to the Community Engagement Process for Reimagining Public Safety the creation of a Group Violence Intervention Program (GVI), or “Operation Ceasefire,” that will assemble a Berkeley-centered interjurisdictional working group of community members, law enforcement personnel, and supportive services providers to address gun violence. Current staffing capacity in the City Manager’s office is insufficient to develop such a program before the process is complete.

²³ Howle, E.M. (2020). Automated License Plate Readers: To Better Protect Individuals’ Privacy, Law Enforcement Must Increase Its Safeguards for the Data It Collects. *Auditor of the State of California*. Retrieved from <https://www.auditor.ca.gov/reports/2019-118/index.html>

²⁴ Talla, V. (2019). Documents Reveal ICE Using Driver Location Data From Local Police for Deportations. *ACLU Northern California*. Retrieved from <https://www.aclunc.org/blog/documents-reveal-ice-using-driver-location-data-local-police-deportations>

²⁵ https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB54

²⁶ <https://transparency.flocksafety.com/vallejo-ca-pd>

²⁷ <https://transparency.flocksafety.com/vallejo-ca-pd>

²⁸ Makarios, M. D., & Pratt, T. C. (2012). The Effectiveness of Policies and Programs That Attempt to Reduce Firearm Violence: A Meta-Analysis. *Crime & Delinquency*, 58(2), 222–244. <https://doi.org/10.1177/0011128708321321>.

²⁹ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB550

ENVIRONMENTAL IMPACTS

None.

FISCAL IMPACTS

In 2017, an amendment to Contract No. 9977³⁰ from the City Manager's Office itemized a unit cost of \$78,363 for each ALPR system. Costs for this referral may be different because this contract was only for mobile ALPRs used for parking enforcement, not in fixed locations or mobile trailers.

CONTACT

Councilmember Terry Taplin, District 2, (510) 981-7120, ttaplin@cityofberkeley.info

ATTACHMENTS

1. City of Vallejo ALPR Policy,
2. City of Alameda,
3. City of Emeryville,
4. City of Hayward,
5. City of Oakland,
6. City of Piedmont,
7. City of Richmond,
8. City of San Leandro.

³⁰https://ci.berkeley.ca.us/Clerk/City_Council/2017/07_Jul/Documents/2017-07-11_Item_13_Contract_No_9977_Amendment.aspx

Policy

426

Automated License Plate Readers (ALPRs)

426.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance for the capture, storage, and use of digital data obtained through the use of Automated License Plate Reader (ALPR) technology.

426.2 DEFINITIONS

- (a) **Automated License Plate Reader (ALPR):** A device that uses cameras and computer technology to compare digital images to lists of known information of interest.
- (b) **ALPR Operator:** Trained Department members who may utilize ALPR system/equipment. ALPR operators may be assigned to any position within the Department, and the ALPR Administrator may order the deployment of the ALPR systems for use in various efforts.
- (c) **ALPR Administrator:** The Investigations Bureau Captain or the Chief's designee, serves as the ALPR Administrator for the Department.
- (d) **Hot List:** A list of license plates associated with vehicles of interest compiled from one or more databases including, but not limited to, NCIC, CA DMV, Local BOLO's, etc.
- (e) **Vehicles of Interest:** Including, but not limited to vehicles which are reported as stolen; display stolen license plates or tags; vehicles linked to missing and/or wanted persons and vehicles flagged by the Department of Motor Vehicle Administration or law enforcement agencies.
- (f) **Detection:** Data obtained by an ALPR of an image (such as a license plate) within public view that was read by the device, including potential images (such as the plate and description of vehicle on which it was displayed), and information regarding the location of the ALPR system at the time of the ALPR's read.
- (g) **Hit:** Alert from the ALPR system that a scanned license plate number may be in the National Crime Information Center (NCIC) or other law enforcement database for a specific reason including, but not limited to, being related to a stolen car, wanted person, missing person, domestic violation protective order or terrorist-related activity.

426.3 ADMINISTRATION

The ALPR technology, also known as License Plate Recognition (LPR), allows for the automated detection of license plates along with the vehicle make, model, color and unique identifiers through the Vallejo Police Department's ALPR's system and the vendor's vehicle identification technology. The technology is used by the Vallejo Police Department to convert data associated with vehicle license plates and vehicle descriptions for official law enforcement purposes, including identifying stolen or wanted vehicles, stolen license plates and missing persons. It may also be used to gather information related to active warrants, homeland security, electronic surveillance, suspect interdiction and stolen property recovery.

All installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Department Information Technology Manager. The Department Information Technology Manager will assign members under his/her command to administer the day-to-day operation of the ALPR equipment and data.

426.3.1 ALPR ADMINISTRATOR

The Investigations Bureau 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):

- (a) Only properly trained sworn officers, crime analysts, and police assistants are allowed access to the ALPR system or to collect ALPR information.
- (b) Ensuring that training requirements are completed for authorized users.
- (c) ALPR system monitoring to ensure the security of the information and compliance with applicable privacy laws.
- (d) Ensuring that procedures are followed for system operators and 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 is maintained. Continually working with the Custodian of Records on the retention and destruction of ALPR data.
- (f) Ensuring this policy and related procedures are conspicuously posted on the department's website.

426.4 OPERATIONS

Use of an ALPR is restricted to the purposes outlined below. Department members 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).

- (a) An ALPR shall only be used for official law enforcement business.
- (b) An ALPR may be used in conjunction with any routine patrol operation or criminal investigation; reasonable suspicion or probable cause is not required before using an ALPR.
- (c) Partial license plates and unique vehicle descriptions reported during major crimes should be entered into the ALPR system in an attempt to identify suspect vehicles.
- (d) No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.
- (e) 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. Once an alert is received, the operator should confirm

that the observed license plate from the system matches the license plate of the observed vehicle. Before any law enforcement action is taken because of an ALPR alert, the alert will be verified through a CLETS inquiry via MDC or through Dispatch. Members will not take any police action that restricts the freedom of any individual based solely on an ALPR alert unless it has been validated. Because the ALPR alert may relate to a vehicle and may not relate to the person operating the vehicle, officers are reminded that they need to have reasonable suspicion and/or probable cause to make an enforcement stop of any vehicle. (For example, if a vehicle is entered into the system because of its association with a wanted individual, Officers should attempt to visually match the driver to the description of the wanted subject prior to making the stop or should have another legal basis for making the stop.)

- (f) Hot Lists. Designation of hot lists to be utilized by the ALPR system shall be made by the ALPR Administrator or his/her designee. Hot lists shall be obtained or compiled from sources as may be consistent with the purposes of the ALPR system set forth in this Policy. Hot lists utilized by the Department's LPR system may be updated by agency sources more frequently than the Department may be uploading them and thus the Department's LPR system will not have access to real time data. Occasionally, there may be errors in the LPR system's read of a license plate. Therefore, an alert alone shall not be a basis for police action (other than following the vehicle of interest). Prior to initiation of a stop of a vehicle or other intervention based on an alert, Department members shall undertake the following:

(1) **Verification of status on a Hot List.** An officer must receive confirmation, from a Vallejo Police Department Communications Dispatcher or other department computer device, that the license plate is still stolen, wanted, or otherwise of interest before proceeding (absent exigent circumstances).

(2) **Visual verification of license plate number.** Officers shall visually verify that the license plate of interest matches identically with the image of the license plate number captured (read) by the LPR, including both the alphanumeric characters of the license plate, state of issue, and vehicle descriptors before proceeding. Department members alerted to the fact that an observed motor vehicle's license plate is entered as a Hot Plate (hit) in a specific BOLO (be on the lookout) 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.

(3) Department members will clear all stops from hot list alerts by indicating the positive ALPR Hit, i.e., with an arrest or other enforcement action. If it is not obvious in the text of the call as to the correlation of the ALPR Hit and the arrest, then the Department member shall update with the Communications Dispatcher and original person and/or a crime analyst inputting the vehicle in the hot list (hit).

(4) General Hot Lists (SVS, SFR, and SLR) will be automatically downloaded into the ALPR system a minimum of once a day with the most current data overwriting the old data.

(5) All entries and updates of specific Hot Lists within the ALPR system will be documented by the requesting Department member within the appropriate general offense report. As such, specific Hot Lists shall be approved by the ALPR

Administrator (or his/her designee) before initial entry within the ALPR system. The updating of such a list within the ALPR system shall thereafter be accomplished pursuant to the approval of the Department member's immediate supervisor. The hits from these data sources should be viewed as informational; created solely to bring the officers attention to specific vehicles that have been associated with criminal activity.

All Hot Plates and suspect information entered into the ALPR system will contain the following information as a minimum:

- Entering Department member's name
- Related case number.
- Short synopsis describing the nature of the originating call

(g) Training. No member of this Department shall operate ALPR equipment or access ALPR data without first completing Department-approved training.

(h) Login/Log-Out Procedure. To ensure proper operation and facilitate oversight of the ALPR system, all users will be required to have individual credentials for access and use of the systems and/or data, which has the ability to be fully audited.

Permitted/Impermissible Uses. The ALPR system, and all data collected, is the property of the Vallejo Police Department. Department personnel may only access and use the ALPR system for official and legitimate law enforcement purposes consistent with this Policy. The following uses of the ALPR system are specifically prohibited:

- (1) Invasion of Privacy: Except when done pursuant to a court order such as a search warrant, is a violation of this Policy to utilize the ALPR to record license plates except those of vehicles that are exposed to public view (e.g., vehicles on a public road or street, or that are on private property but whose license plate(s) are visible from a public road, street, or a place to which members of the public have access, such as the parking lot of a shop or other business establishment).
- (2) Harassment or Intimidation: It is a violation of this Policy to use the ALPR system to harass and/or intimidate any individual or group.
- (3) Use Based on a Protected Characteristic. It is a violation of this policy to use the LPR system or associated scan files or hot lists solely because of a person's, or group's race, gender, religion, political affiliation, nationality, ethnicity, sexual orientation, disability, or other classification protected by law.
- (4) Personal Use: It is a violation of this Policy to use the ALPR system or associated scan files or hot lists for any personal purpose.
- (5) First Amendment Rights. It is a violation of this policy to use the LPR system or associated scan files or hot lists for the purpose or known effect of infringing upon First Amendment rights.

Anyone who engages in an impermissible use of the ALPR system or associated scan files or hot lists may be subject to:

- criminal prosecution,
- civil liability, and/or
- administrative sanctions, up to and including termination, pursuant to and consistent with the relevant collective bargaining agreements and Department policies.

426.4 DATA COLLECTION AND RETENTION

The Investigations Bureau Captain is responsible for ensuring systems and processes are in place for the proper collection and retention of ALPR data. Data will be transferred from vehicles to the designated storage in accordance with department procedures.

All ALPR data downloaded to the server should be stored for no longer than one year, 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 discovery request or other lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media and booked into evidence.

ALPR vendor, Flock Safety will store the data (data hosting) and ensure proper maintenance and security of data stored in their data towers. Flock Safety will purge their data at the end of the 30 days of storage. However, this will not preclude VPD from maintaining any relevant vehicle data obtained from the system after that period pursuant to the established City of Vallejo retention schedule mentioned above or outlined elsewhere.

Restrictions on use of ALPR Data: Information gathered or collected, and records retained by Flock Safety cameras or any other VPD ALPR system will not be sold, accessed, or used for any purpose other than legitimate law enforcement or public safety purposes.

426.5 ACCOUNTABILITY and SAFEGUARDS

All data will be closely safeguarded and protected by both procedural and technological means. The Vallejo 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):

- (a) All non-law enforcement requests for access to stored ALPR data shall be processed in accordance with applicable law.
- (b) All ALPR data downloaded to the mobile workstation shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date, and time.
- (c) Persons 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.

- (d) Such ALPR data may be released to other authorized and verified law enforcement officials and agencies for legitimate law enforcement purposes.
- (e) Every ALPR Detection Browsing Inquiry must be documented by either the associated Vallejo Police case number or incident number, and/or a reason for the inquiry.

For security or data breaches, see the Records Release and Maintenance Policy.

426.6 POLICY

The policy of the Vallejo Police Department is to utilize ALPR technology to capture and store digital license plate data and images while recognizing the established privacy rights of the public.

All data and images gathered by the ALPR are for the official use of this department. Because such data may contain confidential information, it is not open to public review.

The Vallejo Police Department does not permit the sharing of ALPR data gathered by the City or its contractors/subcontractors for 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).

462.7 ALPR DATA DETECTION BROWSING AUDITS

It is the responsibility of the Professional Standards Division (PSD) Lieutenant or the Chief's designee to ensure that an audit is conducted of ALPR detection browsing inquiries at least once during each calendar year. The Department will audit a sampling of the ALPR system utilization from the prior 12-month period to verify proper use in accordance with the above-authorized uses. The audit shall randomly select at least 10 detection browsing inquiries conducted by department employees during the preceding six-month period and determine if each inquiry meets the requirements established in policy section 462.5(e).

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 filed and retained by PSD.

426.8 RELEASING ALPR DATA

The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law.

- (a) The agency makes a written request for the ALPR data that includes:
 - (1) The name of the agency.
 - (2) The name of the person requesting.
 - (3) The intended purpose of obtaining the information.

- (b) The request is reviewed by the Chief of Police or the authorized designee and approved before the request is fulfilled.
- (c) The Chief of Police or the authorized designee will consider the California Values Act (Government Code § 7282.5; Government Code § 7284.2 et seq), before approving the release of ALPR data. The Vallejo Police Department does not permit the sharing of ALPR data gathered by the City or its contractors/subcontractors for purpose of federal immigration enforcement, these federal immigration agencies include Immigrations and Customs Enforcement (ICE) and Customs and Border Patrol (CPB).
- (d) The approved request is retained on file. Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55).

426.9 TRAINING

The Training Sergeant should ensure that members receive department-approved training for those authorized to use or access the ALPR system (Civil Code § 1798.90.51; Civil Code § 1798.90.53).

Automated License Plate Readers (ALPRs)

462.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for officers utilizing the Automated License Plate Reader (ALPR) system. This policy will further establish guidelines for the deployment and actions permissible when using the system. The policy shall remain in effect until it is superseded, amended, or withdrawn.

(a) An ALPR system is a computer-based system that utilizes special cameras to capture license plate information. The ALPR system captures an infrared image of a license plate and converts it to a text file using Optical Character Recognition ("OCR") technology. The text is compared to various hot lists generated by local, state, and federal law enforcement agencies, including the National Crime Information Center ("NCIC"), and generates an alert when there is a hit. The ALPR system identifies license plates and will not identify the person operating the motor vehicle. The Department may, as a separate step and for legitimate law enforcement purposes per the Federal Driver's Privacy Protection Act, and as set forth in this Policy, undertake to identify the owner of a vehicle in the event the ALPR system generates an alert, such as by running the license plate number through the State of California Department of Motor Vehicle (DMV) database.

(b) It shall be the policy of this Agency that all Department members abide by the policy and its procedures set forth when using the ALPR system, thereby increasing the efficiency and effectiveness of its public safety efforts in a manner that safeguards the privacy concerns of law abiding citizens.

(c) The ALPR system shall be restricted to legitimate law enforcement uses for the purpose of furthering legitimate law enforcement goals and enhancing public safety. Such uses and goals include, but are not limited to, providing information to officers that will assist in on-going criminal investigations, crime prevention, crime detection, the apprehension of wanted persons, ensuring the safety of vulnerable individuals through the recovery of missing and endangered persons, and improving the quality of life in our community through the identification and removal of stolen or unregistered motor vehicles.

(d) The Department shall utilize hot lists which further the above specified goals of the ALPR system, where there is a legitimate and specific law enforcement reason for identifying a vehicle associated with an outstanding arrest warrant, vehicles related to missing persons investigations, vehicles associated with AMBER Alerts, stolen vehicles, vehicles that are reasonably believed to be involved in the commission of a crime, vehicles which are registered to or are reasonably believed to be operated by persons who do not have a valid operator's license or who are on the

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revoked or suspended list, vehicles with expired registrations, vehicles registered to persons who are subject to a restraining order issued by a court or by the Parole Board, or who are subject to any other duly issued order restricting their movements, vehicles registered to persons wanted by a law enforcement agency who are of interest in a specific investigation, or vehicles registered to persons who are on any watch list issued by a State or Federal agency responsible for homeland security when information has been received concerning a specific individual.

462.2 DEFINITIONS

ALPR – Automated License Plate Recognition System, or Automated License Plate Reader

ALPR System – The system in its entirety, including all ALPR cameras, software, and collected data

Alert – An audible and/or visual signal activated upon the read of a license plate by the ALPR system that has NOT BEEN VISUALLY VERIFIED by the officer against the photo in the ALPR system.

Tentative Hit – An alert by the ALPR system that HAS BEEN VISUALLY VERIFIED by the officer against the ALPR hotlist and photo but HAS NOT BEEN VALIDATED by the officer or dispatch as a live query transaction OR CONFIRMED AS VALID with the original entering agency.

Live Query Transaction – A hit by the ALPR system that HAS BEEN VALIDATED as active but HAS NOT BEEN CONFIRMED as valid by the entering agency.

Confirmation (Confirmed Hit) – A hit by the ALPR system that HAS BEEN CONFIRMED as valid and active by the original entering agency through secondary check.

Hotlist – Data files extracted from law enforcement databases which contain listings of stolen license plates, stolen vehicles, wanted persons, and other vehicles/persons actively being sought by a law enforcement agency such as Amber/Silver Alert vehicles/persons. These data extracts are generally facilitated numerous times per day in an effort to provide current data.

462.3 PROCEDURES

(a) Management

The Alameda Police Department, by and through the Chief of Police, is solely responsible for the day-to-day operation and management of the ALPR system and for all tasks ancillary to its operation and management. The Chief of Police shall assign Department personnel to operate and manage the ALPR system on a day-to-day basis.

The Chief of Police, through his or her designee, shall ensure that the ALPR system is operated in conformity with this Policy and other Department policies, procedures, rules and regulations. The Chief shall enforce this Policy and shall act as the Department Head for all disciplinary and enforcement actions for any violations by Department personnel.

(b) Operations

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1. Installation and Functioning. ALPR cameras may be mounted on a marked cruiser or unmarked vehicle. ALPR equipment will passively read the license plates of moving or parked motor vehicles using ALPR optical character recognition technology and compare them against various hot lists uploaded or created by the Alameda Police Department. Scanned data files collected by the system will, on an ongoing basis, be automatically uploaded from the ALPR camera to the Department's ALPR database.

2. Hot Lists. Designation of hot lists to be utilized by the ALPR system shall be made by the Chief or his/her designee. Hot lists shall be obtained or compiled from sources as may be consistent with the purposes of the ALPR system set forth in this Policy. These sources may include:

- NCIC Stolen Vehicle files, as available;
- NCIC Stolen plates and Stolen Canadian plates, as available;
- NCIC Wanted persons, as available;
- NCIC Missing or Endangered person files, as available;
- NCIC Supervised Release (Federal Probationers), as available;
- NCIC Nationwide Domestic Violence Protection Orders, as available;
- NCIC Violent Gang and Terrorist Organization File, as available;
- NCIC Sexual Offender;
- DMV Records of Suspended/Revoked Registrations.

3. Training. No member of this Department shall operate ALPR equipment or access ALPR data without first completing Department-approved training.

4. Login/Log-Out Procedure. To ensure proper operation and facilitate oversight of the ALPR system, all users will be required to have individual credentials for access and use of the systems and/or data. A routine check to ensure the equipment is working properly should be done at the beginning of each shift by the user logging into the system.

5. Auditing and Oversight. To ensure proper oversight into the use of the system and adherence to this policy, all activities (plate detections, queries, reports, etc.) are automatically recorded by the system for auditing purposes. System audits shall be conducted by the Inspectional Services Section supervisor at least every six months during the first two years subsequent to implementation and no less than annually thereafter. The audit report shall include an explanation regarding any data retained longer than six months (e.g. data retained as evidence in a criminal case).

6. Permitted/Impermissible Uses. The ALPR system, and all data collected, is the property of the Alameda Police Department. Department personnel may only access and use the ALPR system for official and legitimate law enforcement purposes consistent with this Policy.

The following uses of the ALPR system are specifically prohibited:

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- a. **Invasion of Privacy:** Except when done pursuant to a court order such as a search warrant, it is a violation of this Policy to utilize the ALPR to record license plates except those of vehicles that are exposed to public view (e.g., vehicles on a public road or street, or that are on private property but whose license plate(s) are visible from a public road, street, or a place to which members of the public have access, such as the parking lot of a shop or other business establishment).
- b. **Harassment or Intimidation:** It is a violation of this Policy to use the ALPR system to harass and/or intimidate any individual or group.
- c. **Personal Use:** It is a violation of this Policy to use the ALPR system or associated scan files or hot lists for any personal purpose.

Anyone who engages in an impermissible use of the ALPR system or associated scan files or hot lists may be subject to:

- criminal prosecution,
- civil liability, and/or
- administrative sanctions, up to and including termination, pursuant to and consistent with the relevant collective bargaining agreements and Department policies.

7. **Required Steps Preliminary to Police Action.** Hot lists utilized by the Department's ALPR system may be updated by agency sources more frequently than the Department may be uploading them, and the Department's ALPR system will not have access to real time data. Further, there may be errors in the ALPR's read of a license plate. Therefore, an alert alone shall not be a basis for police action (other than following the vehicle of interest). Prior to initiation of a stop of a vehicle or other intervention based on an alert, an officer shall undertake the following:

- a. **Verification of current status on hot list.** An officer must receive confirmation, from someone or some system within the Department that the license plate is still stolen, wanted, or otherwise of interest before proceeding.
- b. **Visual verification of license plate number.** Officers shall visually verify that the license plate on the vehicle of interest matches identically with the image of the license plate number captured (read) by the ALPR, including both the alphanumeric characters of the license plate and the state of issue, before proceeding with a traffic stop.

8. **Use in Connection With Serious Crimes/Incidents.** Use of the ALPR should be considered to conduct license plate canvasses in the immediate wake of any homicide, shooting, robbery, kidnapping, sexual assault or AMBER ALERT, or other major crime or incident.

(c) Database Access and Privacy Concerns

1. The ALPR system database and software resides in a data center featuring full redundancy and access controls. The data remains property of the Alameda Police Department, and is managed according to this Policy.
2. The ALPR system is governed by the Permitted/Impermissible Uses as outlined in this Policy.

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3. The ALPR data contains no Personally Identifiable Information (PII) that may be used to connect license plate detection to an individual. It is only with permissible purpose that an investigator may make this connection (using other systems) and this access is already governed by the Federal Driver's Privacy Protection Act (DPPA).
4. All investigative queries into collected ALPR data are logged by user and available for auditing and review by the Department as outlined in this Policy.

(d) Data Retention

All data and images gathered by an ALPR are for the official use of the Alameda Police Department and because such data may contain confidential CLETS information, it is not open to public review. ALPR information gathered and retained by this Department may be used and shared with prosecutors or others only as permitted by law. All ALPR data downloaded to the server will be stored for a period of six months, and thereafter shall 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.

Automated License Plate Readers (ALPRs)

429.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance for the capture, storage and use of digital data obtained through the use of Automated License Plate Reader (ALPR) technology.

429.2 ADMINISTRATION

The ALPR technology, also known as License Plate Recognition (LPR), allows for the automated detection of license plates. It is used by the Emeryville Police Department to convert data associated with vehicle license plates for official law enforcement purposes, including identifying stolen or wanted vehicles, stolen license plates and missing persons. It may also be used to gather information related to active warrants, homeland security, electronic surveillance, suspect interdiction and stolen property recovery.

All installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Professional Services and Standards Division Captain. The Professional Services and Standards Division Captain will assign members under his/her command to administer the day-to-day operation of the ALPR equipment and data.

429.2.1 ALPR ADMINISTRATOR

[The Professional Services and Standards Captain 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:](#)

- (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 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.
- (f) Working with the Custodian of Records on the retention and destruction of ALPR data.
- (g) Ensuring this policy and related procedures are conspicuously posted on the departments website.

429.3 OPERATIONS

Use of an ALPR is restricted to the purposes outlined below. Department members 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).

- (a) An ALPR shall only be used for official law enforcement business.

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- (b) An ALPR may be used in conjunction with any routine patrol operation or criminal investigation. Reasonable suspicion or probable cause is not required before using an ALPR.
- (c) 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.
- (d) No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.
- (e) No ALPR operator may access department, state or federal data unless otherwise authorized to do so.
- (f) 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.

429.4 DATA COLLECTION AND RETENTION

The Professional Services and Standards Division Captain is responsible for ensuring systems and processes are in place for the proper collection and retention of ALPR data. Data will be transferred from vehicles to the designated storage in accordance with department procedures.

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 discovery request or other lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media and booked into evidence.

429.5 ACCOUNTABILITY

All data will be closely safeguarded and protected by both procedural and technological means. The Emeryville 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):

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

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- (c) ALPR system audits should be conducted on a regular basis.

For security or data breaches, see the Records Release and Maintenance Policy.

429.6 POLICY

The policy of the Emeryville Police Department is to utilize ALPR technology to capture and store digital license plate data and images while recognizing the established privacy rights of the public.

All data and images gathered by the ALPR are for the official use of this department. Because such data may contain confidential information, it is not open to public review.

429.7 RELEASING ALPR DATA

The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law, using the following procedures:

- (a) The agency makes a written request for the ALPR data that includes:
 1. The name of the agency.
 2. The name of the person requesting.
 3. The intended purpose of obtaining the information.
- (b) The request is reviewed by the Professional Services and Standards Division Captain or the authorized designee and approved before the request is fulfilled.
- (c) The approved request is retained on file.

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

429.8 TRAINING

The Professional Services Officer should ensure that members receive department-approved training for those authorized to use or access the ALPR system (Civil Code § 1798.90.51; Civil Code § 1798.90.53).

Automated License Plate Readers (ALPRs)

429.1 PURPOSE AND SCOPE

Automated License Plate Reader (ALPR) technology, also known as License Plate Recognition, provides automated detection of license plates. ALPRs are used by the Hayward Police Department to convert data associated with vehicle license plates for official law enforcement purposes, including identifying stolen or wanted vehicles, stolen license plates and missing persons. ALPRs may also be used to gather information related to active warrants, homeland security, electronic surveillance, suspect interdiction and stolen property recovery.

429.1.1 ACCREDITATION STANDARDS

This section pertains to the following CALEA Standards: 41.3.9

429.2 ADMINISTRATION OF ALPR DATA

All installation and maintenance of ALPR equipment, as well as ALPR data retention and access shall be managed by the Support Services Division Commander. The Support Services Division Commander will assign personnel under his/her command to administer the day-to-day operation of the ALPR equipment and data.

429.3 ALPR OPERATION

Use of an ALPR is restricted to the purposes outlined below. Department personnel shall not use, or allow others to use the equipment or database records for any unauthorized purpose.

- (a) An ALPR shall only be used for official and legitimate law enforcement business.
- (b) An ALPR may be used in conjunction with any routine patrol operation or criminal investigation. Reasonable suspicion or probable cause is not required before using an ALPR.

Examples of authorized purposes include but are not limited to:

1. Locating stolen, wanted and subject of investigation vehicles;
2. Locating and apprehending individuals subject to arrest warrants or otherwise lawfully sought by law enforcement;
3. Locating witnesses and victims of violent crime;
4. Locating missing children and elderly individuals, including responding to Amber and Silver Alerts;
5. Supporting local, state, federal, and tribal public safety departments in the identification of vehicles associated with targets of criminal investigations, including investigations of serial crimes;
6. Protecting participants at special events; and
7. Protecting critical infrastructure sites.

Automated License Plate Readers (ALPRs)

(c) 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.

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

(e) If practicable, the officer should verify an ALPR response through CLETS before taking enforcement action that is based solely on an ALPR alert.

429.4 ALPR AUTHORIZED USERS AND TRAINING

(a) No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.

(b) The following classifications are authorized to be trained in the use of the ALPR system:

1. Duly sworn peace officers
2. Professional staff whose duties require or call for the use of the system or data; examples: Community Service Officers (assigned to investigative positions) or Crime Analysts

(c) Training in the use of the system shall consist of:

1. Privacy and civil liberties protections;
2. Legal authorities, developments and issues involving the use of ALPR Data and technology;
3. Current HPD Policy regarding appropriate use of ALPR Systems;
4. Technical, physical, administrative and procedural measures to protect the security of ALPR Data against unauthorized access or use; and
5. Practical exercises in the use of the ALPR system.

429.5 ALPR DATA COLLECTION, RETENTION AND DISSEMINATION

Information collected by ALPR is categorized as one of two types.

(a) **DETECTIONS:** Detections are the records including images and data (date, time and location) gathered by ALPR field units.

(b) **HITS:** Are the notices from the system alerting the operator of a match between the license plate captured and a listing on one of the hot lists.

Automated License Plate Readers (ALPRs)

(c) RETENTION OF DATA: All data and images gathered by an ALPR are for the official use of the Hayward Police Department and because such data may contain confidential CLETS information, it is not open to public review. ALPR information gathered and retained by this department may be used and shared with prosecutors or others only as permitted by law.

The Support Services supervisor is responsible to ensure proper collection and retention of ALPR data, and for transferring ALPR data stored in department vehicles to the department server on a regular basis, not to exceed 30 days between transfers.

All ALPR data downloaded to the server should be stored for a minimum of one year (Government Code § 34090.6), and thereafter may 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.

All ALPR HIT records are maintained indefinitely.

(d) DISSEMINATION: The Hayward Police Department may disseminate ALPR data to any government entity with an authorized law enforcement or public safety purpose for access to such data. The Hayward Police Department assumes no responsibility or liability for the acts or omissions of other agencies in making use of the ALPR data properly disseminated. Though the Hayward Police Department will make every reasonable effort to ensure the quality of shared ALPR Data and hotlists, it cannot make absolute guarantees of the accuracy of information provided.

429.6 ACCOUNTABILITY AND SAFEGUARDS

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

(a) All non-law enforcement requests for access to stored ALPR data shall be referred to the Records Administrator and processed in accordance with applicable law.

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

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(c) Persons 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.

(d) Such ALPR data may be released to other authorized and verified law enforcement officials and agencies at any time for legitimate law enforcement purposes.

(e) ALPR system audits should be conducted on a regular basis.

429.7 REVISIONS

Enacted: March 31, 2015

Automated License Plate Readers (ALPRs)

430.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance for the capture, storage and use of digital data obtained through the use of Automated License Plate Reader (ALPR) technology.

430.2 POLICY

The policy of the Oakland Police Department is to utilize ALPR technology to capture and store digital license plate data and images while recognizing the established privacy rights of the public.

All data and images gathered by the ALPR are for the official use of this department. Because such data may contain confidential information, it is not open to public review.

430.3 ADMINISTRATION

The ALPR technology, also known as License Plate Recognition (LPR), allows for the automated detection of license plates. It is used by the Oakland Police Department to convert data associated with vehicle license plates for official law enforcement purposes, including identifying stolen or wanted vehicles, stolen license plates and missing persons. It may also be used to gather information related to active warrants, suspect interdiction and stolen property recovery.

All installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Bureau of Services Deputy Chief. The Deputy Chief will assign members under his/her command to administer the day-to-day operation of the ALPR equipment and data.

430.3.1 ALPR ADMINISTRATOR

The Bureau of Services Deputy Chief shall be the administrator of ALPR program, and 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 through 1798.90.53:

- (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 of the current designee overseeing the ALPR operation.
- (f) Working with the Custodian of Records on the retention and destruction of ALPR data.

Automated License Plate Readers (ALPRs)

- (g) Ensuring this policy and related procedures are conspicuously posted on the department's website.

430.4 ALPR USERS

Personnel authorized to use ALPR equipment or access information collected through the use of such equipment shall be specifically trained in such technology and authorized by the Chief of Police or designee. Such personnel shall be limited to designated sergeants, officers, police service technicians, and parking enforcement personnel unless otherwise authorized.

430.5 PURPOSES FOR ACCESSING AND USING ALPR INFORMATION

Use of an ALPR is restricted to the purposes outlined below. The title of the official custodian of the ALPR system, responsible for implementing this section, is the ALPR Coordinator.

Department members 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).

- (a) No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.
- (b) No ALPR operator may access department, state or federal data unless otherwise authorized to do so.
- (c) 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.
- (d) An ALPR shall only be used for official law enforcement business.
- (e) An ALPR may be used in conjunction with any routine patrol operation or criminal investigation. Reasonable suspicion or probable cause is not required before using an ALPR.
- (f) 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.

430.6 DATA COLLECTION AND RETENTION

The Bureau of Services Deputy Chief is responsible for ensuring systems and processes are in place for the proper collection, accuracy and retention of ALPR data. Data will be transferred from vehicles to the designated storage in accordance with department procedures.

All ALPR data downloaded to the server shall be stored for six months. Thereafter, ALPR data shall 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 discovery request or other lawful action to produce records. In those circumstances the applicable data shall be downloaded from the server onto portable media and booked into evidence.

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430.7 SYSTEM MONITORING AND SECURITY

All data will be closely safeguarded and protected by both procedural and technological means. The Oakland 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):

- (a) All ALPR data downloaded to the mobile workstation and in storage shall be accessible only through a login/password-protected system capable of documenting all access of information by username, license number or other data elements used in the search, name, date, time and purpose (Civil Code § 1798.90.52).
- (b) 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.
- (c) ALPR system audits shall be conducted on a regular basis by the Bureau of Services. The purpose of these audits is to ensure the accuracy of ALPR Information and correct data errors.

For security or data breaches, see the Records Release and Maintenance Policy.

430.8 RELEASING OR SHARING ALPR DATA

The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law, using the following procedures:

- (a) The agency makes a written request for the ALPR data that includes:
 1. The name of the agency.
 2. The name of the person requesting.
 3. The intended purpose of obtaining the information.
- (b) The request is reviewed by the Bureau of Services Deputy Chief or the authorized designee and approved before the request is fulfilled.
- (c) The approved request is retained on file.

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

430.9 TRAINING

The Training Section shall ensure that members receive department-approved training for those authorized to use or access the ALPR system and shall maintain a record of all completed trainings. (Civil Code § 1798.90.51; Civil Code § 1798.90.53).

Training requirements for employees authorized in ALPR Users Section include completion of training by the ALPR Coordinator or appropriate subject matter experts as designated by the Oakland Police Department. Such training shall include:

- Applicable federal and state law
- Applicable policy

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- Memoranda of understanding
- Functionality of equipment
- Accessing data
- Safeguarding password information and data
- Sharing of data
- Reporting breaches
- Implementing post-breach procedures

Training updates are required annually.

Automated License Plate Readers (ALPRs)

438.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance for the capture, storage and use of digital data obtained through the use of Automated License Plate Reader (ALPR) technology.

438.2 ADMINISTRATION

The ALPR technology, also known as License Plate Recognition (LPR), allows for the automated detection of license plates. It is used by the Piedmont Police Department to convert data associated with vehicle license plates for official law enforcement purposes, including identifying stolen or wanted vehicles, stolen license plates and missing persons. It may also be used to gather information related to active warrants, homeland security, electronic surveillance, suspect interdiction and stolen property recovery.

All installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Administration Operations Commander. The Administration Operations Commander will assign members under his/her command to administer the day-to-day operation of the ALPR equipment and data.

438.2.1 ALPR ADMINISTRATOR

The Administration Operations Commander 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):

- (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.
- (f) Working with the Custodian of Records on the retention and destruction of ALPR data.
- (g) Ensuring this policy and related procedures are conspicuously posted on the department's website.

438.3 OPERATIONS

Use of an ALPR is restricted to the purposes outlined below. Department members 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).

- (a) An ALPR shall only be used for official law enforcement business.

Automated License Plate Readers (ALPRs)

- (b) An ALPR may be used in conjunction with any routine patrol operation or criminal investigation. Reasonable suspicion or probable cause is not required before using an ALPR.
- (c) 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.
- (d) No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.
- (e) No ALPR operator may access department, state or federal data unless otherwise authorized to do so.
- (f) 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.

438.4 DATA COLLECTION AND RETENTION

The Administration Operations Commander is responsible for ensuring systems and processes are in place for the proper collection and retention of ALPR data. Data will be transferred from vehicles to the designated storage in accordance with department procedures.

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 there is a reason to believe it will become, evidence in a criminal or civil action or is subject to a discovery request or other lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media and booked into evidence.

438.5 ACCOUNTABILITY

All data will be closely safeguarded and protected by both procedural and technological means. The Piedmont 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):

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

Automated License Plate Readers (ALPRs)

- (c) The Support Services Division Commander will be responsible for directing and ensuring that ALPR system audits are conducted on a regular basis.

For security or data breaches, see the Records Release and Maintenance Policy.

438.6 AUTHORIZED DESIGNEE FOR CERTAIN ALPR SERVICES

The Chief of Police may enter into an agreement with another law enforcement agency or authority, through contract or memorandum of understanding, to receive, provide, or share ALPR services that meet the minimum standards of this policy.

438.7 TRAINING

Only persons trained in the use of the ALPR system, including its privacy and civil liberties protections, shall be allowed access to the ALPR data. Training shall consist of:

- Legal authorities, developments, and issues involving the use of ALPR data and technology
- Current policy regarding appropriate use of ALPR systems
- Evolution of ALPR and related technologies, including new capabilities and associated risks
- Technical, physical, administrative, and procedural measures to protect the security of ALPR data against unauthorized access or use
- Practical exercises in the use of the current ALPR system

Training shall be updated as technological, legal, and other changes that affect the use of the ALPR system occur. In no case shall a person utilize the ALPR system if he/she has not completed training in more than a year.

438.8 POLICY

The policy of the Piedmont Police Department is to utilize ALPR technology to capture and store digital license plate data and images while recognizing the established privacy rights of the public.

All data and images gathered by the ALPR are for the official use of this department. Because such data may contain confidential information, it is not open to public review.

438.9 RELEASING ALPR DATA

The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law.

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

Department personnel who receive requests for ALPR data will accept the request in accordance with our Records Maintenance and Release Policy and forward the request to the Support Services Division Commander.

Automated License Plate Readers (ALPRs)

438.10 TRAINING

The Training Sergeant should ensure that members receive department-approved training for those authorized to use or access the ALPR system (Civil Code § 1798.90.51; Civil Code § 1798.90.53).

Automated License Plate Readers (ALPRs)

462.1 PURPOSE AND SCOPE

Automated License Plate Reader (ALPR) technology, also known as License Plate Recognition, provides automated detection of license plates. ALPRs are used by the Richmond Police Department to convert data associated with vehicle license plates for official law enforcement purposes, including identifying stolen or wanted vehicles, stolen license plates and missing persons. ALPRs may also be used to gather information related to active warrants, homeland security, electronic surveillance, suspect interdiction and stolen property recovery.

462.2 ADMINISTRATION OF ALPR DATA

All installation and maintenance of ALPR equipment, as well as ALPR data retention and access shall be managed by the Administration Division Commander. The Administration Division Commander will assign personnel under his/her command to administer the day-to-day operation of the ALPR equipment and data.

462.3 ALPR OPERATION

Use of an ALPR is restricted to the purposes outlined below. Department personnel shall not use, or allow others to use the equipment or database records for any unauthorized purpose.

- (a) An ALPR shall only be used for official and legitimate law enforcement business.
- (b) An ALPR may be used in conjunction with any routine patrol operation or criminal investigation. Reasonable suspicion or probable cause is not required before using an ALPR.
- (c) 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.
- (d) No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.
- (e) No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so.
- (f) Absent exigent circumstances, the officer shall verify an ALPR response through CLETS before taking enforcement action that is based solely on an ALPR alert.

462.4 ALPR DATA COLLECTION AND RETENTION

All data and images gathered by an ALPR are for the official use of the Richmond Police Department and because such data may contain confidential CLETS information, it is not open to public review. ALPR information gathered and retained by this department may be used and shared with prosecutors or others only as permitted by law.

Richmond Police Department

Policy Manual

Automated License Plate Readers (ALPRs)

The Administration supervisor is responsible to ensure proper collection and retention of ALPR data.

All ALPR data downloaded to the server will be stored for ninety (90) days, and thereafter will 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.

462.5 ACCOUNTABILITY AND SAFEGUARDS

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

- (a) All non-law enforcement requests for access to stored ALPR data shall be referred to the Records Supervisor and processed in accordance with applicable law.
- (b) All ALPR data downloaded to the mobile workstation and server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time.
- (c) Persons 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.
- (d) Such ALPR data may be released to other authorized and verified law enforcement officials and agencies at any time for legitimate law enforcement purposes.
- (e) ALPR system audits should be conducted on a regular basis.

Automated License Plate Readers (ALPRs)

418.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance for the capture, storage and use of digital data obtained through the use of Automated License Plate Reader (ALPR) technology.

418.2 POLICY

The policy of the San Leandro Police Department is to utilize ALPR technology to capture and store digital license plate data and images while recognizing the established privacy rights of the public.

All data and images gathered by the ALPR are for the official use of this department. Because such data may contain confidential information, it is not open to public review.

In accordance with a Memorandum of Understanding (MOU) between the San Leandro Police Department and the Northern California Regional Intelligence Center (NCRIC), the Department shall work in cooperation and coordination with NCRIC in providing a standardized approach and method of collecting and sharing ALPR systems' data.

418.3 ADMINISTRATION

The ALPR technology, also known as License Plate Recognition (LPR), allows for the automated detection of license plates. It is used by the San Leandro Police Department to convert data associated with vehicle license plates for official law enforcement purposes, including identifying stolen or wanted vehicles, stolen license plates and missing persons. It may also be used to gather information related to active warrants, homeland security, electronic surveillance, suspect interdiction and stolen property recovery.

All installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Bureau of Services Captain, or his/her designee. The Bureau of Services Captain, or his/her designee, will assign members under their command to administer the day-to-day operation of the ALPR equipment and data.

418.3.1 ALPR ADMINISTRATOR

The Bureau of Services 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):

- (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.

Automated License Plate Readers (ALPRs)

- (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.
- (f) Working with the Custodian of Records on the retention and destruction of ALPR data.
- (g) Ensuring this policy and related procedures are conspicuously posted on the department's website.

418.4 OPERATIONS

Use of an ALPR is restricted to the purposes outlined below. Department members 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).

- (a) An ALPR shall only be used for official law enforcement business.
- (b) An ALPR may be used in conjunction with any routine patrol operation or criminal investigation. Reasonable suspicion or probable cause is not required before using an ALPR.
- (c) 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.
- (d) No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.
- (e) No ALPR operator may access department, state or federal data unless otherwise authorized to do so.
- (f) 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.

418.4.1 AUTHORIZED PURPOSES, COLLECTION, AND USE OF ALPR DATA

Sworn peace officers with a need and right to know may utilize ALPR technology for the following reasons, but are not limited to:

- (a) Locate stolen, wanted, and subject of investigation vehicles.
- (b) Locate and apprehend individuals subject to arrest warrants or otherwise lawfully sought by law enforcement.
- (c) Locate witnesses and victims of violent crime.
- (d) Locate missing children and elderly individuals, including responding to Amber and Silver Alerts.

Automated License Plate Readers (ALPRs)

- (e) Support local, state, federal and tribal public safety departments in the identification of vehicles associated with targets of criminal investigations, including investigations of serial crimes.
- (f) Protect participants at local events.
- (g) Protect critical infrastructure sites.

418.5 ALPR DATA COLLECTION AND RETENTION

The City of San Leandro Information Technology division is responsible for ensuring the collection of ALPR data is transferred from department vehicles to the Northern California Regional Intelligence Center (NCRIC) server on an automatic basis, transferring immediately upon utilization of the system.

All data and images gathered by an ALPR are for the official use only, and because such data may contain confidential CLETS information, it is not open to public review. ALPR information gathered and retained by this NCRIC may be used and shared with prosecutors or others only as permitted by law.

All ALPR data downloaded to the NCRIC server shall be stored for one year (Government Code § 34090.6) and thereafter will be purged on the 366th day 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 NCRIC server onto portable media and booked into evidence.

418.6 ACCOUNTABILITY

All data will be closely safeguarded and protected by both procedural and technological means by NCRIC. The San Leandro 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):

- (a) All ALPR data downloaded to the mobile workstation and in storage shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code § 1798.90.52).
- (b) 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.
- (c) ALPR system audits should be conducted by the ALPR Administrator on a quarterly basis.
- (d) The ALPR Administrator shall report any errors to NCRIC for correction.

418.7 RELEASING ALPR DATA

The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law, using the following procedures:

- (a) The agency makes a written request for the ALPR data that includes:

Automated License Plate Readers (ALPRs)

1. The name of the agency.
 2. The name of the person requesting.
 3. The intended purpose of obtaining the information.
- (b) The request is reviewed by the Bureau of Services Captain or the authorized designee and approved before the request is fulfilled.
- (c) The approved request is retained on file.

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

418.8 TRAINING

The Professional Standards and Training Unit should ensure that members receive department-approved training for those authorized to use or access the ALPR system (Civil Code § 1798.90.51; Civil Code § 1798.90.53). This training shall be consistent with the training outlined in the NCRIC ALPR Policy.

418.9 NCRIC ALPR POLICY

[NCRIC ALPR Policy](#)

Surveillance Use Equipment

Fixed Automated License Plate Readers (ALPRs)

Fixed Automated License Plate Readers (ALPR)

- In order to complete Council's Referral and satisfy the City of Berkeley Surveillance Technology Use and Community Safety Ordinance, BPD has developed the following:
 - Policy 422-Fixed Automated License Plate Readers,
 - Policy 1305-Surveillance Use 422-Fixed Automated License Plate Readers, and
 - Acquisition Report for 422-Fixed Automated License Plate Readers.

Fixed Automated License Plate Readers

- **Use Policy (422)** is designed to read, and comport with the structure of other BPD policies. This is intended for officers and supervisors.
- **Surveillance Use Policy (1305)** is designed to ensure legal compliance with any surveillance equipment utilized by BPD. Every header and the content is directly pulled from City of Berkeley Surveillance Ordinance (BMC 2.99.020(4)).
- **Acquisition Report.** Authored to ensure legal compliance with the parameters set forth in the City of Berkeley Surveillance Ordinance (BMC 2.99.020(3)).

Fixed Automated License Plate Readers

This policy was initially intended for the fixed ALPRs to aid patrol, which is a different use as described and approved for Parking Enforcement. This comes in response to a 2021 Budget Referral from Councilmember Taplin, Wengraf, and retired CCM Droste.

Fixed Automated License Plate Readers

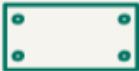




BPD has proposed in the Acquisition Report the following:

- That the City of Berkeley consider a two-year trial period of 52 fixed automated license plate readers.
- Initial cost is not to exceed \$250,000
- Yearly subscription cost is not to exceed \$175,000
- Camera placement based on vendor experience on effectiveness, but would be on thoroughfares and not placed in residential streets.
- Retention is 30 days, technology differs from fixed surveillance cameras
- Cameras do not capture people, no facial recognition, and cannot be used for traffic enforcement.

Fixed Automated License Plate Readers



The image shows a vertical, black, cylindrical ALPR camera on the left. To its right is a photograph of a dark gray Toyota sedan with a white rectangular box around its license plate. Below these images is a data interface with a light green background. It contains six data points arranged in a 3x2 grid, each with an icon and text: a license plate icon for 'Plate TX LGS2639', a clock icon for 'Last Visit 3:15 PM EDT', a car icon for 'Make Toyota', an eye icon for 'Seen 3 OF 30 DAYS', and a color swatch icon for 'Color Gray'.

| | | | |
|---|----------------------------|--|----------------------------------|
|  | Plate TX LGS2639 |  | Last Visit 3:15 PM EDT |
|  | Make Toyota |  | Seen 3 OF 30 DAYS |
|  | Color Gray | | |

A sample of an ALPR camera and the data captured:

- Indiscriminate evidence as the cameras are in fixed locations.
- Doesn't capture people.
- Not connected to any personal identifying information.

Fixed Automated License Plate Readers

- The cameras recognize and read license plates
- Gathers objective evidence and facts about a vehicle, not people
- Alerts the police of wanted vehicles
- Used to solve crimes
 - Proactive: Real time alerts when a stolen or wanted vehicle enters the City.
 - Can aid our Investigations Division with increased clearance rates.
 - Can have a deterrent effect.
- Adheres to state law
- Footage would be owned by the City
- Complies with the TRUST Act to entirely prohibit cooperation with immigration

Fixed Automated License Plate Readers

- Removes human bias out of crime solving by detecting objective data, and detecting events that are objectively illegal (ex stolen vehicle).
- A search reason and case number is required for the audit trail.
- Creates an audit search history, and policy requires minimally biennial report, which would be included in the Annual Surveillance Technology Ordinance report.
- Releasing to outside agencies shall be only done with a signed letter from an agency supervisor agreeing to only use the data in alignment with the Berkeley Police Fixed ALPR policies.

Fixed Automated License Plate Readers

Regional Successes with Fixed ALPRs

- Benicia PD reported a stolen trailer on 7/11/21 at 3PM. Trailer was entered into Stolen Vehicle Systems. Benicia PD was alerted to the trailer at 3:30 PM. Suspect was apprehended, and the trailer was returned to the owner. (<https://patch.com/california/benicia/automated-license-plate-reader-leads-stolen-trailer-Benicia>)
- Vacaville Police Chief Schmutzler publicly reported that ALPRs aided in a 33% decrease in reported vehicle thefts, and a 35% increase in arrests related to vehicle thefts.

Fixed Automated License Plate Readers

Recent missed opportunity of fixed ALPRs

- Recently BPD received a call about a robbery from a victim in the area of the South Campus.
- A witness reported the license plate of the associated vehicle to BPD.
- Officers conducted a records check of the license plate and determined it was associated with a homicide in San Francisco, and was listed as Wanted and associated with a homicide.

Fixed Automated License Plate Readers

Uses of the Fixed ALPRs

- Wanted vehicles listed in Stolen Vehicle Systems (SVS) like stolen and car-jacked vehicles.
- Amber/silver/blue alerts- real time notification on vehicles associated with any of the above alerts.
- Hot lists- used for stolen vehicles or plates to bridge the gap before they are uploaded into SVS, usually a day. Also can alert to vehicles that are of interest, such as used in robberies, organized retail crime, and shootings. They don't necessarily offer a reason to stop, but provide notice to officers.

Fixed Automated License Plate Readers

Any questions



INFORMATION CALENDAR

May 23, 2023

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jennifer Louis, Interim Chief of Police

Subject: Audit Recommendation Status - Data Analysis of the City of Berkeley's Police Response

CURRENT SITUATION AND ITS EFFECTS

The City Auditor's report included 2 recommendations. Both of the recommendations have been implemented.

BACKGROUND

On July 2, 2021, the City Auditor's Office issued its audit, *Data Analysis of the City of Berkeley's Police*¹ This audit report included 2 recommendations. The purpose of this report is to update the City Council on the Police Department's progress on implementing the City Auditor's recommendations. This is the second and final status report for this audit. In brief, multiple datasets including Crime Mapping, Use of Force, Calls for Service, RIPA, the Arrest and Booking Logs are now published and available on the BPD Transparency Hub. The Transparency Hub also information where there was a documented mental health or homelessness component involved: <https://bpd-transparency-initiative-berkeleypd.hub.arcgis.com/>.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects or opportunities associated with the subject of this report.

FISCAL IMPLICATIONS

Staff time for various members of BPD and the Department of Information Technology.

CONTACT PERSON

Captain Kevin Schofield, Police Department, (510) 981-5815

ATTACHMENTS

1: Data Analysis Recommendation Table

¹ City Auditor's Office Data Analysis Audit (7/2/2021)

<https://berkeleyca.gov/sites/default/files/2022-01/Data-Analysis-Berkeley-Police-Response.pdf>

| Audit Title: Data Analysis of Berkeley's Police Response | | | | | |
|---|---|------------|---------------------|--|--|
| Finding | Recommendation | Department | Last Period: Status | Expected or Actual Implementation Date | Status of Audit Recommendations, Corrective Plan, and Progress Summary |
| Berkeley Police Department can better track mental health and homelessness calls. | 1.1 To improve access to data, we recommend the Berkeley Police Department identify all calls for service where there is an apparent mental health issue and/or homelessness component in a manner that protects the privacy rights of the individuals involved. | Police | Implemented | 6/29/2022 | <u>Implemented:</u> Starting July 1, 2021, the department formally began utilizing “H” homeless and “MH” mental health disposition codes when closing out any call involving a homeless person or a person with mental health issues. Officers were instructed that they were not required to ask people what their housing status is unless necessary for identification purposes. Unless there are mental health issues which are related to the call, they are not required to ask them what their mental health status is either. Officers are expected to use their best judgement / perception in determining if a call is related to a homeless issue or someone suffering from a mental health issue. If so, they are directed to add the “H” and/or “MH” disposition to the CAD disposition. |
| The City can improve the transparency of Police Department activity data on the Open Data Portal. | 2.1 To improve access to data, we recommend the Berkeley Police Department make calls for service data available on the City’s Open Data Portal for all call types allowable by Berkeley Police Department policy and law, and update regularly to facilitate transparency. This data should be published in machine ready format, and contain as many years of data as is available. | Police | Partly Implemented | 1/11/2023 | <u>Implemented:</u> Multiple datasets including Crime Mapping, Use of Force, Calls for Service, RIPA, the Arrest and Booking Logs are published and available on the BPD Transparency Hub: https://bpd-transparency-initiative-berkeleypd.hub.arcgis.com/ . |



CONSENT CALENDAR
September 13, 2022

To: Honorable Mayor and Members of the City Council

From: Councilmember Taplin

Subject: Information Report Request: Alternatives to Chemical Agents for Response to Violent Large-Scale Crowd Scenarios

RECOMMENDATION

Direct the City Manager to study alternatives to chemical agents to improve the Berkeley Police Department's ability and capacity to respond to and de-escalate large-scale crowd scenarios, including violent militias, and return a report to the City Council by the end of Fiscal Year 2023.

Report should include but not be limited to the following factors:

- BPD intelligence-gathering capabilities on potentially violent large crowd scenarios
- BPD response protocols including procedures for protecting bystanders, peaceful protesters, and businesses
- Tools and tactics available for crowd control in potentially violent scenarios
- Mutual aid and support from other local/state/federal agencies
- Applicable state and federal laws on crowd control and First Amendment rights

FINANCIAL IMPLICATIONS

Staff time.

CURRENT SITUATION AND ITS EFFECTS

Planning for large-scale crowd scenarios is a Strategic Plan Priority Project, advancing our goal to create a resilient, safe, connected, and prepared city.

As of June 9, 2020, the City of Berkeley has prohibited the use of tear gas, pepper spray, smoke canisters, and other chemical agents for crowd control by the Berkeley Police Department and any other outside agencies providing mutual aid in Berkeley. This prohibition was enacted due to concerns for the health and safety of peaceful protesters, including permanent lung damage and the potential to exacerbate the COVID-19 pandemic (see Attachment 1).

In 2021, the state legislature passed Assembly Bill 48 (see Attachment 2), which imposed restrictions on the use of chemical agents and kinetic energy projectiles by law enforcement officers during protests, including requirements for de-escalation, prohibiting their use for dispersing crowds, and restricting their use to "objectively

reasonable efforts” to only target violent individuals after all other options have been exhausted, while also establishing public reporting requirements.

In June of 2022, the Berkeley Police Department presented to the City Council’s Public Safety Policy Committee on regional best practices and conformance with AB-48 (see Attachment 3).

In August of 2022, the Berkeley City Council was briefly scheduled to discuss potentially lifting the prohibition on chemical agents on a temporary basis in response to reports of violence at protests near People’s Park, due to concerns that the Alameda County Sheriff’s Office would not provide mutual aid. The meeting was canceled, and the prohibition remains in place.¹ UCPD, which is overseeing law enforcement at the park, is permitted to use tear gas in limited situations under its use of force policy.² On August 5, 2022, the Sheriff Gregory Ahern clarified on KTVU that the Alameda County Sheriff’s Office would provide mutual aid to the City, not “to assist with the movement of the crowd.”³

Due to ongoing concerns regarding violent crowds outlined below, it is in the public interest to study feasible alternatives for responding to potentially violent large gatherings while protecting First Amendment rights, de-escalating and preventing bodily harm for all present pursuant to existing City of Berkeley policies.

BACKGROUND

The extreme far-right in the US has become increasingly violent since the election of President Donald Trump, with white supremacist propaganda and neo-Nazi rallies consistently condoned by the highest echelons of the Republican Party. Since former President Trump’s well-documented lies about election theft fomented an attempted insurrection and violent invasion of the US Capitol on January 6, 2021, the need to safeguard democratic institutions from violent extremism has only increased, as far-right figures have openly threatened to increase violent demonstrations while pivoting to more local, decentralized actions.⁴

Berkeley has been the site of several violent encounters with far-right militias and counter-protesters. On February 1, 2017, a faction of protesters opposing a UC

¹ Yelimeli, S. (Aug. 4, 2022). Berkeley City Council will not lift tear gas ban amid People’s Park protests. *Berkeleyside*. Retrieved from <https://www.berkeleyside.org/2022/08/04/berkeley-city-council-will-not-lift-tear-gas-ban-amid-peoples-park-protests>

² https://newspack-berkeleyside-cityside.s3.amazonaws.com/wp-content/uploads/2022/08/Use_of_Force-1.pdf

³ KTVU. (Aug 5, 2022). People’s Park project on hold; debate over tear gas in Berkeley. Retrieved from <https://www.ktvu.com/news/peoples-park-project-on-hold-debate-over-tear-gas-in-berkeley>

⁴ Holt, J. (2022). After the insurrection: How Domestic Extremists Adapted and Evolved After the January 6 US Capitol Attack. *Atlantic Council*. Retrieved from <https://www.atlanticcouncil.org/wp-content/uploads/2022/01/After-the-Insurrection.pdf>

Berkeley speaking event by far-right figurehead Milo Yiannopoulos engaged in looting of commercial retailers and injured peaceful protesters.⁵ On March 4, 2017, Berkeley police arrested 10 individuals following violent clashes at a “March 4 Trump” rally in Civic Center Park where 7 were injured. In response, then-President Trump praised the rallies and threatened to pull federal funding from UC Berkeley.⁶ On April 15, 2017, right-wing protesters (including neo-Nazi militia groups such as Oath Keepers) and counter-protesters fought violently with rocks, sticks, pepper spray, and smoke bombs, resulting in 21 arrests and 11 injuries, including one stabbing.⁷

The City of Berkeley must assess its preparedness for large crowd scenarios in order to prevent future violence.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

CONTACT PERSON

Councilmember Taplin Council District 2 510-981-7120

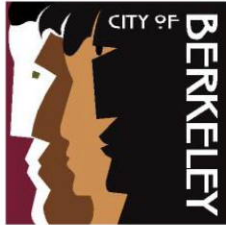
ATTACHMENTS

- 1: June 9, 2020: Prohibiting Use of Chemical Agents for Crowd Control During COVID-19 Pandemic
- 2: Assembly Bill 48 (2021)
- 3: June 6, 2022: Berkeley City Council Public Safety Policy Committee presentation

⁵ Bodley, M. (2017, Feb 2). At Berkeley Yiannopoulos protest, \$100,000 in damage, 1 arrest. *SFGate*. Retrieved from <https://www.sfgate.com/crime/article/At-Berkeley-Yiannopoulos-protest-100-000-in-10905217.php>

⁶ Wang, A.B. (2017, March 5). Pro-Trump rally in Berkeley turns violent as protesters clash with the president’s supporters. *Los Angeles Times*. Retrieved from <https://www.washingtonpost.com/news/post-nation/wp/2017/03/05/pro-trump-rally-in-berkeley-turns-violent-as-protesters-clash-with-the-presidents-supporters/>

⁷ St. John, P. (2017, Apr 15). 21 arrested as hundreds of Trump supporters and counter-protesters clash at Berkeley rally. Retrieved from <https://www.latimes.com/local/lanow/la-me-ln-berkeley-trump-rally-20170415-story.html>



Office of the Mayor

LATE AGENDA MATERIAL

Pursuant to Government Code Section 54954.2(b)

Meeting Date: June 9, 2020

Item Description: Prohibiting the use of Chemical Agents for Crowd Control during the COVID-19 pandemic

Submitted By: Mayor Arreguin, Councilmember Harrison, Councilmember Robinson

Pursuant to California Government Code Section 54954.2(b) (2), the Mayor submits the attached item to the City Council for placement on the June 9, 2020 meeting agenda. Gov. Code Section 54954.2(b) (2) states that *“Upon a determination by a two-thirds vote of the members of a legislative body presents at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).”*

This item meets the criteria for “immediate action” as follows:

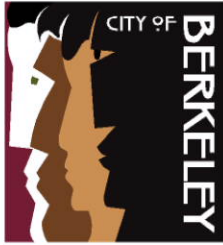
The City of Berkeley is currently in a declared state of emergency regarding the outbreak of a novel coronavirus, causing the respiratory disease COVID-19. COVID-19 is an acute respiratory illness that affects the lungs in addition to other symptoms. The severity of these symptoms increases based on underlying health conditions including asthma, heart and lung problems, diabetes, and other medical conditions.

Despite being in a declared public health emergency, the Berkeley Police Department can use chemical agents (tear gas, pepper spray, and smoke canisters) to disperse a crowd, but subject to the authorization and policies outlined in General Order U-2.

Public health experts have concluded that chemical agents like tear gas may make individuals more susceptible to COVID-19 and increase its community spread. Along with the immediate pain that can cause watering eyes and burning throats, tear gas may cause damage to people’s lungs and make them more susceptible to getting a respiratory illness, according to studies on the risks of exposure. The gas and smoke can also incite coughing, which can further spread the virus from an infected person.

On June 1, 2020, in response to a largely peaceful demonstration against the killing of George Floyd, Oakland Police fired tear gas into a crowd of demonstrators. The tear gas not only affected protestors by also bystanders in the immediate area. The police killing of George Floyd on May 25, 2020 and the deaths of other African Americans have sparked nationwide outrage and protests over police brutality, including demonstrations in the City of Berkeley. Additional protests may occur in the coming days and weeks.

Consideration of late agenda items is subject to approval by a two-thirds vote of the City Council. (California Government Code Section 54954.2(b)(2))



ACTION CALENDAR
June 9, 2020

To: Members of the City Council

From: Mayor Jesse Arreguín, Councilmember Kate Harrison and Councilmember Rigel Robinson

Subject: Prohibiting the use of Chemical Agents for Crowd Control during the COVID-19 pandemic

RECOMMENDATION

Adopt a motion to establish an official City of Berkeley policy prohibiting the use of tear gas (CS gas), pepper spray or smoke for crowd control by the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, during the COVID-19 pandemic, until such time that the City Council removes this prohibition.

BACKGROUND

The use of tear gas (CS gas) and pepper spray are authorized less-than-lethal uses of force which can be deployed in crowd control situations under Berkeley Police Department policy, with specific conditions (See [General Order U-2](#)).

On June 1, 2020, Oakland police deployed tear gas to disperse protesters who failed to move before a legally established curfew. The tear gas not only affected protestors by also bystanders in the immediate area. This has raised concerns over the police use of tear gas in protests, the chilling effect it has on people engaging in First Amendment activity, and the health impacts of tear gas during a public health emergency. In response to this incident, Oakland City Council President Rebecca Kaplan and Councilmembers Nikki Fortunato Bas and Sheng Thao issued a letter to Oakland City administrators requesting that OPD use of tear gas be immediately suspended and not used during the COVID-19 pandemic. Similarly, on June 5, 2020, Berkeley Councilmembers Harrison, Davila, Bartlett and Robinson made a similar request.

International, national, state and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named "SARS-CoV-2." and the disease it causes has been named "coronavirus disease 2019," abbreviated COVID-19, ("COVID-19"). In response to this emergency, on March 3, 2020, the City Manager acting as the Director of Emergency Services declared a local State of Emergency based on COVID-19 (hereinafter referred to as "the State of Emergency"), which the City Council subsequently ratified on March 10, 2020. In addition, on March 4, 2020, the Governor declared a state of emergency in California and the President of the United States declared a national state of emergency on March 13, 2020 regarding the novel coronavirus and COVID-19.

During the COVID-19 state of emergency, there is a heightened risk of individuals contracting the virus if they are exposed to tear gas, pepper spray or smoke. This will put people's safety and lives at risk. As a public health strategy, the deployment of tear gas, pepper spray and smoke must be suspended.

According to a June 2, 2020 KTVU article, infectious disease specialists are circulating an online petition calling for police to stop using tear gas to disperse crowds and calling on police to use "public health best practices" during demonstrations.¹

According to an article in the June 3, 2020, *New York Times*, **"Along with the immediate pain that can cause watering eyes and burning throats, tear gas may cause damage to people's lungs and make them more susceptible to getting a respiratory illness, according to studies on the risks of exposure. The gas can also incite coughing, which can further spread the virus from an infected person."**²

Researchers are concerned that the use of tear gas in crowds "might catalyze a new wave of Covid-19."³

Data show that African Americans are disproportionately impacted by COVID-19 in Berkeley and Alameda County. In addition, "many black Americans disproportionately have pre-existing conditions like asthma that could make tear gas lethal."

Tear gas has been banned for use in warfare, but is legal for police to use in the U.S. Yet, experts say it should be a weapon of last resort for crowd control and for addressing violent behavior of specific individuals because it affects everyone in the area including peaceful protestors.

The use of tear gas and other agents for crowd control adversely affects individuals in crowds of protestors as well as residents who are not involved in protesting, and it can have serious effects on medically vulnerable people and increase the spread of COVID-19.

Oakland Police Department's own police training bulletin (V-F.2. July 26, 2006) states that "Breathing CS (gas) may create a feeling of tightness in the chest, shortness of breath, coughing and/or sneezing." These are reactions that can spread COVID-19.

In response to mass protests over the killing of George Floyd, on Friday, June 5, 2020, Governor Newsom announced that he would work with the State Legislature, activists, law enforcement officers, and journalists to create new standards for policing protests in California.

"Protesters have the right not to be harassed," he said. **"Protesters have the right to protest peacefully. Protesters have the right to do so without being arrested, gassed, being shot at by projectiles."**⁴

¹ Lisa Fernandez, "Infectious disease specialists call for an end to tear gas during COVID-19 pandemic," KTVU News, June 2, 2020, <https://www.ktvu.com/news/infectious-disease-specialists-call-for-an-end-to-tear-gas-during-covid-19-pandemic>

² Mike Baker, "Corrosive Effects of Tear Gas Could Intensify Coronavirus Pandemic," The New York Times, <https://www.nytimes.com/2020/06/03/us/tear-gas-risks-protests-coronavirus.html>

³ Hilary Brueck and Canela López, "Tear gas is banned from war — but police still shoot it at protesters, who cough and bleed as a result. At least one has lost an eye," Business Insider, June 3, 2020, <https://www.insider.com/tear-gas-banned-from-war-why-dangerous-how-to-neutralize-2020-6>

⁴ Alexei Koseff, "Gavin Newsom calls for new protest policing standards in California, ban on carotid holds" San Francisco Chronicle, June 5, 2020 <https://www.sfchronicle.com/politics/article/Gavin-Newsom-calls-for-new-protest-policing-15320403.php>

The police killing of George Floyd on May 25, 2020 and the deaths of other African Americans have sparked nationwide outrage and protests over police brutality, including demonstrations in the City of Berkeley. Additional protests may occur in the coming days and weeks. Therefore, the Council should take immediate action to impose this moratorium on the use of chemical agents during the COVID-19 pandemic.

FINANCIAL IMPLICATIONS

None. Prohibiting the use of tear gas, pepper spray and smoke will require the Berkeley Police Department to use other tactics in crowd control situations.

CONTACT PERSONS

| | |
|------------------------|----------------|
| Mayor Jesse Arreguín | (510) 981-7100 |
| Councilmember Harrison | (510) 981-7140 |
| Councilmember Robinson | (510) 981-7170 |

Assembly Bill No. 48

CHAPTER 404

An act to amend Section 12525.2 of the Government Code, and to add Sections 13652 and 13652.1 to the Penal Code, relating to law enforcement.

[Approved by Governor September 30, 2021. Filed with Secretary of State September 30, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 48, Lorena Gonzalez. Law enforcement: use of force.

(1) Existing law authorizes a peace officer to use reasonable force to effect the arrest, to prevent escape, or to overcome resistance. Existing law requires law enforcement agencies to maintain a policy on the use of force, as specified. Existing law requires the Commission on Peace Officer Standards and Training to implement courses of instruction for the regular and periodic training of law enforcement officers in the use of force.

This bill would prohibit the use of kinetic energy projectiles or chemical agents by any law enforcement agency to disperse any assembly, protest, or demonstration, except in compliance with specified standards set by the bill, and would prohibit their use solely due to a violation of an imposed curfew, verbal threat, or noncompliance with a law enforcement directive. The bill would include in the standards for the use of kinetic energy projectiles and chemical agents to disperse gatherings the requirement that, among other things, those weapons only be used to defend against a threat to life or serious bodily injury to any individual, including a peace officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control. The bill would define chemical agents to include, among other substances, chloroacetophenone tear gas or 2-chlorobenzalmalononitrile gas. The bill would make these provisions inapplicable within a county jail or state prison facility.

This bill would also require each law enforcement agency, within a specified timeframe, to post on their internet website a summary, as described, of any incident in which a kinetic energy projectile or chemical agent is deployed by that agency for the purpose of crowd control. The bill would require the Department of Justice to provide a compiled list of links to these reports on its internet website.

(2) Existing law requires each law enforcement agency to annually report specified use of force incidents to the Department of Justice and requires the Department of Justice to annually publish a summary of those incidents, as specified.

This bill would require these reports to be made monthly. By imposing new duties on law enforcement agencies, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. Section 12525.2 of the Government Code is amended to read:

12525.2. (a) Each law enforcement agency shall monthly furnish to the Department of Justice, in a manner defined and prescribed by the Attorney General, a report of all instances when a peace officer employed by that agency is involved in any of the following:

- (1) An incident involving the shooting of a civilian by a peace officer.
- (2) An incident involving the shooting of a peace officer by a civilian.
- (3) An incident in which the use of force by a peace officer against a civilian results in serious bodily injury or death.
- (4) An incident in which use of force by a civilian against a peace officer results in serious bodily injury or death.

(b) For each incident reported under subdivision (a), the information reported to the Department of Justice shall include, but not be limited to, all of the following:

- (1) The gender, race, and age of each individual who was shot, injured, or killed.
- (2) The date, time, and location of the incident.
- (3) Whether the civilian was armed, and, if so, the type of weapon.
- (4) The type of force used against the officer, the civilian, or both, including the types of weapons used.
- (5) The number of officers involved in the incident.
- (6) The number of civilians involved in the incident.
- (7) A brief description regarding the circumstances surrounding the incident, which may include the nature of injuries to officers and civilians and perceptions on behavior or mental disorders.

(c) Each year, the Department of Justice shall include a summary of information contained in the reports received pursuant to subdivision (a) through the department's OpenJustice Web portal pursuant to Section 13010 of the Penal Code. This information shall be classified according to the reporting law enforcement jurisdiction. In cases involving a peace officer who is injured or killed, the report shall list the officer's employing jurisdiction and the jurisdiction where the injury or death occurred, if they are not the same. This subdivision does not authorize the release to the public of the badge number or other unique identifying information of the peace officer involved.

(d) For purposes of this section, “serious bodily injury” means a bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member or organ.

SEC. 2. Section 13652 is added to the Penal Code, to read:

13652. (a) Except as otherwise provided in subdivision (b), kinetic energy projectiles and chemical agents shall not be used by any law enforcement agency to disperse any assembly, protest, or demonstration.

(b) Kinetic energy projectiles and chemical agents shall only be deployed by a peace officer that has received training on their proper use by the Commission on Peace Officer Standards and Training for crowd control if the use is objectively reasonable to defend against a threat to life or serious bodily injury to any individual, including any peace officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control, and only in accordance with all of the following requirements:

(1) Deescalation techniques or other alternatives to force have been attempted, when objectively reasonable, and have failed.

(2) Repeated, audible announcements are made announcing the intent to use kinetic energy projectiles and chemical agents and the type to be used, when objectively reasonable to do so. The announcements shall be made from various locations, if necessary, and delivered in multiple languages, if appropriate.

(3) Persons are given an objectively reasonable opportunity to disperse and leave the scene.

(4) An objectively reasonable effort has been made to identify persons engaged in violent acts and those who are not, and kinetic energy projectiles or chemical agents are targeted toward those individuals engaged in violent acts. Projectiles shall not be aimed indiscriminately into a crowd or group of persons.

(5) Kinetic energy projectiles and chemical agents are used only with the frequency, intensity, and in a manner that is proportional to the threat and objectively reasonable.

(6) Officers shall minimize the possible incidental impact of their use of kinetic energy projectiles and chemical agents on bystanders, medical personnel, journalists, or other unintended targets.

(7) An objectively reasonable effort has been made to extract individuals in distress.

(8) Medical assistance is promptly provided, if properly trained personnel are present, or procured, for injured persons, when it is reasonable and safe to do so.

(9) Kinetic energy projectiles shall not be aimed at the head, neck, or any other vital organs.

(10) Kinetic energy projectiles or chemical agents shall not be used by any law enforcement agency solely due to any of the following:

(A) A violation of an imposed curfew.

(B) A verbal threat.

(C) Noncompliance with a law enforcement directive.

(11) If the chemical agent to be deployed is tear gas, only a commanding officer at the scene of the assembly, protest, or demonstration may authorize the use of tear gas.

(c) This section does not prevent a law enforcement agency from adopting more stringent policies.

(d) For the purposes of this section, the following terms have the following meanings:

(1) “Kinetic energy projectiles” means any type of device designed as less lethal, to be launched from any device as a projectile that may cause bodily injury through the transfer of kinetic energy and blunt force trauma. For purposes of this section, the term includes, but is not limited to, items commonly referred to as rubber bullets, plastic bullets, beanbag rounds, and foam tipped plastic rounds.

(2) “Chemical agents” means any chemical that can rapidly produce sensory irritation or disabling physical effects in humans, which disappear within a short time following termination of exposure. For purposes of this section, the term includes, but is not limited to, chloroacetophenone tear gas, commonly known as CN tear gas; 2-chlorobenzalmalononitrile gas, commonly known as CS gas; and items commonly referred to as pepper balls, pepper spray, or oleoresin capsicum.

(e) This section does not apply within any county detention facility or any correctional facility of the Department of Corrections and Rehabilitation.

SEC. 3. Section 13652.1 is added to the Penal Code, to read:

13652.1. (a) Each law enforcement agency shall, within 60 days of each incident, publish a summary on its internet website of all instances in which a peace officer employed by that agency uses a kinetic energy projectile or chemical agent, as those terms are defined in Section 13652, for crowd control. However, an agency may extend that period for another 30 days if they demonstrate just cause, but in no case longer than 90 days from the time of the incident.

(b) For each incident reported under subdivision (a), the summary shall be limited to that information known to the agency at the time of the report and shall include only the following:

(1) A description of the assembly, protest, demonstration, or incident, including the approximate crowd size and the number of officers involved.

(2) The type of kinetic energy projectile or chemical agent deployed.

(3) The number of rounds or quantity of chemical agent dispersed, as applicable.

(4) The number of documented injuries as a result of the kinetic energy projectile or chemical agent deployment.

(5) The justification for using the kinetic energy projectile or chemical agent, including any deescalation tactics or protocols and other measures that were taken at the time of the event to deescalate tensions and avoid the necessity of using the kinetic energy projectile or chemical agent.

(c) The Department of Justice shall post on its internet website a compiled list linking each law enforcement agency’s reports posted pursuant to subdivision (a).

SEC. 4. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

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Berkeley Police Department



Background

- **June 2020:** City Council enacts a ban on tear gas and a moratorium on the use of smoke and pepper spray for crowd-control events.
- **2021 police reform bill AB 48** signed into law, placing restrictions on the types of force law enforcement can use in response to protests. As a general rule, the bill prohibits the use of “kinetic energy projectiles” and “chemical agents” to disperse any assembly, protest, or demonstration, except in compliance with several requirements.
- **January 1, 2022:** AB 48 codified as PC 13652 Section 2



Balanced Approach

Important considerations as to the appropriateness of using tear gas for law enforcement purposes:

Does the use of tear gas have a chilling effect on Free Speech?

Is the use of tear gas reasonable?

- Is the use of tear gas excessive?
- Is there accountability/oversight in its use?
- Is current policy in alignment with AB48?
- What are regional/State best practices?

Health concerns related to smoke and pepper spray during COVID-19

- Enacted when infections were up and there was no vaccine.



Protecting Free Speech

- History of use
- Allows for safe speech:
 - Intervene at lower levels
 - Mitigates co-opting of crowd by bad actors
 - Gives department ability to target individuals committing crimes and violence
 - Smaller contingent of officers able to protect large crowd



Is the use of tear gas reasonable?

- Allows a small number of officers to regain control over a much larger violent crowd.
- Minimal force used:
 - Consequences and level of force are much lower than all other options.
 - Effects are temporary.
 - Effects end as soon as no longer exposed.
 - Dissipates quickly.



Accountability and Oversight

New legal requirement created by AB48 aligns with the department's past use and current policy language. Some of the legal requirements are:

- Requires **de-escalation techniques or alternatives** to force before use.
- Limits use to defend against **threats to life, serious bodily injury**, or to bring objectively dangerous and unlawful situations safely and effectively under control.
- Requires **announcement before use**.
- Requires officers to make objectively reasonable efforts to **identify** persons engaged in **violent** acts and target those individuals.



Accountability and Oversight (continued)

AB48/Penal Code 13652 requirements (continued):

- Minimize the possible incidental impact on bystanders, medical personnel, journalist, or other unintended targets.
- Use must be objectively reasonable and proportional to the threat (including frequency and intensity of use).
- Specifically prohibited in response to verbal threats, noncompliance with law enforcement directives, or curfew violations.
- *Note: AB 48 anticipates certain instances where tear gas may be reasonably used and places that responsibility on the commanding officer of the event.*



Accountability and Oversight (continued)

- Our current Use of Force (Policy 300) and First Amendment Assembly (Policy 428) policies align with requirements set forth in Penal Code section 13652.
- Oversight is required and provided via Police Equipment and Community Safety Ordinance.
- If tear gas ban was removed state reporting requirements would require the department to publish an after-action report documenting the equipment's use and the reasons for it within 60 days of an incident.



What is the scope of use in Berkeley?

- To resolve a situation involving an armed barricaded person (SWAT call).
- Respond to a medical or fire emergency, or prevent catastrophic damage to critical infrastructure, where a violent crowd is present.
- To protect officers or community from large-scale violent assaults.
- To disburse a violent crowd through a minimal amount of force.



Regional/State Best Practices

What are other agencies doing?

- Oakland PD has a policy that aligns with State law
- No other local agencies have bans in place
- All agencies in the state are compelled to abide by the requirements and protections outlined in PC 13652.



Use of smoke and pepper spray

- Smoke has been used before deploying tear gas. Although not an alternative, it gives the department an option to try before deploying tear gas.
- Smoke is often used in conjunction with tear gas, and acts as a visual deterrent.
- Pepper Spray provides officers with an intermediate force option to use in response to an individual violent act.
 - Allows officers to respond to a specific threat up to 15 feet away.
 - Effects are temporary; there are no injuries once spray wears off.



Questions?

The mission of the Berkeley Police Department is to preserve the peace and allow for the peaceful expression of First Amendment Rights. These rights include, but are not limited to, assembling, marching, carrying signs, making speeches, or other lawful activity designed to express or advocate political, religious, or social opinions and beliefs.

