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Councilmember, District 4

## **SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2**

**Meeting Date:** May 23, 2023

**Item number:** 46

**Item Description:** Surveillance Ordinance items related to Fixed Surveillance Cameras and Unmanned Aerial Systems (UAS)

**Submitted by:** Councilmember Harrison

### **RECOMMENDATION:**

Adopt revised version of the External Fixed Surveillance Cameras Policy 351 consistent with Councilmember Taplin and Kesarwani's legislative intent and 2021 Council action approving the budget referral.

### **BACKGROUND**

The authors' 2021 budget referral item was explicit that it was limited to criminal investigations: "deter gun violence and obtain evidence to solve criminal investigations." In addition, the authors explicitly stated their limited intent: "We note that the security camera footage would be used solely for the purpose of solving criminal investigations. The cameras are not intended and would not be used for any kind of surveillance purposes whatsoever."

Nevertheless, the policy proposed by BPD broadly expands uses to include monitoring of pedestrian and traffic activity, and civil investigations.

Further, in approving the camera budget referral in 2021 the Council was clear to state that data should be strictly used for "active [criminal] investigations only." Minutes from the Council action in October 2021 read:

Approved recommendation as revised in Supplemental Communications Packet #1 from Councilmember Taplin, and further revised to include the amendments below.

- Refer to the City Manager to develop a use policy for the security cameras that includes provisions that the data may be used for active investigations only and that the policy will include the data retention schedule. Staff to provide Council with an off-agenda memo commemorating the use policy.
- The locations of the cameras will be based on calls-for-service data; that staff will bring a list of locations to Council; and to refer the item to the AAO1 budget process

The amended version included in this item narrows the scope to the version Council approved.

The proposed Policy 351 as drafted also attempts to re-litigate the question of whether video or image recordings constitute "government records" that have to be kept for a year or more. During the Parking Enforcement ALPR development process, Councilmember Harrison successfully worked with the City Attorney to determine that collection of data which did not result in an investigation does not constitute a government record in and of itself. For example, thousands of drivers may pass through a given intersection in a day; images of their vehicles should not be retained unless part of an active City investigation. As with ALPRs parking enforcement, data should only be retained for purposes identified in the policy. The proposed version clarifies that unless a video recording has a nexus to an active investigation, use of force by a police officer, detention, arrest, or recordings relevant to a formal or informal complaint, all recordings shall be purged within 30 days.

Finally, as drafted, Policy 351 permits expansive installation of cameras potentially at locations not approved by Council with the phrase "Camera placement includes, but is not limited to." The policy also conflates two distinct types of surveillance: recording and live monitoring, which needs to be delineated and clarified to match the authors' and Council's intent. This updated version of Policy 351 separates policies around recording and monitoring to properly achieve the intent of the authors and Council.

**ATTACHMENT**

Revised BPD Policy 351

## External Fixed Video Surveillance Cameras

### 351.1 PURPOSE AND SCOPE

This policy provides guidance for the use of City of Berkeley external fixed video surveillance cameras by the Berkeley Police Department.

This policy only applies to fixed, overt, marked external video surveillance systems utilized by the Department. It does not apply to mobile audio/video systems, covert audio/video systems or any other image-capturing devices used by the Department. Department Personnel shall adhere to requirements for External Fixed Video Surveillance Cameras covered in this policy as well as the corresponding Surveillance Use Policy – 1304.

### 351.2 POLICY

The Berkeley Police Department utilizes a video surveillance system to enhance its anti-crime strategy, to effectively allocate and deploy personnel, and to enhance safety and security in public areas and City property. [As specified by this policy](#), cameras may be placed in strategic locations throughout the City to ~~detect~~ record and deter crime, to help [the City](#) safeguard against potential threats to the public, to help [the City](#) manage emergency response situations during natural and human-made disasters, ~~to assist City officials in providing services to the community~~, among other uses [specified in Section 351.3.1](#).

Video surveillance in public areas will be conducted in a legal and ethical manner while recognizing and protecting constitutional standards of privacy.

### 351.3 OPERATIONAL GUIDELINES

Only City Council-approved video surveillance equipment shall be utilized. [BPD](#) Members authorized to review video surveillance should only [record and](#) monitor public areas and public activities where no reasonable expectation of privacy exists [and pursuant to Section 351.3.1](#). The City Manager shall obtain Council approval for any proposed additional locations for the use of video surveillance technology.

#### 351.3.1 PLACEMENT, [REVIEW](#) AND MONITORING

Camera placement will be guided by [this policy and](#) the underlying purpose or strategy associated with the overall video surveillance plan. As appropriate, the Chief of Police should confer with other affected City departments when evaluating camera placement. Environmental factors, including lighting, location of buildings, presence of vegetation or other obstructions, should also be evaluated when determining placement.

Camera placement includes, ~~but is not limited to~~: existing cameras such as those located at San Pablo Park, the Berkeley Marina, and cameras placed in Council identified and approved intersections throughout the City, and potential future camera locations as approved by City Council.

Current City Council approved locations:

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- 6<sup>th</sup> Street at University Avenue
  - San Pablo Avenue at University Avenue
  - 7th Street at Dwight Way
  - San Pablo Avenue at Dwight Way
  - 7<sup>th</sup> Street at Ashby Avenue
  - San Pablo Avenue at Ashby Avenue
  - Sacramento Street at Ashby Avenue
  - College Avenue at Ashby Avenue
  - Claremont Avenue at Ashby Avenue
  - 62<sup>nd</sup> Street at King Street

The cameras shall only record video images and not sound. Recorded images pursuant to Section 351.5 may be used for specific and active City criminal or civil-administrative investigations. The video surveillance system may be usemonitored by the City~~ful strictly~~ for the following purposes:

- (a) ~~To support specific and active criminal or administrative investigations prevent, deter and identify criminal activity.~~
- ~~(b) To address identified areas of criminal activity.~~
- ~~(e)(b) To respond to critical incidents or natural disasters.~~
- ~~(d) To assist in identifying, apprehending and prosecuting offenders.~~
- ~~(e) To document officer conduct during interactions to safeguard the rights of the public and officers.~~
- ~~(f) To monitor pedestrian and vehicle traffic activity in order to assist with traffic related investigations.~~
- ~~(g) To document City of Berkeley employee, employer, and/or customer conduct during interactions to safeguard the City of Berkeley employee, employer, and customer from misconduct.~~

Unauthorized recording, viewing, reproduction, dissemination or retention is prohibited.

### **351.3.2 FIXED CAMERA MARKINGS**

All public areas monitored by video surveillance equipment shall be marked in a conspicuous manner with unobstructed signs to inform the public that the area is under police surveillance.

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### 351.3.3 INTEGRATION WITH OTHER TECHNOLOGY

The Department is prohibited from integrating or accessing system capabilities of the video surveillance system with other systems, such as gunshot detection, automated license plate recognition, facial recognition and other video-based analytical systems.

### 351.4 VIDEO SUPERVISION

Access to video surveillance cameras data shall be limited to Berkeley Police Department (BPD) personnel utilizing the camera database for uses described above, with technical assistance from Public Works personnel. Information may be shared in accordance with 351.6 or 1304.9 below. ~~BPD Members~~ members seeking access to the camera system shall seek the approval from the Investigations Division Captain, or their designee.

Supervisors should monitor camera access and usage to ensure BPD members are complying with ~~in~~ this policy, other applicable department policy and applicable laws. Supervisors should ensure such use and access is appropriately documented.

#### 351.4.1 VIDEO LOG

No one without authorization will be allowed to login and view the recordings. Access to the data must be obtained through the Public Works Department. All system access including system login, access duration, and data access points is accessible and reportable by the Public Works Department's authorized administrator. Those who are authorized and login should automatically trigger the audit trail function to ensure compliance with the guidelines and policy. This is further outlined in 1304.4 of the Surveillance Use Policy.

#### 351.4.2 PROHIBITED ACTIVITY

Video surveillance systems will not intentionally be used to invade the privacy of individuals or observe areas where a reasonable expectation of privacy exists.

Video surveillance systems shall not be used in an unequal or discriminatory manner and shall not target protected individual characteristics including, but not limited to race, ethnicity, national origin, religion, disability, gender or sexual orientation.

Video surveillance equipment shall not be used to harass, intimidate or discriminate against any individual or group.

Video surveillance systems and recordings are subject to the Berkeley Police Department's Immigration Law Policy, and hence may not be shared with federal immigration enforcement officials.

### 351.5 STORAGE AND RETENTION OF MEDIA

Video surveillance recordings are transient means to create potential government records, but are not government records in and of themselves. Except as otherwise permitted in this section, video surveillance recordings shall be purged within thirty (30) days. ~~The cameras should record minimally for one year as guided by Government Code 34090.~~

Recordings of incidents involving use of force by a police officer, detentions, arrests, or recordings relevant to a formal or informal complaint shall be retained for a minimum of two years and one month. Recordings relating to court cases and personnel complaints that are being adjudicated will be manually deleted at the same time other evidence associated with the case is purged in line with the Department's evidence retention policy. Any recordings related to administrative ~~or~~ civil proceedings pursuant to this section shall be maintained until such matter is fully adjudicated, at which time it shall be deleted in line with the Department's evidence retention

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policy, and any applicable orders from the court.

Any recordings needed as evidence in a criminal or [civil-administrative](#) proceeding shall be copied to a suitable medium and booked into evidence in accordance with current evidence procedures.

### **351.5.1 EVIDENTIARY INTEGRITY**

All downloaded and retained media shall be treated in the same manner as other evidence. Media shall be accessed, maintained, stored and retrieved in a manner that ensures its integrity as evidence, including strict adherence to chain of custody requirements. Electronic trails, including encryption, digital masking of innocent or uninvolved individuals to preserve anonymity, authenticity certificates and date and time stamping, shall be used as available and appropriate to preserve individual rights and to ensure the authenticity and maintenance of a secure evidentiary chain of custody.

### **351.6 RELEASE OF VIDEO IMAGES**

Data collected and used in a police report shall be made available to the public in accordance with department policy and applicable state or federal law, also referenced in Policy 1304.8.

Requests for recorded video images from the public or the media shall be processed in the same manner as requests for department public records pursuant to Policy 804.

Requests for recorded [images-video](#) from other law enforcement agencies shall be referred to the Investigations Division Captain, or their designee for release in accordance with [this policy and a specific and active and legitimate law enforcement purpose](#) [criminal investigation](#).

Recorded video images that are the subject of a court order or subpoena shall be processed in accordance with the established department subpoena process.

### **351.7 VIDEO SURVEILLANCE AUDIT**

The video surveillance software generates a site log each time the system is accessed. The site log is broken down by server, device, user or general access. The site log is kept on the server for two years and is exportable for reporting. System audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant on a regular basis, at least biennial.

BPD will enforce against prohibited uses of the cameras pursuant to Policy 1010, Personnel Complaints or other applicable law or policy.

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 [the](#) Professional Standards Bureau.

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### **351.8 TRAINING**

All department members authorized to operate or access video surveillance systems shall receive appropriate training. Training should include guidance on the use of cameras, associated software, and review of relevant policies and procedures, including this policy. Training should also address state and federal law related to the use of video surveillance equipment and privacy. All relevant recordings that are utilized will be collected pursuant to Policy 802, Property and Evidence, and retained pursuant to Policy 804 Records and Maintenance.

### **351.9 MAINTENANCE**

It shall be the responsibility of the Public Works Department to facilitate and coordinate any updates and required maintenance.