



**POLICE ACCOUNTABILITY BOARD
SUPPLEMENTAL SPECIAL MEETING PACKET**

**Friday, June 16, 2023
10:00 A.M.**

Board Members:

JOHN MOORE III. (CHAIR)
KITTY CALAVITA

JULIE LEFTWICH

REGINA HARRIS (VICE-CHAIR)
LEAH WILSON

MEETING LOCATION

Multipurpose Room
1947 Center Street,
Berkeley, CA 94704

Item	Page
Board Member Calavita's Responses to 1305 Appendix A and Proposed Policy 1305.	1
Board Member Wilson's Commentary on Proposed Policy 422 and 1305.	8
Automatic License Plate Readers (ALPR) in the City of Berkeley: A Preliminary Review of proposed BPD Policies by the Office of the Director of Police Accountability (ODPA) submitted to the Police Accountability Board (PAB) Special Meeting: June 16, 2023.	23

Calavita Responses to 1305 Appendix A

- A. **Description.** Does not capture facial recognition, but what *does* it capture besides license plate and make of car? Photos online suggest ALPRs can capture at least silhouettes of those in car.
- B. **Purpose.** The cases mentioned here (for example, the armed robbery mentioned first) might have been prevented *if the cameras allow for real-time alerts* based on the license plates being immediately transferred into a machine-readable format. That requires Optical Character recognition (OCR) which is a feature of the expensive version of cameras (not the \$2000-2500 garden-variety referred to in the cost estimate).
- C. **Location.** Why 52? Based on what? Who is the vendor and why will they play the critical role of where the cameras would go? How will effectiveness be determined? (Needs a detailed explanation of performance review, given the fiscal costs involved).
- D. **Impact.** If efficient utilization of resources is the goal, it is important to provide more detail on cost/benefits (as above). Also, there is a sentence here that says ALPRs “will help to ensure unauthorized use of its data” (sic). What procedures “will ensure the data is not used in a way that would violate or infringe on anyone’s civil rights and/or liberties...”? More is needed here. Explain exactly what procedures other than the “data security” mentioned in G below.

F.Data types and sources. In addition to providing images of plates and cars, is it possible that some images of people will be retrieved? Further, bumper stickers, decals and roof racks are mentioned. How does this impact civil liberties? The text says only the *fact* of a bumper sticker would be in the image—it is unclear why the content is not also revealed. Also, the roof rack suggests that the entire car is in the image, and thus may include number of passengers and perhaps even their characteristics.

G. Data Security. (a). It notes there will be non-law enforcement requests for access. This is somewhat alarming. This report needs to clarify what is

meant by this and exactly how it will be dealt with (not just referencing a different policy/law).

(b) “All ALPR data downloadable to any workstation or server”

(clarify)

(c,d, and G). All mention “legitimate law enforcement purposes” or “law enforcement officials and agencies”, but nowhere does this confine the sharing to California. Will these data be shared with, for example, Texas law enforcement officials, or federal officials? I am concerned about other state agencies acquiring CA ALPR data for the “legitimate law enforcement purpose” of violating reproductive rights in their states. (see below)

H. Fiscal cost. This is probably an underestimate of costs, given what I have researched. Low-end cameras with limited abilities go for \$2000 each but others (which allow real-time alerts) cost in the \$25,000 range. Also, Council Member Taplin’s proposal provides the CM estimate for the ALPRs used for parking enforcement at \$78,363 each. What is the low-ball estimate here based on? What type or model of camera is being proposed?

I. Third-party dependence and access. Again, does “legitimate law enforcement or public safety purpose” include across state lines? What about a “legitimate” Texas law enforcement purpose?

(b). no reasonable suspicion or probable cause required? In other words, there is no need for a “hit”? What factors will determine if it is “used” if not suspicion? And, what does “used” mean in this context?

After #5 (p. 7), a #6 is necessary, making it clear that ALPRs can not be used in the violation of reproductive rights (see University of Washington Center for Human Rights [Dec 2022], “Who’s Watching Washington: Dangers of Automated License Plate Readers to Immigration and Reproductive Rights in Washington State”).

(b). (p. 7). Explain how those requests will be processed.

J. Alternatives. The only alternative mentioned is additional police resources. CM Taplin's proposal mentions other violence prevention measures and Reimagining. There is some evidence across the country for the effectiveness of alternatives other than additional police. These need to be acknowledged.

K. Experience of other entities. What is the evidence for the effectiveness of ALPRs in these other jurisdictions? Is their crime rate lower than that of Berkeley, or their criminal investigations improved by these cameras? Given the potential civil liberty threats of this technology, we need for them to at least be evidence-based.

Finally, the last paragraph in the Report is a duplicate.

Calavita Response to Proposed Policy 1305

1305.1. Purpose. First, there is no mention of what the actual purpose is. Second, the 4th paragraph mentions “contractors/subcontractors”. Who are they and exactly what role do they play? This is nowhere spelled out. Also, the only restriction on sharing mentioned in this section relates to the California Values Act and immigration enforcement. We need a statement that includes no sharing with states that violate a woman’s right to access reproductive care.

1305.2. Definitions. (a) What does “known information of interest” mean? (b) ALPR Operator. This section and section c conflate/confuse “operator” with “administrator”, which appear to be quite different things. Section e contains wording/grammar problems. Section (f on “detection”) does not fit in “definitions”. Neither does Section g belong in “definitions”.

1305.3 Authorized and prohibited uses. The first sentence is repetitious with Section a here. (b) says no “reasonable suspicion” or “probable cause” is necessary for use. What does “use” mean in this context? And, elsewhere it talks about a “vehicle of interest”. How is this different from “reasonable suspicion”? What factors will determine a “vehicle of interest”? This is all vague and confusing. Section d is not about a “purpose”. Sections e through g do not belong in a section on “authorized and prohibited uses”. They belong in a section possibly called “OPERATION”. Further, Section e begins “If practicable...”. This seems unduly vague, especially when joined with the later word “should” (not “shall”). Additionally, why is “LPR” sometimes used instead of “ALPR”? It’s a minor detail but if there is no difference, it’s better to be consistent.

#6 (p. 3). I have lost track of this enumeration system but this #6 appears to be subsequent to the entry on “Hot lists”. The first sentence in #6 makes no sense: “Administrator (or his/her designee) before initial entry within the ALPR system”.???

In Section g, there is the phrase “which has the ability to be fully audited”. What does this mean? Later in section g, there is a section entitled

“Permitted/Impermissible Uses”, but this is the title of all of Section 1305.3. What is this doing here?

Similar problems exist throughout this policy draft, and I will stop keeping track here.

Section g on p. 4 needs a #6 after First Amendment Rights, citing Reproductive Rights for example: “It is a violation of this policy to provide the ALPR data to officials of any state that does not protect a woman’s reproductive rights.

Also, since the cameras capture images of whole cars, not just license plates, I assume they also periodically capture images of individual pedestrians and cyclists. Is it permissible to use these images in law enforcement? If so, how are these 52 APLRs in any essential way different from the 10 fixed surveillance cameras recently provided for?

1305.4. Data Collection. The first paragraph does not explain what “systems and processes are in place for the proper collection and retention of ALPR data,” only that they will be developed by the Division Captain. And, again, “if feasible” is vague and provides substantial discretion. Is this adequate? In the second critical paragraph about data retention, the word “should” is used throughout. Why not “shall”?

1305.6 Data Protection. For Sections a through c, see my notes about the acquisition report—for example, what “non-law enforcement requests”?

1305.7. Civil liberties. As always, Berkeley may want to have policies that are *more* restrictive than state and federal law requires.

1305.8. Data Retention. This section is largely verbatim with the second and third paragraphs of 1305.4 (Data Collection).

1305.10. Third Party data sharing. This section is largely redundant with previous sections, but if it is kept, add reproductive rights.

1305.12. Auditing and Oversight. This section needs to include a rigorous performance review. Has the camera reduced crime or helped solve crimes in the area? Does the evidence suggest that the cameras have had a positive impact on public safety around the city? What has the effect been on civil liberties? Have the cameras captured images of individual people in the roadway? Have these images been used by law enforcement?



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:**

Commented [WL1]: This section is problematic and needs more work. Specific comments noted below.

Commented [WL2]: What does this mean? Not an easily defined or enforceable standard.

Commented [WL3]: This sentence contradicts the first one – this doesn't have an "if practicable" modifier

Commented [WL4]: Is police action the same as law enforcement action?

Commented [WL5]: So no reasonable suspicion or pc to use ALPR per (b) above, but you need one to make an enforcement stop. So do you need BOTH to verify in CLETS and have reasonable suspicion? This whole section needs to be cleaned up.

Commented [WL6]: This kind of explanatory information is not needed in a policy.

(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).

Commented [WL7]: #3 doesn't go with the intro..Prior to initiation of a stop...neither does number 4, 5, or 6

(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.

Commented [WL8]: There should be a formal process to document exceptions to retention scheduled.

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.

Commented [WL9]: This makes no sense. The retention schedule above is 30 days so what is the variance referenced?

Commented [WL10]: Why is this capitalized? Is there a separate document called 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.

Commented [WL11]: This doesn't fit under Data Access section.

1305.6 DATA PROTECTION

Internal
Berkeley Police Department
Law Enforcement Services Manual

Surveillance Use Policy-Fixed ALPRs

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.

Surveillance Use Policy-Fixed ALPRs

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.

Commented [WL12]: This section appears to be repeated in its entirety.

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

Internal
Berkeley Police Department
Law Enforcement Services Manual

Surveillance Use Policy-Fixed ALPRs

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.

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.

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- (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 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.

Commented [WL1]: I don't know what this is referencing but asking the department to do something if feasible is not appropriately in a policy document.

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

Commented [WL2]: An independent auditor would be more appropriate; sample size should be determined based on the number of inquiries. 10 may be too low dependent on the total number.

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)

AUTOMATIC LICENSE PLATE READERS (ALPR) IN THE CITY OF BERKELEY



A Preliminary Review of proposed BPD Policies by the
Office of the Director of Police Accountability (ODPA)
submitted to the Police Accountability Board (PAB)
Special Meeting: June 16, 2023

Table of Contents

Background	2
Key Questions	4
Literature Review Findings: ALPR Technology and its Implications	4
ALPR systems and crime	5
ALPR systems and its effects on racial disparities in law enforcement stops	7
ALPR systems and privacy	7
Preliminary Analysis of the Proposed Policies	10
BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT – FIXED AUTOMATED LICENSE PLATE READERS	10
Recommendations	18
Conclusion	19
Appendices	20

Figure 1 Historical crime rates overview 14

Background

On November 1, 2021 the Public Safety Policy Committee of the City Council, made a budget referral proposing the acquisition of fixed automatic license plate readers (ALPRs) to the Council. They emphasized the need to evaluate the costs and benefits of the proposed expenditure in comparison to other public safety investments in the two-year FY 2022-23 & 2023-24 budget. Furthermore, they called for the development of a policy that addresses data retention and other pertinent issues in accordance with the City of Berkeley Surveillance Ordinance and Sanctuary City Contracting Ordinance.

On November 30, 2021, Councilmember Taplin presented the budget referral proposing the acquisition of fixed automatic license plate readers (ALPRs) and received co-sponsorship from Councilmember Droste and Councilmember Wengraf. The item was a part of the City Council's Action Calendar (Item 28)¹ and presented the following recommendations:

- Authorize the City Manager to install ALPRs at strategic locations, including public facilities, city entrances, and areas affected by violent crime, traffic violations, illegal dumping, Schedule II drug offenses, and other criminal activities.
- Allocate funds for ALPRs in the FY 23-24 budget.
- Refer the development of a policy enabling the use of ALPRs by the Berkeley Police Department to the City Manager, ensuring compliance with the City of Berkeley Surveillance Ordinance and Sanctuary City Contracting Ordinance.
- Consider a data retention period of no longer than one year, with a minimum of sixty days to account for reporting delays.
- Study the feasibility of shorter data retention periods for non-hit scans, granting the City Manager the final decision-making authority.

¹ <https://berkeleyca.gov/sites/default/files/city-council-meetings/2021-11-30%20Annotated%20Agenda%20-%20Council%20%281%29.pdf>

- Consider ALPR policies from neighboring 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.
- Include provisions in the policy to safeguard against plate counterfeiting, plate switching, and other methods of detection evasions.

The Public Safety Policy Committee's recommendation received approval from the City Council, garnering a majority in favor². Councilmembers Kesarwani, Taplin, Bartlett, Wengraf, Robinson, Droste, and Mayor Arreguin all voted in support of the recommendation. However, Councilmember Harrison voted against it, while Councilmember Hahn chose to abstain from voting. This Council approval signifies the majority's endorsement of the proposed actions outlined in the recommendation. These actions include the installation of ALPRs at strategic locations, allocation of funds in the FY 23-24 budget for ALPRs, and the development of a policy governing the use of ALPRs by the Berkeley Police Department in compliance with relevant city ordinances, specifically Berkeley Municipal Code (BMC) 2.99³.

On May 11, 2023, Police Chief Jen Louis presented the Board⁴ with draft policies outlining the usage of Automated License Plate Readers (ALPRs) in accordance with the Berkeley City Council's budget referral item focused on Community Safety. In response to this directive, the department diligently prepared the necessary Surveillance Ordinance policies and presented the following documents to the Police Accountability Board (PAB) and the Office of the Director of Police Accountability (ODPA):

- Policy 422: This policy establishes guidelines for the department's use of Fixed Automated License Plate Readers.
- Policy 1305: The Surveillance Use Policy specifically addresses the implementation of Fixed Automated License Plate Readers.

² <https://berkeleyca.gov/sites/default/files/city-council-meetings/2021-11-30%20Annotated%20Agenda%20-%20Council%20%281%29.pdf>

³ <https://berkeley.municipal.codes/BMC/2.99>

⁴ Through a secretarial oversight by the Director of Police Accountability (DPA) Hansel Alejandro Aguilar, the report was not provided to the Board until June 8, 2023. A request for additional time to review the policy (beyond the 30 days provided by the ordinance) was made to City Manager Williams-Ridley by DPA Aguilar. Per Council Member Taplin's (current Chair of the Public Safety Policy Committee) instructions, the request to postpone was denied.

- Surveillance Acquisition Report: This report provides details regarding the acquisition of Fixed Automated License Plate Readers.
- Council Budget Referral Item: This document serves as background information.

According to the provisions of the Surveillance Ordinance (BMC Section 2.99.030.2), the Police Accountability Board (PAB) must review a Surveillance Use Policy within 30 days of receiving it. During this timeframe, the PAB is required to vote on recommending approval of the policy, objecting to the proposal, suggesting modifications, or taking no action. It is important to note that if there is opposition to the policy's approval or if the PAB does not take any action, the City Manager retains the authority to conduct an independent review and potentially proceed with adopting the policy.

Key Questions

The following questions will be addressed through the preliminary review on the use of ALPR technology by law enforcement agencies:

1. What evidence exists regarding the effectiveness of ALPR systems in reducing crime rates?
2. To what extent does the implementation of ALPR technology contribute to reducing disparities in law enforcement stops?
3. What are the specific privacy concerns associated with the use of ALPR technology, and what potential safeguards can be implemented to protect individual privacy rights? How do existing legal and regulatory frameworks address the privacy concerns related to this technology?

Literature Review Findings: ALPR Technology and its Implications

The literature review involved a thorough analysis of relevant sources, encompassing scholarly articles, research papers, reports, news articles and other pertinent publications from credible sources. The gathered information sheds light on the key questions posed in this review.

ALPR systems and crime

In 2022, a survey conducted by the International Association of Chiefs of Police (IACP) gathered responses from 1,237 law enforcement agencies regarding the use of Automated License Plate Readers (ALPR) systems⁵. The survey revealed that approximately 40% of the participating agencies utilized ALPR systems, while 52% reported never having used such a system⁶. The remaining 8% had used ALPR systems in the past but had discontinued their use⁷.

Among the agencies employing ALPR systems, the majority (86%) had fewer than 10 units available for deployment⁸. According to the survey, the IACP found that vehicle-mounted and stationary/fixed units were the most⁹ commonly utilized, whereas portable units mounted on non-vehicular objects were less prevalent. A significant portion (74%) of the agencies using ALPR had implemented the technology for a duration ranging from one to 10 years¹⁰.

For the agencies that were not currently employing ALPR systems, the primary reason cited for their non-use was the cost of acquisition. This concern was particularly pronounced among smaller agencies. The survey did not specifically request examples of how ALPR systems were used. However, a focus group identified three main purposes: investigations, crime prevention, and traffic/parking enforcement¹¹. The United States Department of Transportation's report titled "State of Knowledge and Practice for Using Automatic License Plate Readers for Traffic Safety Purposes" highlights the predominant use of ALPR systems in reactive scenarios. These include responding to incidents involving stolen vehicles, hit-and-run accidents, specific criminal activities, Amber Alerts, Megan's Law, Silver Alerts, be-on-the-look-out (BOLO) notifications, and wanted felons¹².

⁵ "IACP LPR Survey Results." International Association of Chiefs of Police (IACP). Accessed June 15, 2023. https://www.theiacp.org/sites/default/files/IACP_LPR_Survey_Results_5.16.22.pdf

⁶ Id.

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ Id.

¹¹ Id.

¹² Zmud, Jennifer, et al. "State of Knowledge and Practice for Using Automated License Plate Readers for Traffic Safety Purposes." April 2021, Report No. DOT HS 813 051, National Highway Traffic Safety Administration.

The Vallejo Police Department conducted a case study to assess the effectiveness of Automated License Plate Readers (ALPR) technology. Patrol cars were randomly selected and equipped with ALPR systems, with some cars having the ALPR alerts activated and others having them deactivated. The study found that the cars with ALPR technology had a 140 percent higher ability to detect stolen vehicles¹³. However, the analysis also revealed that the technology identified a significantly larger number of lost or stolen license plates, including duplicates, which may have caused officers to overlook legitimate hits¹⁴.

Fixed ALPR systems, which were stationary units, were found to be more efficient than mobile ALPR systems in making arrests. Officers using fixed systems tended to wait downstream of fixed locations for hits, resulting in more arrests. The control data indicated that 35 percent of hits from mobile readers and 37 percent of hits from fixed readers were misreads¹⁵. After accounting for the number of cars in each condition, the department found significantly more hits in the ALPR intervention condition.

The study also found that stolen vehicles identified by officers with more seniority were more likely to result in arrests, although this finding was only marginally significant. The use of fixed ALPR systems significantly increased the odds of identifying a stolen vehicle and increased the likelihood of arrests¹⁶. This is consistent with the IACP (2022) findings as they note¹⁷, "Although research is sparse, there is some evidence that suggests LPR use is effective at preventing crime,". While acknowledging the potential benefits of ALPR technology, it is crucial to recognize the limited research conducted on its effectiveness in these specific scenarios. The available information predominantly originates from police technology vendors, underscoring the need for a cautious and critical approach when evaluating and interpreting it.

¹³ "March 2018 RIB (Research in Brief)." International Association of Chiefs of Police (IACP). Accessed June 15, 2023. <https://www.theiacp.org/sites/default/files/2018-08/March%202018%20RIB.pdf>

¹⁴ "March 2018 RIB (Research in Brief)." International Association of Chiefs of Police (IACP). Accessed June 15, 2023. <https://www.theiacp.org/sites/default/files/2018-08/March%202018%20RIB.pdf>

¹⁵ Id.

¹⁶ Id.

¹⁷ pg. 1: IACP LPR Survey Results." International Association of Chiefs of Police (IACP). Accessed June 15, 2023. https://www.theiacp.org/sites/default/files/IACP_LPR_Survey_Results_5.16.22.pdf

ALPR systems and its effects on racial disparities in law enforcement stops

Extensive research has shown clear disparities in police traffic stops based on race. A report published in October 2022 by the Public Policy Institute of California revealed that Latino drivers constitute approximately 40 percent of traffic stops, while white drivers make up around 33 percent, and Black drivers account for approximately 14 percent¹⁸. This data highlights a notable overrepresentation of Black Californians in traffic stops, considering they comprise only 6 percent of the state's population¹⁹. Conversely, the proportion of traffic stops involving Latino drivers closely mirrors their population representation, with 40 percent of stops compared to 39 percent of the population²⁰. However, white drivers are somewhat underrepresented in traffic stops, comprising 33 percent of stops compared to 35 percent of the population. It is worth noting that despite the Asian population in California growing to 15 percent, they are notably underrepresented in traffic stops, accounting for only 6 percent of them²¹.

A supporting point for the use of ALPR technology is its potential to mitigate racial and ethnic disparities in traffic stops. The rationale behind this argument is that by relying on the license plate and vehicle description, law enforcement officers can avoid making subjective judgments based on the driver's appearance matching potentially matching a subject description²². However, through this preliminary review of the literature, the ODPa is unable to identify readily available research findings to substantiate this claim.

ALPR systems and privacy

The Supreme Court of the United States (SCOTUS) has examined constitutional concerns regarding the use of Automatic License Plate Readers (ALPRs) by law enforcement. Currently, SCOTUS has not required a warrant for photographing license plates for comparison with law enforcement databases, nor have they established a specific standard of evidence to justify the use of ALPR technology. This lack of

¹⁸ Public Policy Institute of California. "Racial Disparities in Traffic Stops." PPIC, www.ppic.org/publication/racial-disparities-in-traffic-stops/. Accessed 15 June 2023.

¹⁹ Public Policy Institute of California. "Racial Disparities in Traffic Stops." PPIC. PPIC, n.d. Web. Accessed 15 June 2023. <https://www.ppic.org/publication/racial-disparities-in-traffic-stops/>.

²⁰ Id.

²¹ Id.

²² "Axon Ethics Report 2." Axon. Accessed 15 June 2023.

https://static1.squarespace.com/static/58a33e881b631bc60d4f8b31/t/5dadec937f5c1a2b9d698ba9/1571679380452/Axon_Ethics_Report_2_v2.pdf

requirement is based on two factors. First, the regulations governing vehicles on public roads have created a situation where there is no expectation of privacy regarding license plates. Second, longstanding legal precedent establishes that individuals driving on public roads have limited expectation of privacy in their movements with regard to law enforcement.

As new surveillance tools have emerged, they have raised concerns about potential infringements on individuals' Fourth Amendment rights to privacy. In the case of *United States v. Jones*²³, which involved GPS tracking, the Court determined that installing and monitoring a GPS device without a warrant constituted a search that violated the Fourth Amendment. However, the Court did not address whether achieving the same tracking result through electronic means, without a physical trespass, would be an unconstitutional invasion of privacy.

In her concurring opinion in *Jones*, Justice Sotomayor discussed the reasonable expectation of privacy in one's public movements. She emphasized the need to consider the aggregation of data from novel modes of surveillance and its potential impact on constitutional rights²⁴. Justice Sotomayor expressed criticism towards the trespass standard and proposed adopting the *Katz* test established in *Katz v. United States*. The *Katz test* centers around determining whether there is a violation of a societal expectation of privacy, rather than solely relying on physical trespass²⁵. In *Katz*, the SCOTUS underscored that the Fourth Amendment safeguards individuals, not just physical locations. Of course, applying the *Katz* test presents its own sets of challenges.

The *Katz* test necessitates judges and lawmakers to evaluate the hypothetical expectation of privacy held by a reasonable person. This methodology has resulted in inconsistent judgments due to varying comprehension of advanced technology among judges and the inability of law and policy to keep up with the rapid pace of technological progress. However, despite these difficulties, the Court's agreement in *Jones* indicated that limited monitoring of an individual's movements on public roads might be acceptable in certain circumstances, while prolonged tracking could potentially exceed permissible

²³ *United States v. Jones* – 565 U.S. 400, 132 S. Ct. 945 (2012)

²⁴ Justice Sotomayor, concurring opinion, *United States v. Jones*, 565 U.S. 400, 132 S. Ct. 945 (2012).

²⁵ *Katz v. United States*, 389 U.S. 347 (1967).

boundaries²⁶. The parameters of that boundary were established in the case of *Carpenter v. United States*.

In the landmark case of *Carpenter v. United States*, the Supreme Court undertook an examination of the utilization of historical cell phone data by law enforcement agencies. The Court reached a significant conclusion, asserting that the collection of such data, particularly when viewed in its entirety or aggregate form, raised legitimate constitutional concerns²⁷. The primary factors that contributed to these concerns were the depth, breadth, and automatic nature of the data collection process.

The concerns raised by citizen organizations, such as the Electronic Frontier Foundation (EFF)²⁸ and the American Civil Liberties Union (ACLU)²⁹, regarding the utilization of Automatic License Plate Readers (ALPR) technology were echoed in this case. Like the collection of historical cell phone data, ALPR technology involves the automatic gathering of information, often on a massive scale. The automatic nature of data collection, whether it pertains to cell phone records or license plate information, raises questions about the scope of privacy intrusion and the potential for misuse or abuse of such data.

Furthermore, the *Carpenter* case also highlighted the significance of driving as an integral part of active participation in civil society. The Court recognized that individuals rely on their cell phones and vehicles for various daily activities, and the collection and analysis of location data can reveal detailed information about a person's movements, associations, and private activities³⁰. Similarly, ALPR technology captures and stores information about an individual's whereabouts, raising concerns about the extent to which one's movements should be subject to constant surveillance by law enforcement.

Therefore, *Carpenter v. United States* underscored the need for judicial scrutiny and safeguards when it comes to the collection and use of personal data, whether it

²⁶ *United States v. Jones* – 565 U.S. 400, 132 S. Ct. 945 (2012)

²⁷ *Carpenter v. United States*, 585 U.S. 741 (2018)

²⁸ "Automated License Plate Readers (ALPR)." Electronic Frontier Foundation (EFF). Electronic Frontier Foundation, n.d. Web. Accessed 15 June 2023. <https://www.eff.org/pages/automated-license-plate-readers-alpr>.

²⁹ "How to Pump the Brakes on Your Police Department's Use of Flock's Mass Surveillance License Plate Readers." American Civil Liberties Union (ACLU). American Civil Liberties Union, n.d. Web. Accessed Day Month Year. <https://www.aclu.org/news/privacy-technology/how-to-pump-the-brakes-on-your-police-departments-use-of-flocks-mass-surveillance-license-plate-readers>.

³⁰ *Carpenter v. United States*, 585 U.S. 741 (2018)

involves cell phone records or ALPR technology. According to Yash Dattani's research titled "Big Brother is Scanning: The widespread implementation of ALPR Technology in America's Police Forces," a potential safeguard against privacy intrusions caused by ALPR technology would involve implementing stringent regulations on the retention periods of data not identified by the ALPR system³¹.

Preliminary Analysis of the Proposed Policies

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

Per BMC 2.99.020, the City Manager is required to present a "Surveillance Acquisition Report" to the Police Accountability Board prior to adoption by the City Council (2.99.030(2)). Under the ordinance, "Surveillance Acquisition Report" means a publicly-released written report produced prior to acquisition or to proposed permanent use after use in Exigent Circumstances pursuant to Section 2.99.040 (2), of a type of Surveillance Technology that includes the following:

- a. **Description:** Information describing the Surveillance Technology and how it works, including product descriptions from manufacturers;
- b. **Purpose:** Information on the proposed purpose(s) for the Surveillance Technology;
- c. **Location:** The general location(s) it may be deployed and reasons for deployment;
- d. **Impact:** An assessment identifying potential impacts on civil liberties and civil rights including but not limited to potential disparate or adverse impacts on any communities or groups;
- e. **Mitigation:** Information regarding technical and procedural measures that can be implemented to appropriately safeguard the public from any impacts identified in subsection (d);
- f. **Data Types and Sources:** A list of the sources of data proposed to be collected, analyzed, or processed by the Surveillance Technology, including "open source" data;

³¹ Dattani. (2022). Big Brother is Scanning: The Widespread Implementation of ALPR Technology in America's Police Forces. *Vanderbilt Journal of Entertainment and Technology Law*, 24(4), 749–785.

- g. **Data Security:** Information about the steps that can be taken to ensure adequate security measures to safeguard the data collected or generated from unauthorized access or disclosure;
- h. **Fiscal Cost:** The fiscal costs for the Surveillance Technology, including initial purchase, personnel and other ongoing costs, including to the extent practicable costs associated with compliance with this and other reporting and oversight requirements, as well as any current or potential sources of funding;
- i. **Third Party Dependence and Access:** Whether use or maintenance of the technology will require data gathered by the technology to be handled or stored by a third-party vendor on an ongoing basis, and whether a third party may have access to such data or may have the right to sell or otherwise share the data in aggregated, disaggregated, raw or any other formats;
- j. **Alternatives:** A summary and general assessment of potentially viable alternative methods (whether involving the use of a new technology or not), if any, considered before deciding to propose acquiring the Surveillance Technology; and
- k. **Experience of Other Entities:** To the extent such information is available, a summary of the experience of comparable government entities with the proposed technology, including any unanticipated financial or community costs and benefits, experienced by such other entities.

The general purpose of the acquisition report is to provide the Council with sufficient information to make a reasoned determination about the need and impact of the proposed surveillance technology acquisition or use. The following provides ODPa's observations regarding the Acquisition Report for ALPR drafted by the BPD as the designee of the City Manager:

Description:

Considering the proposed expanded uses of the ALPR program already in place in the City, this section should provide further clarification about the technology. In our review and comparison to other descriptions and or definitions of the system, the BPD's description section in the proposed Acquisition Report provides overall sufficient information about the technology by defining it in plain language; specifying where it can be mounted; identifying the data points it collects (i.e. license plates, location, date and time) Table _ provides information about the descriptive language used by other entities

Table 1 ALPR Technology Description Comparison

BPD	IACP³²	EFF³³	ACLU³⁴
<p>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.</p> <p>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.</p> <p>This technology does not have facial recognition, and is not tied to any personal identifying information or used for traffic enforcement.</p>	<p><i>ALPR systems function to automatically capture an image of the vehicle's license plate, transform that image into alphanumeric characters using optical character recognition or similar software, compare the plate number acquired to one or more databases of vehicles of interest to law enforcement and other agencies, and to alert the officer when a vehicle of interest has been observed.</i></p>	<p><i>ALPR are high-speed camera systems that photograph license plates, convert the numbers and letters into machine-readable text, tag them with the time and location, and upload that data into a database for retrieval.</i></p>	<p><i>Automatic license plate readers—mounted on police cars or on objects like road signs and bridges—use small high-speed cameras to photograph thousands of plates per minute. The information captured by the readers—including the license plate number and the date, time, and location of every scan—is being collected and sometimes pooled into regional sharing systems.</i></p>

³² <https://www.theiacp.org/projects/automated-license-plate-recognition>

³³ <https://www.eff.org/pages/california-automated-license-plate-reader-policies>

³⁴ <https://www.aclu.org/issues/privacy-technology/location-tracking/automatic-license-plate-readers>

Purpose:

This section of the Acquisition Report describes the purpose for the installation and use of a network of fixed automated license plate readers by the Berkeley Police Department (BPD). Specifically, the Department clarifies that the automated license plate readers 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.*” This is an important clarification considering that ALPRs can be mounted on police vehicles and it appears that the BPD does not have the intention in this acquisition to deploy the technology on patrol vehicles. If this is a misinterpretation on the ODPAs’ behalf or an omission by the BPD in this section, this should be further clarified.

This section also presents several cases where the technology could have been beneficial in preventing crimes or apprehending suspects. From the perspective of the ODPAs, it is important to evaluate whether the BPD has provided a data-based justification for the use of ALPRs and to identify areas where the section could be improved.

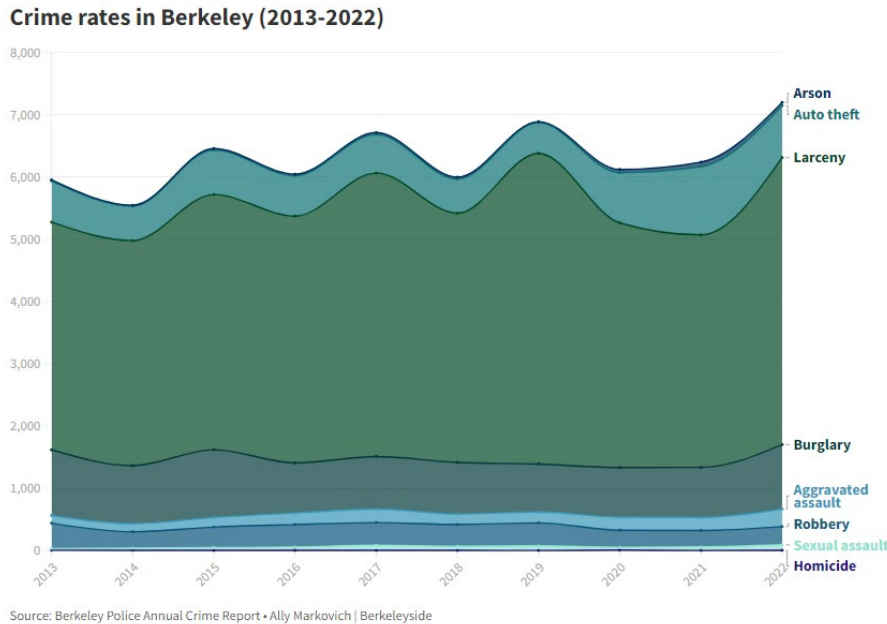
Data-Based Justification:

As was reported earlier this year by the Berkeleyside³⁵ (through their review of BPD data), we know that violent crime and property crimes are on the rise, “*The overall total number of violent and property crimes in 2022 was “the highest in the past 10 years,” Interim Police Chief Jen Louis told the City Council in a special meeting this week. “Berkeley continues to have one of the highest property crime rates in our region.”* (Gecan, 2023). Specifically, the Berkeleyside reports that according to the recent annual report presented by the Berkeley Police Department, crime rates in Berkeley witnessed an increase in almost all categories from 2021 to 2022. However, it is worth noting that in several areas, these rates still remain below³⁶ the levels observed before the pandemic.

³⁵ <https://www.berkeleyside.org/2023/03/17/crime-reports-berkeley-police>

³⁶ Id.

Figure 1 Historical crime rates overview



Noteworthy are the following observations regarding Berkeley specific crime trends:

- Violent crimes (i.e. homicides, rapes, robberies and aggravated assaults) increased by 25.2%.
- Total property crimes (i.e. burglaries, larcenies, auto thefts and arson collectively) increased by 14.5% (although the specific categories of auto theft and arson saw a decrease from 2021 to 2022).

At face value, these trends, compounded with the current staffing crises being experienced in the City and in the Department, provide empirical support for the implementation of innovative crime prevention and reduction strategies. The use of technological tools like ALPR, when used transparently and judiciously, can be an effective force multiplier that improves public safety while balancing the respect and protection of civil liberties. As noted in the literature review, “*Although research is sparse, there is some evidence that suggests LPR use is effective at preventing crime,*” (pg. 1, IACP, 2022) As currently written, however, the BPD’s *Purpose* section does not explicitly mention a data-based justification for the use of ALPRs (beyond the highlighted cases of interest). To strengthen the justification, the BPD could provide statistical analyses and employ predictive policing methods (or other empirical data analyses) demonstrating the effectiveness of ALPRs in reducing crime rates, apprehending suspects, or improving overall public safety. This could include information on the number of cases where ALPRs

have aided investigations, the success rate of identifying wanted vehicles, or any studies or reports that support the use of ALPR technology.

Location:

As written, it is unclear what specific locations the proposed 52 units will be placed in around the City. Without that information, it is difficult to assess any disparate impact that may result from the use of this technology. It would be helpful to specify if the proposed 52 units translate to 13 separate locations at key intersections around the City (i.e. capturing the North, South, East, and West vantage points) or if the BPD intends to fix an ALPR unit at 52 separate locations. As referenced earlier, according to the 2022 survey³⁷ conducted by IACP of jurisdictions utilizing the technology, “*Most (86%) agencies using LPR systems reported fewer than 10 deployable units*” (pg. 4). Without a clear articulable need or justification for 52 units, the BPD should consider deploying the proposed 52 units on a segmented deployment schedule that allows for data analysis and feedback on the effectiveness of the technology in Berkeley. For example, the BPD could consider a deployment schedule as outlined in Table 2.

Table 2 Suggested Segmented Deployment Schedule

Deployment Year	Deployed Units	Predictive policing forecasting, benchmarking and assessments ³⁸
2023	13	<ul style="list-style-type: none"> • Prior to the deployment year, through predictive policing program, utilize a forecasting methodology that addresses the specific crime problem BPD is attempting to solve (i.e. property, violent crime, etc.). • Assign (monthly/quarterly/yearly) benchmarks or goals for assessing the efficacy of ALPR in the crime reduction and prevention forecasted. • Continue deployment plan if data supports the effectiveness of the program
2024	13	
2025	13	
2026	13	

This strategy will also allow the BPD to determine ongoing community receptiveness, social impact, fiscal implications beyond the initial assessment, and data to assess the soundness of the data security protocols of this proposed policy.

³⁷ https://www.theiacp.org/sites/default/files/IACP_LPR_Survey_Results_5.16.22.pdf

³⁸ For more information on predictive analytics in policing consider:

Fitzpatrick, D. J., Gorr, W. L., & Neill, D. B. (2019). Keeping score: Predictive analytics in policing. *Annual Review of Criminology*, 2, 473-491.

<https://www.annualreviews.org/doi/pdf/10.1146/annurev-criminol-011518-024534>

Impact:

Similar to the comments on the previous sections, this section could benefit from further articulation of the impact. In the October 2022 Staff Report³⁹ to the City Council, the Palo Alto Police Department, provides a helpful framework in its *Benefits of Usage* section which includes a discussion on:

- Real-Time Alerts
- Deterrence
- Crime solving
- Regional coordination
- Police-Community Co-production through an expanded searchable data set

Mitigation and Data Security:

While the Department indicates that it will safeguard and protect data through procedural and technological means, Policy 1305 should be strengthened to reflect this commitment. Specifically, the BPD should consider revising 1305.4 Data Collection in the following manner:

Table 3 Data security suggestions

Current Language	Suggested Language
The Department should if feasible find a solution to transfer evidentiary hit data into it's digital evidence repository through secure integration.	<i>Evidentiary hit data shall be transferred into the Department's digital evidence repository through secure integration.</i>
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.	<i>All ALPR data downloaded to the ALPR server shall be stored for no longer than 30 days, and in accordance with the established records retention schedule.</i>

Data Types and Sources:

No comments at this time.

Fiscal Cost:

The BPD should consider revisiting its justifications to ensure the fiscal cost is accurate and a defensible use of City resources.

³⁹ <https://www.cityofpaloalto.org/files/assets/public/police-department/public-information-portal/alpr-staff-report-10-24-2022-cmr-14870.pdf>

Third Party Dependence and Access:

In this section, BPD outlines allowable uses which also appear in the corresponding policies (422 and 1305). The ODPa notes the potential for disparate impact and or civil liberties issues if safeguards are not put in place regarding the ability to use ALPR. Specifically, one of the authorized uses should be further analyzed:

(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.

While (as noted earlier) there are no specific legal protections for a license plate in a public roadway, the BPD should further articulate the permission to utilize ALPR technology without reasonable suspicion or probable cause. Currently, the BPD's language is consistent with every Lexipol drafted ALPR policy that the ODPa has reviewed, however, there does not appear to be clear justification or explanation on why ALPR would be used without meeting a reasonable suspicion or probable cause threshold. The BPD should assess and or explain if it has considered whether this provision has the potential for a racially disparate impact. Potential misuse or improper training can result in additional racial disparities that the Department is currently still grappling with. While the Department explicitly prohibits this technology from being used in a discriminatory matter, absent of reasonable suspicion or probable cause, if this technology is affixed in a neighborhood or location where racial minorities are overrepresented, its mere use may yield racial disparities.

Alternatives:

While the ODPa acknowledged the City and BPD are experiencing a hiring and retention shortage, a more defensible alternative is not deploying "additional police officers", but rather assessing if reaching the authorized number of officers will enable the Department to address the current crime issues before assessing if this technology should be deployed.

Experience of Other Entities:

As the literature review section indicated, there are considerable case studies that indicate how this technology has been utilized in other locations. The Department can

benefit from further expanding this section to demonstrate successes and challenges with the implementation of this technology.

Recommendations

Without taking specific positions regarding the predicted or expected effectiveness of the expansion of this technological adoption in the City of Berkeley, the ODPA believes there are several opportunities to further improve this Acquisition Report and the corresponding policies.

Suggestions for Improvement include:

- **Transparency and Oversight:** The report is silent on the Police Accountability Board's or the Office of the Director of Police Accountability's access to this system's data for the performance of the duties and responsibilities set forth by the Charter or by Ordinance. The report and policies could benefit from including information about the policies and guidelines contemplated to ensure the responsible use of ALPRs by the BPD and the ability of the PAB and ODPA to complete their duties.
- **Privacy Safeguards:** Given the potential privacy concerns associated with ALPR technology, it would be valuable to highlight the steps taken by the BPD to protect the privacy of individuals whose license plate data is captured and stored. This could involve explaining measures such as data encryption, access restrictions, and training to members and users on compliance with relevant privacy laws or regulations.
- **Community Engagement:** The report and or policies should emphasize the importance of engaging with the community and seeking public input on the use of ALPRs. The BPD could consider soliciting feedback, conducting public forums or surveys, and addressing concerns raised by community members to foster trust and transparency.
- **Regular Training and Accountability:** The BPD should outline the minimum training provided to officers on the proper use of ALPRs and adherence to privacy and civil rights standards. Additionally, the section could mention the existence of

mechanisms for reporting and investigating any alleged misuse or misconduct related to ALPR technology.

By incorporating these suggestions, the report and policies would provide a more comprehensive and transparent overview of the BPD's use of ALPRs, addressing potential concerns and enhancing accountability and public trust in the process.

Conclusion

In conclusion, while the implementation of an Automatic License Plate Readers (ALPR) system holds potential benefits, it is crucial to acknowledge that the current body of research, the lack of clarity on the BPD's deployment strategy and lack of articulation of the crime problems the BPD is attempting to solve is insufficient to make definitive conclusions about its effectiveness in the City of Berkeley. The limited scope of existing studies and varying contexts make it challenging to determine the true impact of ALPR systems on public safety and law enforcement outcomes. Therefore, further research and articulation of the proposed policies is necessary to comprehensively evaluate the efficacy of ALPR technology and its potential benefits in the City.

Moreover, it is essential to recognize and address the legitimate privacy concerns raised by all relevant stakeholders. ALPR systems have the potential to collect and store vast amounts of personal data, raising concerns about surveillance and potential misuse. To mitigate these risks, robust safeguards must be put in place to ensure the privacy and protection of non-hit license plates. Transparent policies, legal frameworks, and data governance protocols should be developed and implemented, guaranteeing that the information collected is used solely for its intended purpose and subject to strict access controls and retention limits.

Additionally, the proposed police department policies, as currently formulated, do not fully address all the concerns raised by this report. The lack of clarity and specific guidelines regarding data handling and access restrictions can contribute to mistrust and apprehension. To foster community trust, it is imperative that the policies be revisited and

improved to incorporate meaningful community input and address the identified shortcomings. A well-defined policy should outline the purpose, limitations, and safeguards of the ALPR system, assuring the public that their privacy rights will be respected.

In the event that the need for ALPR systems is deemed to outweigh the privacy concerns of the community in the interest of public safety, a clear and transparent plan for implementation must be established. The process should encompass thorough public consultation, open dialogue, and active involvement of stakeholders at all stages. This inclusive approach ensures that community concerns are adequately addressed, and the benefits, risks, and trade-offs associated with ALPR deployment are fully understood by all parties involved.

In summary, while the potential benefits of ALPR systems warrant consideration, more research is required to determine their true effectiveness in our City. Privacy concerns must be taken seriously, and appropriate safeguards put in place to protect the privacy of non-hit license plates. The proposed police department policies should be refined to address community concerns and clearly articulate the plan for implementation. If the decision is made to proceed with ALPR deployment, transparency and accountability should guide the development of policies and the implementation process, ensuring that public safety goals are achieved while respecting the rights and privacy of individuals and respecting the Charter authority of the Police Accountability Board and the Office of the Director of Police Accountability.

Appendices

- A. Letter from The Director of Police Accountability to City Manager Williams-Ridley Requesting Additional Time for Review of Policies and The Respective Response.
- B. Draft of BPD Policy 422 “Fixed Automated License Plate Readers (ALPRs)”
- C. Draft of BPD Policy 1305 “Surveillance Use Policy – Fixed ALPRs”
- D. Draft of BPD Policy 1305 Appendix A “Berkeley Police Department Surveillance Acquisition Report – Fixed Automated License Plate Readers”



Hansel Alejandro Aguilar
Director of Police Accountability
haguilar@cityofberkeley.info

June 08, 2023

Via Electronic Mail [DWilliams-Ridley@berkeleyca.gov]

Dee Williams-Ridley
2180 Milvia Street, 5th Floor
Berkeley, CA 94704

Re: Request to Postpone Presentation of Automated License Plate Reader Policy

Dear City Manager Williams-Ridley,

I hope this letter finds you well. I am writing to you today in my capacity as the Director of Police Accountability (ODPA) and Secretary of the Police Accountability Board (PAB) to request a postponement of the presentation of the Automated License Plate Reader (ALPR) policy to the Public Safety Policy Committee until July and to the full Council until after the summer recess. This request is being made due to a secretarial oversight on my behalf, which unfortunately resulted in a delay in disseminating the proposed policy to the PAB.

While Chief Louis promptly provided the ALPR policy to me as required by the ordinance, I regretfully failed to distribute it to the rest of the Board in a timely manner. I was alerted to this oversight in the Chief's presentation to the PAB at their regularly scheduled Board meeting on June 8, 2023. They have now received the policy, but as a result of this delay, the Board has been unable to thoroughly review the policy in the contemplated time frame and provide meaningful input to the Berkeley Police Department, Public Safety Committee, and the full Council. I take full responsibility for this oversight and deeply apologize for any inconvenience caused especially considering the ongoing public safety discussions in the City and the need for solutions to address the various issues being experienced.

Given the importance of the ALPR policy and the need for the Board's comprehensive review, I firmly believe that providing additional time in this instance will benefit both the Department and the community at large. The PAB's meticulous review process and commitment to evidence-based policing will ensure that the policy takes into account a wide range of public safety considerations.

By postponing the presentation, we can ensure that the ALPR policy is the strongest it can be, reflecting the values and concerns of the community we serve. This will ultimately contribute to the adoption of an effective and transparent policy that upholds civil liberties while promoting public safety.

I kindly request your understanding and support in granting this postponement. We will use the additional time to support the Police Accountability Board in their thorough review and thoughtful feedback.

With this postponement, the Board will have sufficient time to review the ALPR policy and we will be better equipped to present a comprehensive and well-informed recommendation to the Police Department, Public Safety Policy Committee, and full Council. This will further facilitate a productive dialogue and enable us to address any concerns or suggestions raised by the Board.

Thank you for your attention to this matter, and I sincerely appreciate your consideration of our request. I can also confirm that because of this incident, I have revised my secretarial processes to ensure that this does not occur in the future. Should you require any additional information or have any questions, please do not hesitate to reach out to me or our team. We are fully committed to ensuring that the ALPR policy reflects the highest standards of accountability and transparency.

I look forward to your favorable response and the opportunity to work collaboratively on this important policy issue.

Sincerely,



Hansel Alejandro Aguilar
Director of Police Accountability

Cc: Public Safety Committee
Farimah Brown, City Attorney
Anne Cardwell, Deputy City Manager
Jennifer Louis, Chief of Police
Police Accountability Board

Attachments:

Email from Chief Louis dated May 11, 2023 (and resent on June 7, 2023)_Per
Surveillance Ordinance _Automated License Plate Reader (APLR) Policies for PAB
review

Aguilar, Hansel

From: Louis, Jennifer A.
Sent: Wednesday, June 7, 2023 7:18 PM
To: Aguilar, Hansel
Subject: FW: Per Surveillance Ordinance _Automated License Plate Reader (APLR) Policies for PAB review
Attachments: 1305-Surveillance_Use_Policy-Fixed_ALPRs (5-11-23).docx; 422 Automated License Plate Readers Patrol Operations (ALPRs) (5-11-23).docx; Fixed Automated License Plate Reader Acquisition Report(3 rev 5-11-23).docx; 2021-11-30 Item 28 Automated license plate readers for community safety improvement.pdf

Restricted

From: Louis, Jennifer A.
Sent: Thursday, May 11, 2023 5:54 PM
To: Aguilar, Hansel <HAguilar@cityofberkeley.info>
Cc: Cardwell, Anne <ACardwell@cityofberkeley.info>; Durbin, Michael R. <MDurbin@cityofberkeley.info>; LeDoux, Joseph <JLeDoux@cityofberkeley.info>
Subject: Per Surveillance Ordinance _Automated License Plate Reader (APLR) Policies for PAB review

Restricted

Good afternoon Director Aguilar,

Under the direction of a Berkeley City Council Budget referral item regarding Automated License Plate Readers for Community Safety, the department drafted the required Surveillance Ordinance policies. Attached please find the following documents for PAB review:

1. Policy 422 – The policy that will establish guidelines for the 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 regarding Fixed Automated License Plate Readers
4. Council Budget Referral Item (for background)

Under the Surveillance Ordinance, BMC Section 2.99.030.2, 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.”

These policies are also being sent to the City Attorney’s Office for review and we plan to present on these policies to the Public Safety Policy Committee at their June meeting. Can you please forward these documents to the PAB for review. I wanted to get them to your office as soon as the first draft was completed so that the PAB would have ample time for review and feedback. I look forward to hearing back from you and the Board and we are available to answer questions that you or the PAB may have related to Policies 422 or 1305.

Respectfully,

Jen

Jen Louis
Chief of Police
Berkeley Police Department

Follow us on:





City Manager's Office

June 13, 2023

Sent via email: haguilar@cityofberkeley.gov
Hansel Alejandro Aguilar
Director of Police Accountability
Office of the Director of Police Accountability
1947 Center St. – 5th floor
Berkeley, CA 94704

Dear Director Aguilar,

I am in receipt of your letter dated June 8, 2023 requesting to postpone the presentation of the Automated License Plate Reader Policy. I spoke with the Chair of the Public Safety Policy Committee, Council Member Taplin, and his desire is to move forward with this item as scheduled. This will be an opportunity for you to hear the department's presentation in advance of your discussion with the Police Accountability Board.

It is suggested that you plan to attend the next Public Safety Policy Committee meeting on June 20th, as well as the last City Council meeting on July 25th, when you will have the opportunity to bring forward any ideas and concerns.

If you have any questions, please feel free to reach out to Anne Cardwell, Deputy City Manager.

Sincerely,

Dee Williams-Ridley

Dee Williams-Ridley, City Manager

cc: Public Safety Policy Committee
Farimah Brown, City Attorney
Anne Cardwell, Deputy City Manager
Jennifer Louis, Chief of Police
Police Accountability Board

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.

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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

Internal
Berkeley Police Department
Law Enforcement Services Manual

Surveillance Use Policy-Fixed ALPRs

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.

Surveillance Use Policy-Fixed ALPRs

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

Internal
Berkeley Police Department
Law Enforcement Services Manual

Surveillance Use Policy-Fixed ALPRs

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.

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

1305 APPENDIX A

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

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

1305 APPENDIX A

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

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

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

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.

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:

1305 APPENDIX A

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

- (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 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 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.