



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

**Monday, October 4, 2021
10:30 AM**

Committee Members:

Councilmembers Rashi Kesarwani, Susan Wengraf, and Ben Bartlett
Alternate: Councilmember Terry Taplin

**PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH
VIDEOCONFERENCE AND TELECONFERENCE**

Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of the attendees. Therefore, no physical meeting location will be available.

To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL - <https://us02web.zoom.us/j/89965690392>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon on the screen.

To join by phone: Dial **1-669-900-9128 or 1-877-853-5257 (Toll Free)** and Enter Meeting ID: **899 6569 0392**. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized by the Chair.

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

AGENDA

Roll Call

Public Comment on Non-Agenda Matters

Minutes for Approval

Draft minutes for the Committee's consideration and approval.

1. Minutes - August 9 and September 27, 2021

Committee Action Items

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

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

2. **Adopt an Ordinance Adding Chapter 13.09 to the Berkeley Municipal Code Prohibiting Discriminatory Reports to Law Enforcement**
From: Councilmember Harrison (Author), Councilmember Hahn (Co-Sponsor)
Referred: June 14, 2021
Due: December 23, 2021
Recommendation: 1. Adopt an Ordinance Amending Chapter 13.09 to the Berkeley Municipal Code Prohibiting Discriminatory Reports to Law Enforcement.
2. Refer to the City Manager to report to Council within six months with anonymized data and information regarding discriminatory reports to law enforcement.
Financial Implications: Staff time
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

Committee Action Items

3. Budget referral: Automated license plate readers for community safety improvement

From: Councilmember Taplin (Author), Councilmember Droste (Co-Sponsor), Councilmember Wengraf (Co-Sponsor)

Referred: August 30, 2021

Due: January 30, 2022

Recommendation: That the Berkeley City Council take the following actions to enable and deploy tactical technologies in strategic public spaces and the public ROW for the improvement of community safety and determent, intervention, prevention of illegal dumping and/or investigation of violent crime and traffic violations: Authorize the City Manager to install Automatic License Plate Readers (ALPRs) at strategic locations including public facilities, entrances to the city and strategic intersections in areas impacted by violent crime, traffic violations, illegal dumping, drug offenses, and other criminal activity; and refer to the budget process cost of ALPRs. Refer to the City Manager the development of a policy pursuant and subject to City of Berkeley Surveillance Ordinance enabling the use of ALPRs in fixed locations and mobile trailers by the Berkeley Police Department, while restricting data storage and distribution pursuant to standards set forth in Senate Bill 210 (Wiener, 2021).

Financial Implications: See report

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

Unscheduled Items

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

4. Presentation by the Fire Department on the City's Evacuation Plan

Items for Future Agendas

- Discussion of items to be added to future agendas

Adjournment

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

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



### COMMUNICATION ACCESS INFORMATION:

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date.

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I hereby certify that the agenda for this meeting of the Standing Committee of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on September 30, 2021.



Mark Numainville, City Clerk

## **Communications**

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

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

**Monday, August 9, 2021  
10:30 AM**

Committee Members:

Councilmembers Rashi Kesarwani, Susan Wengraf, and Ben Bartlett  
Alternate: Councilmember Terry Taplin

**PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH  
VIDEOCONFERENCE AND TELECONFERENCE**

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting of the City Council Public Safety Policy Committee will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL - <https://us02web.zoom.us/j/89775766534>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon on the screen.

To join by phone: Dial **1-669-900-9128 or 1-877-853-5257 (Toll Free)** and Enter Meeting ID: **897 7576 6534**. If you wish to comment during the public comment portion of the agenda, press \*9 and wait to be recognized by the Chair.

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

## MINUTES

**Roll Call:** 10:35 a.m. All present.

### Committee Action Items

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

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

**1. Ghost Gun Precursor Parts Ordinance**

**From: Councilmember Taplin (Author), Councilmember Hahn (Co-Sponsor), Councilmember Bartlett (Co-Sponsor)**

**Referred: July 12, 2021**

**Due: January 28, 2022**

**Recommendation:** Refer to the City Manager the development of an ordinance amending the Berkeley Municipal Code to prohibit any person other than a licensed manufacturer or importer from possessing, selling, offering for sale, transferring, purchasing, transporting, receiving, or manufacturing an unfinished firearm frame or receiver that has not been imprinted with a serial number, subject to certain exceptions pursuant to state law; and prohibiting any person from manufacturing or assembling a firearm that has not been imprinted with a serial number, subject to certain exceptions pursuant to state law; and return such an ordinance to the City Council.

**Financial Implications:** Staff time

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

**Action:** 2 speakers. Revised material submitted by the author. Discussion held. The item was continued to a future meeting to allow for the development of Ordinance language.

### Items for Future Agendas

- None

## Adjournment

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

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

Adjourned at 11:22 a.m.

I hereby certify that this is a true and correct record of Public Safety Policy Committee meeting held on August 9, 2021.

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Michael MacDonald, Assistant City Clerk

## Communications

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

**Monday, September 27, 2021  
10:30 AM**

Committee Members:

Councilmembers Rashi Kesarwani, Susan Wengraf, and Ben Bartlett  
Alternate: Councilmember Terry Taplin

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VIDEOCONFERENCE AND TELECONFERENCE**

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To join by phone: Dial **1-669-900-9128 or 1-877-853-5257 (Toll Free)** and Enter Meeting ID: **849 5585 1613**. If you wish to comment during the public comment portion of the agenda, press \*9 and wait to be recognized by the Chair.

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## AGENDA

**Roll Call:** 10:34 a.m. All present.

### Committee Action Items

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**Financial Implications:** Staff time

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

**Action:** 2 speakers. Discussion held. Supplemental material submitted by the author. M/S/C (Wengraf/Kesarwani) to send the item, with a positive recommendation, to Council and directed the author to work with the City Attorney's office to finalize a draft Ordinance and to submit the item as a time critical item for inclusion in the October 12, 2021 Council agenda.

**Vote:** All Ayes

### Items for Future Agendas

- None

### Adjournment

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

**Vote:** All Ayes

Adjourned at 10:57 a.m.

I hereby certify that this is a true and correct record of Public Safety Policy Committee meeting held on September 27, 2021.

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Michael MacDonald, Assistant City Clerk

### **Communications**

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Kate Harrison  
Councilmember District 4

ACTION CALENDAR

June 29, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Harrison (Author) and Councilmember Hahn (Co-sponsor)

Subject: Adopt an Ordinance Adding Chapter 13.09 to the Berkeley Municipal Code Prohibiting Discriminatory Reports to Law Enforcement

RECOMMENDATION

1. Adopt an Ordinance Amending Chapter 13.09 to the Berkeley Municipal Code Prohibiting Discriminatory Reports to Law Enforcement.
2. Refer to the City Manager to report to Council within six months with anonymized data and information regarding discriminatory reports to law enforcement.

CURRENT SITUATION, EFFECTS, AND RATIONALE FOR RECOMMENDATION

As the City of Berkeley addresses disparate policing outcomes, it is critical to consider potential bias stemming from community-initiated calls for service. Over the past year, there have been numerous high-profile instances, including in the Bay Area, of people allegedly calling law enforcement on innocent people on purely discriminatory grounds. It is likely that numerous additional instances go unreported each year. Such incidents cause serious harm to the person falsely accused of a crime, contribute to defamation, cause anxiety and distrust among people of color and other people, and put an unnecessary strain on law enforcement officers responding to frivolous and false calls. Berkeley is not immune to such discriminatory calls and therefore it is the public interest to explicitly expand existing laws regarding false police reports such that it is explicitly unlawful to engage in such behavior and that any aggrieved person may seek restitution through civil means.

BACKGROUND

This Ordinance is modelled upon the City and County of San Francisco's recently unanimously adopted 2020 Caution Against Racially and Exploitative Non-Emergencies (CAREN) Act. A similar bill also passed in the State of Virginia.<sup>1</sup>

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<sup>1</sup> Ebrahimji, Alisha, and Amanda Jackson, "San Francisco's 'CAREN Act,' Making Racially Biased 911 Calls Illegal, Is One Step Closer to Becoming a Law," *CNN*, October 21, 2020, [www.cnn.com/2020/10/20/us/caren-act-911-san-francisco-board-passes-first-read-trnd/index.html](http://www.cnn.com/2020/10/20/us/caren-act-911-san-francisco-board-passes-first-read-trnd/index.html).

Adopt an Ordinance Adding Chapter 13.09 to the Berkeley Municipal Code Prohibiting Discriminatory Reports to Law Enforcement

These laws were passed in the wake of the global protest movement in response to the murder of George Floyd, which highlighted discriminatory calls to law enforcement, including notable incidents in New York City's Central Park and Oakland's Lake Merritt.<sup>2</sup>

In addition to causing serious harm to the person(s) falsely accused of a crime, anxiety and distrust among people of color and other groups, such incidents put an unnecessary strain on law enforcement officers responding to frivolous and false calls. However, this ordinance is not intended to discourage individuals from contacting law enforcement when they are facing real danger or desire to report a crime.

The Berkeley Police Review Commission's 2017 "To Achieve Fairness and Impartiality: Report and Recommendations" cited a number of anecdotal reports from community members alleging discriminatory calls for law enforcement service, including:

- A racially-mixed family was having pizza at Bobby G's on University. Another diner called police saying that the mixed couple were "abusing their child by drinking beer and wine in front of their child." Two police cars arrived with lights flashing. The owner attested that the family were regulars, and were minding their own business watching a football game. Police interrogated the African American father for one hour in a hallway at the restaurant.
- An African American man, a security guard in uniform with a licensed gun, was talking with a Caucasian female on the corner of Bonar and Allston Way after a ceremony at the Berkeley Youth Association. A Caucasian man drove by, parked the car, got out and started videotaping the couple. The African American man asked the driver to stop videotaping. The man answered that it was his right to do so and started making statements such as "don't bring a gun into my neighborhood." After a heated back-and-forth, the driver called the police. Eight cars arrived. The lead officer reviewed the credentials of the African-American man, was satisfied and departed. One of the remaining officers stayed and continue to ask the same questions for another 15 minutes. The African American security guard registered that he felt he was "unduly questioned" and was being "badgered."
- The owners of "44 Restaurant and Lounge" lodged a complaint with NAACP and police. During happy hour to 8p.m.the guests that frequent the bar are a racially mixed crowd. After 8p.m.the guests are predominantly African American. After a minor complaint to police from a resident, the police parked a car with lights off across the street from the establishment for a period of four months. "44" has no history of rowdiness or spillover from bar patrons onto the sidewalk or the street. The bar down the street, Nick's Lounge, has spillover into the street almost every night. The owners of "44" and the NAACP observed there is no police presence at Nick's.<sup>3</sup>

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<sup>2</sup> Nir, Sarah Maslin, "How 2 Lives Collided in Central Park, Rattling the Nation," *The New York Times*, June 14, 2020, [www.nytimes.com/2020/06/14/nyregion/central-park-amy-cooper-christian-racism.html](http://www.nytimes.com/2020/06/14/nyregion/central-park-amy-cooper-christian-racism.html); Fearnow, Benjamin, "A Black Family's Sunday Barbecue Was Interrupted after a Woman Called out Their Charcoal Grill and Phoned the Cops," *Newsweek*, May 10, 2018, [www.newsweek.com/lake-merritt-bbq-barbecue-video-oakland-racist-charcoal-east-bay-black-family-919355](http://www.newsweek.com/lake-merritt-bbq-barbecue-video-oakland-racist-charcoal-east-bay-black-family-919355).

<sup>3</sup> Berkeley Police Review Commission, "To Achieve Fairness and Impartiality: Report and Recommendations from the Berkeley Police Review Commission," November 15, 2017, [https://www.cityofberkeley.info/uploadedFiles/Police\\_Review\\_Commission/Level\\_3\\_-\\_General/FAIR%20%20IMPARTIAL%20POLICING%20REPORT%20final.pdf](https://www.cityofberkeley.info/uploadedFiles/Police_Review_Commission/Level_3_-_General/FAIR%20%20IMPARTIAL%20POLICING%20REPORT%20final.pdf)

Adopt an Ordinance Adding Chapter 13.09 to the Berkeley Municipal Code Prohibiting Discriminatory Reports to Law Enforcement

The Berkeley Police Review Commission's 2017 report was not exhaustive and it is likely that there were numerous additional unreported incidents involving individuals contacting law enforcement to report innocuous behavior as suspicious, or to falsely report alleged criminal behavior, for what appear to be solely discriminatory reasons. Berkeley Police Department staff also cited biased calls for service as a potential factor in racially disparate policing outcomes during the Mayor's Fair and Impartial Working Group meetings. The intent of this ordinance and referral is to prohibit and daylight these incidents, and to provide an avenue for restitution through the court system.

The misuse of law enforcement by members of the public to discriminate against others is intolerable. Creating a civil cause of action for damages will also discourage this type of behavior and provide a tangible compensation for victims.

Berkeley Municipal Code 13.08 already prohibits persons from knowingly reporting or causing to be reported:

"any false or fictitious request for protection or assistance, or any false or fictitious information indicating that a crime has been or is about to be committed, or to knowingly cause the Police Department to respond to any such false or fictitious report, or to request any assistance or investigation in connection with or as a result of any such false or fictitious report or false or fictitious information."

This ordinance expands the scope of this existing law to explicitly prohibit false or frivolous reports involving individuals who contact law enforcement to report innocuous behavior as suspicious, or to falsely report alleged criminal behavior, for what appear to be solely discriminatory reasons. Discriminatory calls are defined as those that are made on the basis of a person's actual or perceived race, color, ancestry, ethnicity, national origin, place of birth, sex, age, religion, creed, disability, sexual orientation, gender identity, weight, or height, and with the intent to do any of the following:

- (1) Infringe upon the person's rights under either the California Constitution or the United States Constitution;
- (2) Discriminate against the person;
- (3) Cause the person to feel harassed, humiliated, or embarrassed;
- (4) Cause the person to be expelled from a place in which the person is lawfully located;
- (5) Damage the person's reputation or standing within the community; or
- (6) Damage the person's financial, economic, consumer, or business prospects or interests.

In addition, any aggrieved person may enforce the provisions of this ordinance by means of a civil action, including special, general and punitive damages.

#### FINANCIAL IMPLICATIONS

Staff time will be necessary to implement and enforce this ordinance. However, this ordinance already in part tracks existing law and practices regarding false police reports.

#### ENVIRONMENTAL SUSTAINABILITY

No immediately identifiable environmental impact.

Adopt an Ordinance Adding Chapter 13.09 to the Berkeley Municipal Code Prohibiting Discriminatory Reports to Law Enforcement

CONTACT

Councilmember Kate Harrison  
kharrison@cityofberkeley.info | 510-981-7140

ATTACHMENTS:

1. Ordinance

ORDINANCE NO. -N.S.

ADDING A NEW CHAPTER 13.09 TO THE BERKELEY MUNICIPAL CODE  
PROHIBITING DISCRIMINATORY REPORTS TO LAW ENFORCEMENT

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. The Berkeley Municipal Code Chapter 13.09 is added to read as follows:

**Chapter 13.09**  
**Discriminatory Reports to Law Enforcement**

**Sections:**

**13.09.010 Findings and Purpose.**

**13.09.020 Discriminatory Reports to Law Enforcement Prohibited.**

**13.09.030 Civil Cause of Action.**

**13.09.040 Undertaking for the General Welfare.**

**13.09.050 Severability.**

**13.09.010 Findings and Purpose.**

The Council finds and expressly declares as follows:

- A. There have been numerous incidents across the country involving individuals contacting law enforcement to report innocuous behavior as suspicious, or to falsely report alleged criminal behavior, for what appear to be solely discriminatory reasons. Discriminatory law enforcement reports against people of color for racially motivated reasons are common enough that many people of color have experienced one or more incident of being contacted by law enforcement when engaging in normal day-to-day activities. These incidents cause serious harm to the person falsely accused of a crime, cause anxiety and distrust among people of color, and put an unnecessary strain on law enforcement officers responding to frivolous and false calls.
- B. The misuse of law enforcement by members of the public to discriminate against others should not be tolerated and the City should take action to stop such behavior in every way possible. Creating a means for people who suffer this kind of discrimination to seek redress from those who have targeted them through a civil cause of action for damages will discourage this type of behavior and provide a tangible way for these victims to be compensated for this wrong.
- C. This ordinance is not intended to discourage individuals from contacting law enforcement when they are facing real danger or desire to report a crime. It will allow individuals who have been reported to law enforcement for unfair and unnecessary reasons to seek justice and restitution, and will motivate people who contact law enforcement to consider the reasons they are making the report.

**13.09.020 Discriminatory Reports to Law Enforcement Prohibited.**

(a) It shall be unlawful to knowingly make a false or frivolous call to police to cause a peace officer to arrive at a location to contact a person, with the specific intent to do any of the following on the basis of the person's actual or perceived race, color, ancestry, ethnicity, national origin, place of birth, sex, age, religion, creed, disability, sexual orientation, gender identity, weight, or height:

- (1) Infringe upon the person's rights under either the California Constitution or the United States Constitution;
- (2) Discriminate against the person;
- (3) Cause the person to feel harassed, humiliated, or embarrassed;
- (4) Cause the person to be expelled from a place in which the person is lawfully located;
- (5) Damage the person's reputation or standing within the community; or
- (6) Damage the person's financial, economic, consumer, or business prospects or interests.

**13.09.030 Civil Cause of Action.**

(a) Any aggrieved person may enforce the provisions of this Section by means of a civil action.



- (1) A person found to have violated Section 13.09.020 (a) in a cause of action under subsection (a) shall be liable to the aggrieved person for special and general damages, but in no case less than \$1,000 plus attorneys' fees and the costs of the action. In addition, punitive damages may be awarded in a proper case.
- (2) Nothing in this Section shall preclude any person from seeking any other remedies, penalties, or procedures provided by law.

**13.09.040 Undertaking for the General Welfare.**

In enacting and implementing this ordinance, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

**13.09.050 Severability.**

If any section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Chapter. The Council of the City of Berkeley hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.





CONSENT CALENDAR  
DATE: September 14, 2021

To: Honorable Mayor and Members of the City Council

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

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

#### RECOMMENDATION

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

- Authorize the City Manager to install Automatic License Plate Readers (ALPRs) at strategic locations including public facilities, entrances to the city and strategic intersections in areas impacted by violent crime, traffic violations, illegal dumping, drug offenses, and other criminal activity; **and refer to the budget process cost of ALPRs.**
- Refer to the City Manager the development of a policy pursuant and subject to City of Berkeley Surveillance Ordinance enabling the use of ALPRs in fixed locations and mobile trailers by the Berkeley Police Department, while restricting data storage and distribution pursuant to standards set forth in Senate Bill 210 (Wiener, 2021).

#### CURRENT SITUATION AND ITS EFFECTS

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

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<sup>1</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2020/10\\_Oct/Documents/2020-10-13\\_Presentations\\_Item\\_19\\_\\_Pres\\_Police\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/10_Oct/Documents/2020-10-13_Presentations_Item_19__Pres_Police_pdf.aspx)

According to a 2018 study<sup>2</sup> by the Center for Policing Equity, Black people comprise only 8% of Berkeley's population, but a disproportionate 46% of people subject to police uses of force. In light of this evidence, and in the wake of the national outcry over the death of George Floyd, the City Council adopted a resolution<sup>3</sup> on July 14, 2020 directing the City Manager in part to "identify elements of police work that could be achieved through alternative programs, policies, systems, and community investments."

Currently, the police department's Parking Enforcement Bureau uses Automated License Plate Readers (ALPRs) for time zone parking and scofflaw enforcement, replacing the practice of physically "chalking" car tires, but ALPR technology has not been implemented in the city for other law enforcement purposes. According to the City Manager's 2020 Surveillance Technology Report, there were an average of 12,059 successful license plate "reads" per day in the month of September, 2020. From October 2019 to October 2020, there were 44,068 "hits" detecting a positive violation, roughly 25% (14,945) of which resulted in enforcement by citation issuance.<sup>4</sup>

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

## BACKGROUND

Some research has found that ALPRs contribute to marginal improvements in public safety outcomes with respect to vehicle thefts and traffic safety. The use of LPR technology has increased significantly in law enforcement agencies across the US in the past decade, but outcomes have been inconsistently tracked, which limits available research.<sup>5</sup> One qualitative case study found that criminal investigators adapted LPR technology to a broader range of investigative work, such as rapid responses and corroborating suspect alibis.<sup>6</sup>

An analysis of a randomized control trial in the City of Vallejo found that ALPRs attached to police vehicles enabled a 140% increase in detection of stolen vehicles, while arrests were more efficient with stationary ALPRs in fixed locations.<sup>7</sup> A study on LPR technology in Mesa, AZ

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<sup>2</sup> Buchanan, K.S., Pouget, E., Goff, P.A. (2018). The Science of Justice: Berkeley Police Department. *Center for Policing Equity*. Retrieved from <https://www.berkeleyside.org/wp-content/uploads/2018/05/Berkeley-Report-May-2018.pdf>

<sup>3</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2020/07\\_Jul/Documents/2020-07-14\\_Item\\_18d\\_Transform\\_Community\\_Safety\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-14_Item_18d_Transform_Community_Safety_pdf.aspx)

<sup>4</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2020/11\\_Nov/Documents/2020-11-10\\_Item\\_19\\_Resolution\\_Accepting\\_the\\_Surveillance.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/11_Nov/Documents/2020-11-10_Item_19_Resolution_Accepting_the_Surveillance.aspx)

<sup>5</sup> Lum, C., Koper, C.S., Willis, J., Happeny, S., Vovak, H. and Nichols, J. (2019). The rapid diffusion of license plate readers in US law enforcement agencies. *Policing: An International Journal*, (42)3, pp. 376-393. <https://doi.org/10.1108/PIJPSM-04-2018-0054>

<sup>6</sup> James J. Willis, Christopher Koper & Cynthia Lum (2018). The Adaptation of License-plate Readers for Investigative Purposes: Police Technology and Innovation Re-invention, *Justice Quarterly*, 35:4, 614-638, DOI: 10.1080/07418825.2017.1329936

<sup>7</sup> Potts, J. (2018). Research in brief: assessing the effectiveness of automatic license plate readers. *POLICE CHIEF*. Retrieved from <http://www.theiacp.org/sites/default/files/2018-08/March%202018%20RIB.pdf>

found that LPRs resulted in an eightfold increase in the number of plates scanned, more positive scans, arrests and recovery of stolen vehicles, and a reduction in calls for drug offenses. However, the study did not find a statistically significant reduction in vehicle thefts in hot spots compared to manual checks, possibly because the presence of law enforcement officers performing manual checks had a more preventative effect.<sup>8</sup> Another study of the Charlotte-Mecklenburg Police Department found that “LPR use may have contributed to modest improvements in case closures for auto theft and robbery”—the former in the long term, and the latter both short- and long term.<sup>9</sup>

According to recent analysis by the National Highway Traffic Safety Administration, one law enforcement agency found that drivers with suspended, revoked, or restricted licenses were 2.2 times more likely to be involved in serious or fatal crashes than other drivers, and that identifying these drivers with ALPRs “could affect traffic safety positively by targeting violator vehicles that are more prone to crash risk.”<sup>10</sup> A quasi-experimental survey of data from Buffalo, NY found a reduction in violent crime and traffic accidents associated with roadblocks using LPRs.<sup>11</sup>

#### RATIONALE FOR RECOMMENDATION

Reimagining public safety necessitates significant improvements in public safety outcomes, including practical solutions to traffic safety and property crime. California law currently preempts municipalities from transferring law enforcement into civilian duties or automated speed cameras.

While auto thefts in Berkeley increased by 66% in 2020, a 2021 City Auditor analysis<sup>12</sup> of the Berkeley Police Department found that Officer-Initiated Stops disproportionately target Black and Latino drivers relative to their share of the city’s population.

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<sup>8</sup> Taylor, B., Koper, C. S., & Woods, D. J. (2012). Combatting auto theft in Arizona: A randomized experiment with license plate recognition technology. *Criminal Justice Review*, 37, 24-50.

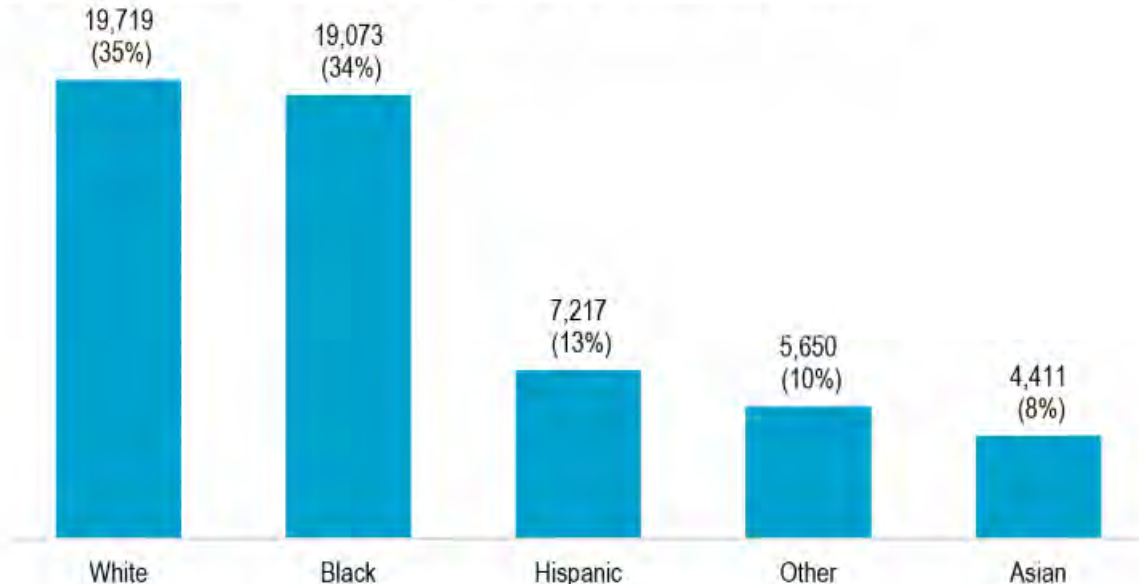
<sup>9</sup> Koper, C. S., & Lum, C. (2019). The Impacts of Large-Scale License Plate Reader Deployment on Criminal Investigations. *Police Quarterly*, 22(3), 305–329. <https://doi.org/10.1177/1098611119828039>

<sup>10</sup> Zmud, J., Walden, T., Ettelman, B., Higgins, L. L., Graber, J., Gilbert, R., & Hodges, D. (2021). State of Knowledge and Practice for Using Automated License Plate Readers for Traffic Safety Purposes. Retrieved from [https://rosap.ntl.bts.gov/view/dot/55586/dot\\_55586\\_DS1.pdf](https://rosap.ntl.bts.gov/view/dot/55586/dot_55586_DS1.pdf)

<sup>11</sup> Wheeler, A.P., Phillips, S.W. (2018). A quasi-experimental evaluation using roadblocks and automatic license plate readers to reduce crime in Buffalo, NY. *Secur J* 31, 190–207. <https://doi.org/10.1057/s41284-017-0094-1>

<sup>12</sup> Berkeley City Auditor. (2021, Apr. 22). Data Analysis of the City of Berkeley’s Police Response. Retrieved from [https://www.cityofberkeley.info/uploadedFiles/Auditor/Level\\_3\\_-\\_General/Data%20Analysis%20of%20the%20City%20of%20Berkeley's%20Police%20Response.pdf](https://www.cityofberkeley.info/uploadedFiles/Auditor/Level_3_-_General/Data%20Analysis%20of%20the%20City%20of%20Berkeley's%20Police%20Response.pdf)

Figure 18. Officer-Initiated Stops by Race, 2015-2019 (n = 56,070 individuals stopped)



Source: Auditor's analysis of Berkeley Police Department Computer Aided Dispatch data

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

However, ALPR data storage gives rise to several privacy concerns. In *Carpenter v. United States*, the U.S. Supreme Court ruled that accessing location data tracking an individual's movements from their cell phone constitutes a search under the Fourth Amendment and requires a search warrant.<sup>13</sup> While ALPR scans are subject to reasonableness standards for searches under Fourth Amendment jurisprudence, state courts have found that ALPR alerts are sufficient to establish a reasonable suspicion, though there are situations that require further intervention to establish reasonableness or avoid error.<sup>14</sup>

In *Neal v. Fairfax County Police Department*, the Virginia Supreme Court ruled that GPS data and images associated with license plate numbers were private personal information (PPI), but license plate numbers themselves stored in ALPR databases were not.<sup>15</sup> The California Supreme Court has also underscored such a distinction between "bulk data collection" of license plate numbers that did not "produce records of investigations" for particular crimes.<sup>16</sup> By

<sup>13</sup> *Carpenter v. United States*, 138 S. Ct. 2206 (2018).

<sup>14</sup> Fash, L. (2018). Automated License Plate Readers: The Difficult Balance of Solving Crime and Protecting Individual Privacy. *Md. L. Rev. Endnotes*, 78, 63.

<sup>15</sup> *Neal v. Fairfax County Police Dept.*, 812 S.E.2d 444, 295 Va. 334 (2018).

<sup>16</sup> *Am. Civil Liberties Union Found. of S. Cal. v. Super. Ct. of L.A. Cty.*, 400 P.3d 432

contrast, U.S. Supreme Court Justice Sotomayor argued in *United States v. Jones* that government agencies collecting “private aspects of identity” could be “susceptible to abuse.”<sup>17</sup> This calls into question the so-called third party doctrine of the Fourth Amendment—the longstanding precedent that individuals may be reasonably considered to waive their right to privacy and assume any information provided to third parties may eventually be accessed by the government—given the vast array of information government agencies can now access through surveillance technology. To carefully balance privacy and policing efficacy under this new paradigm, Newell (2013) recommends strictly limiting data retention for non-“hit” scans, and maintaining anonymized ALPR data subject to public disclosure laws.<sup>18</sup>

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

In 2015, Senate Bill 34 imposed additional security and privacy requirements on the use of ALPR data.<sup>19</sup> Unfortunately, a State Auditor report in 2020 surveying four local law enforcement agencies in California found that ALPR policies were out of compliance with SB34, retained images for far longer than needed or allowed, and had no processes in place to safeguard local compliance. For example, the State Auditor “did not find evidence that the agencies had always determined whether an entity receiving shared images had a right and a need to access the images or even that the entity was a public agency.”<sup>20</sup>

In 2018, a lawsuit by the American Civil Liberties Union of Northern California revealed that Immigration and Customs Enforcement (ICE) had purchased access to private databases containing ALPR data with 5 billion individual data points for civil immigration enforcement, and had obtained ALPR data from over 80 local law enforcement agencies.<sup>21</sup> However, in 2017, Senate Bill 54 greatly restricted the ability of California law enforcement agencies to share information with ICE.<sup>22</sup>

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(Cal. 2017).

<sup>17</sup> *United States v. Jones*, 565 U.S. 400, 415 (2012) (Sotomayor, J., concurring);

<sup>18</sup> Newell, B. C. (2013). Local law enforcement jumps on the big data bandwagon: Automated license plate recognition systems, information privacy, and access to government information. *Me. L. Rev.*, 66, 397.

<sup>19</sup> [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160SB34](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB34)

<sup>20</sup> Howle, E.M. (2020). Automated License Plate Readers: To Better Protect Individuals’ Privacy, Law Enforcement Must Increase Its Safeguards for the Data It Collects. *Auditor of the State of California*. Retrieved from <https://www.auditor.ca.gov/reports/2019-118/index.html>

<sup>21</sup> Talla, V. (2019). Documents Reveal ICE Using Driver Location Data From Local Police for Deportations. *ACLU Northern California*. Retrieved from <https://www.aclunc.org/blog/documents-reveal-ice-using-driver-location-data-local-police-deportations>

<sup>22</sup> [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180SB54](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB54)

Introduced in January 2021, Senate Bill 210 by State Sen. Scott Wiener (D-SF) would further limit data storage and access for ALPRs.<sup>23</sup>

### ENVIRONMENTAL IMPACTS

None.

### FISCAL IMPACTS

In 2017, an amendment to Contract No. 9977<sup>24</sup> from the City Manager's Office itemized a unit cost of \$78,363 for each ALPR system. Costs for this referral may be different because this contract was for mobile ALPRs used for parking enforcement, not in fixed locations.

### CONTACT


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<sup>23</sup> [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220SB210](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB210)

<sup>24</sup> [https://ci.berkeley.ca.us/Clerk/City\\_Council/2017/07\\_Jul/Documents/2017-07-11\\_Item\\_13\\_Contract\\_No\\_9977\\_Amendment.aspx](https://ci.berkeley.ca.us/Clerk/City_Council/2017/07_Jul/Documents/2017-07-11_Item_13_Contract_No_9977_Amendment.aspx)





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