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REVISED AGENDA MATERIAL for Supplemental Packet 1

Meeting Date: September 13, 2022

Item Number: 32

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

Submitted by: Vice Mayor Harrison

This revised version of BPD Policy 1302 reflects edits proposed by the Public Works Department to better reflect current practices, technology, and terminology with respect to Parking Analysis.

The City previously maintained a contract with Conduent (formerly Xerox) to create a database for parking occupancy analysis, but it was not operationally successful and is not being used or maintained. Public Works is currently developing new Parking Analysis programs for goBerkeley that may utilize license plate data and metadata, to be maintained by Public Works and/or a third-party data analysis and visualization vendor contracted by Public Works for Parking Analysis.

The edits in the supplemental reflect these developments, but do not modify the policy's operational limitations with respect to BPD querying Parking Analysis data and metadata.

Surveillance Use Policy- Automated License Plate Reader

1302.1 PURPOSE

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

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

1302.2 DEFINITIONS

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

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

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

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

1. match between an ALPR Read and ALPR Read Metadata stored in the Genetec ALPR System, to include the Stolen Vehicle System; or
2. cross checking between ALPR Read and permit information which is stored on the Genetec ALPR System.

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

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

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

"Enforced ALPR Hit" means an Alleged Parking Violation confirmed by a Parking Enforcement Officer that results in the transmission of associated ALPR Read Image and ALPR Read Metadata

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to the Passport Parking Management System for storage in a database as a government record for the purpose of citation processing.

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

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

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

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

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

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

1. that directly identifies an individual (e.g., name, address, telephone number, email address, etc.) or
2. by which the City or other agency intends to identify specific individuals in conjunction with other data elements, i.e., indirect identification.

"Parking Analysis" means ongoing computational or algorithmic analyses performed by the City of Berkeley [and/or a third-party data analysis and visualization vendor contracted by Public Works](#) on ALPR Read Metadata regarding the occupancy [and/or turnover](#) of ~~total-public~~ parking spaces ~~across commercial districts~~ as part of goBerkeley, the City's data-driven, demand-responsive parking management program. ALPR Read Metadata data associated with Parking Analysis may include non-randomized license plates, to be maintained by Public Works [and/or a third-party data analysis and visualization vendor contracted by Public Works](#) for Parking Analysis.

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

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

"Passport Parking Management System" means the servers and databases maintained by

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Passport Labs Incorporated, containing the database of the license plate numbers and other PII associated with Parking Permit Applications and Residential Parking Permits, and including historic parking citation data, to include Enforced Hits.

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

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

1302.3 AUTHORIZED AND PROHIBITED USES

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

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

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

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

- (a) An ALPR shall only be Deployed and used for Parking Enforcement Operations, and Parking Analysis.
- (b) ALPR data obtained from Parking Enforcement Operations and retained pursuant to this use policy, including data and metadata associated with ALPR Reads and Hits, may be queried and used to support a specific BPD criminal investigation when an officer has a good faith belief that an emergency involving the danger of, or imminent threat of death or serious physical injury to any person requires such a query or use, and the officer reasonably believes there is a nexus between a vehicle and the alleged crime scene. Approval to query the data must be granted by the Chief of Police and City Manager. The City Manager shall log any queries or use of such information pursuant to this subsection in its Annual Surveillance Technology Report pursuant to BMC 2.99.
- (c) Notwithstanding subsection (b), officers may investigate hits based on reasonable suspicion resulting from apparent matches, discovered in the regular course of work of Parking Enforcement Operations, between the Genetec ALPR System and the following databases: Stolen Vehicles System, Amber, Silver, and Blue Alerts, local missing persons, scoff law violator, gig car, general permit, or other non-criminal local lists.
- (d) Data obtained from Parking Analysis shall not be queried or used for criminal investigations.
- (e) The following uses of the Genetec ALPR System are specifically prohibited:
 1. Invasion of Privacy

(a) It is a violation of this Policy to utilize the Genetec ALPR System to capture

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license plates not on a public road or street, or in a place not accessible to the public.

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2. Crowd Control
 - (a) ALPRs shall not be deployed in crowd control operations except strictly for the purposes of Parking Enforcement Operations.
3. Criminal Enforcement
 - (a) It is a violation of this Policy to use or Deploy ALPRs to scan or canvass license plates in connection with any crime scene, patrol operation, or investigation except pursuant to Section 1302.3(c) of this Policy.
4. Use of Lists and Databases
 - (a) It is a violation of this Policy to use the Genetec ALPR System or associated ALPR Read data in conjunction with any list or database other than those specified pursuant to Section 1302.3(c) of this Policy, or for any personal use.

1302.4 DATA COLLECTION AND RETENTION

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

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

(a) ALPR Read Images

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

(b) ALPR Reads Not Resulting in ALPR Hits

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

ALPR Read Metadata in the form of license plate data or other non-PII data may be transmitted to [Public Works staff and stored in the Passport Automatic Data Collection System](#) for Parking Analysis purposes ~~and retained pursuant to applicable retention policies.~~ [ALPR Read Metadata data associated with Parking Analysis may include non-randomized license plates, to be maintained by Public Works and/or a third-party data analysis and visualization vendor contracted by Public Works for Parking Analysis.](#)

(c) ALPR Hits

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

(d) Unenforced ALPR Hits

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

(e) Enforced ALPR Hits

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

1302.5 DATA ACCESS

- (a) Only properly trained Parking Enforcement Officers, Sworn Officers as selected by the Investigation's Division Captain, and Information Technology personnel are allowed access to the Genetec ALPR system or to collect ALPR information.
- (b) No member of the BPD shall operate ALPR equipment or access ALPR data without first completing department-approved training, which shall include compliance with this use policy.
- (c) No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so.
- (d) If a Sworn officer is called to verify a stolen vehicle, if practicable, the officer should verify an ALPR response through CLETS before taking enforcement action that is based solely on an ALPR Hit.
- (e) Sworn Officers shall visually verify that the license plate of interest matches identically with the ALPR Read Image of the license plate number captured (ALPR Read) by the ALPR, including both the alphanumeric characters of the license plate, state of issue, and vehicle descriptors before proceeding. BPD members alerted to the fact that an observed motor vehicle's license plate is entered as an ALPR Hit in a specific Stolen Vehicle System list are required to make a reasonable effort to confirm that a wanted person is actually in the vehicle and/or that a reasonable basis exists before a Department member would have a lawful basis to stop the vehicle.

1302.6 DATA PROTECTION

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

- (a) All ALPR data downloaded to any workstation or server shall be accessible only through a login and/or password-protected system capable of documenting all access of information by name, date and time.
- (b) Berkeley Police Department members approved to access ALPR data under these guidelines are permitted to access the data for Parking Enforcement Operations or

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

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

1302.7 CIVIL LIBERTIES AND RIGHTS PROTECTION

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

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

1302.8 PUBLIC ACCESS

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

1302.9 THIRD PARTY DATA-SHARING

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

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

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

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

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

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

1302.10 TRAINING AND ALPR ADMINISTRATOR

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

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

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

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

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

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1302.11 AUDITING AND OVERSIGHT

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

1. Any unauthorized access or data breach shall be reported immediately to the City Manager. BPD will enforce against prohibited uses of the Genetec ALPR system, associated ALPR Read and Hit metadata, and lists and databases pursuant to Policy P-26, or other applicable law or policy.
2. The audit shall be documented in the form of an internal department memorandum to the Chief of Police. The memorandum shall include any data errors found so that such errors can be corrected. After review by the Chief of Police, the memorandum and any associated documentation shall be placed into the annual report filed with the City Council pursuant to BMC Section 2.99.020 2. d., published on the City of Berkeley website in an appropriate location, and retained within Professional Standards Bureau.

1302.12 MAINTENANCE

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