

Lee, Katherine

From: Lee, Katherine
Sent: Monday, July 11, 2022 10:52 AM
To: Lee, Katherine
Subject: FW: Question from last night's PAB meeting

Dear Board,

Please see the advice below from Deputy City Attorney Chang.

-Kathy

Katherine J. Lee
Interim Director of Police Accountability
City of Berkeley
o: 510.981.4960 (usually in office during regular business hours)
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From: Chang, James J
Sent: Friday, July 8, 2022 4:12 PM
To: Lee, Katherine <KLee@cityofberkeley.info>
Cc: Mattes, Laura Iris <LMattes@cityofberkeley.info>; Brown, Farimah F. <FBrown@cityofberkeley.info>
Subject: RE: Question from last night's PAB meeting

Hi Kathy,

Although this is a close question, I advise that the best interpretation of PAB's rules of procedure (Charter Article XVIII, Section 125(13)(B)) is that once a quorum (ie a majority of appointed Board members) is present, a majority of those present voting yes is sufficient to take action. This reading is consistent with the construction of other Charter and BMC provisions relating to the minimum vote threshold for taking action.

Most City bodies, including the City Council and most boards and commissions created by the Council, follow the rule that once a quorum is present, a majority vote of those present is sufficient to take action:

City Council Charter, Article VII, Section 42	A majority of the members of the Council shall constitute a quorum for the transaction of business.
Most City Boards BMC 2.04.090	The quorum for all boards, commissions and committees covered by Sections 2.04.030 through 2.04.130 shall be a majority of those persons appointed in accordance with the ordinance codified herein. All boards, commissions and committees may take action if a quorum is present.

Other City bodies that require a higher vote threshold have procedural rules specifically enumerating the minimum number of affirmative votes required for the body to take action:

Rent Stabilization Board Charter, Article XVII, Section 123(5)	Five (5) Commissioners shall constitute a quorum for the Board. The affirmative vote of five (5) Commissioners of the Board is required for a decision, including all motions, rules, regulations and orders of the Board.
Citizens Redistricting Commission BMC 2.10.060(E)	A quorum of the full thirteen (13) member Commission is always seven (7), and seven (7) affirmative votes are always needed to take action unless otherwise specified by statute.”
Housing Advisory Commission BMC 19.44.030(D)	A majority of the members shall constitute a quorum and the affirmative vote of a majority of the members is required to take any action.
Safety Members Pension Board BMC 4.18.030	A majority of the members of the board shall constitute a quorum. No action may be taken by the board except by a majority vote of the entire membership thereof.
School Board Charter, Article XV, Section 99	Three members of the Board shall constitute a quorum, and the affirmative votes of three members shall be necessary to pass any measure . . .

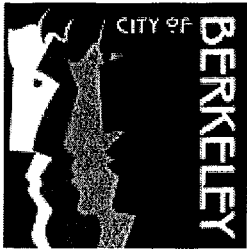
PAB’s rules of procedure, Charter Art. XVIII, Sec. 125 (13)(b) state: “A majority of appointed Board members constitutes a quorum to conduct business and take any action.”

This language is much closer to the Charter language for the City Council and BMC rule for most other City boards. By contrast, all the bodies that impose a higher vote threshold do so with clear language specifically enumerating the number of votes required to take action. The PAB Charter language lacks such specificity and therefore does not appear to indicate an intent to depart from the general rule for City bodies that a majority of those present is sufficient to take action.

As you note, the PAB charter language is worded differently than the former PRC rule, but given the absence of specificity as in other places in the Charter and BMC where a higher vote threshold is required, I would be hesitant to read into this difference an intention that the PAB charter language requires a higher vote threshold.

Ultimately the Chair and the Board retain the prerogative to reasonably interpret their rules of procedure, but I hope that this advisory guidance from is helpful to the Board.

PS - *I will also raise with the Clerk’s office the issue you noted regarding updating the BMC to reflect the repeal of BMC 3.32.



James J. Chang

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Pronouns: he / him / his

From Board member Levine for July 13, 2022 PAB meeting
Proposed revision to draft Regulations, Section II.A.

1. Complaint form. A formal complaint alleging misconduct by one or more sworn officers of the Berkeley Police Department must be filed on a form provided by the Office of the Director of Police Accountability. Complaints must include language advising a complainant who of the following: 1) if they have a criminal case pending, or if one may be filed, related to the complaint, the content of their complaint could be used against them in that criminal case and therefore, the complainant should consult their attorney (which could be the public defender) before completing the complaint form; and 2) they should also consult an attorney if the complainant intends to file a lawsuit, or has one pending, against the police. is the subject of, or has commenced, litigation relating to the incident that gave rise to the complaint, to consult an attorney before filing a complaint. The form shall also require the complainant to sign the following statement: "I hereby certify that, to the best of my knowledge, the statements made herein are true. ~~I also understand that my oral testimony before the Board shall be given under oath.~~"

Commented [A1]: Ask CAO

Commented [A2R1]: Per Bd member Levine: I omitted the last sentence because being advised they will need to testify under oath in a future hypothetical Board hearing may have a chilling effect. It may be better not to include the parenthetical about public defender. Most defendants in criminal cases use the public defender. Many do not appreciate they are attorneys.

The Danger of License Plate Readers in Post-Roe America

Known as ALPRs, this surveillance tech is pervasive across the US—and could soon be used by police and anti-abortion groups alike.

SINCE THE UNITED States Supreme Court overturned *Roe v. Wade* last month, America's extensive surveillance state could soon be turned against those seeking abortions or providing abortion care.

Currently, nine states have almost entirely banned abortion, and more are expected to follow suit. Many Republican lawmakers in these states are discussing the possibility of preventing people from traveling across state lines to obtain an abortion. If such plans are enacted and withstand legal scrutiny, one of the key technologies that could be deployed to track people trying to cross state lines is automated license plate readers (ALPRs). They're employed heavily by police forces across the US, but they're also used by private actors.

ALPRs are cameras that are mounted on street poles, overpasses, and elsewhere that can identify and capture license plate numbers on passing cars for the purpose of issuing speeding tickets and tolls, locating stolen cars, and more. State and local police maintain databases of captured license plates and frequently use those databases in criminal investigations.

The police have access to not only license plate data collected by their own ALPRs but also data gathered by private companies. Firms like Flock Safety and Motorola Solutions have their own networks of ALPRs that are mounted to the vehicles of private companies and organizations they work with, such as car repossession outfits. Flock, for instance, claims it's collecting license plate data in roughly 1,500 cities and can capture data from over a billion vehicles every month.

"They have fleets of cars that have ALPRs on them that just suck up data. They sell that to various clients, including repo firms and government agencies. They also sell them to police departments," says Jay Stanley, a senior policy analyst at the ACLU. "It's a giant, nationwide mass surveillance system. That obviously has serious implications should interstate travel become part of forced-birth enforcement."

In a statement to WIRED, a Flock Safety spokesperson said the company does not provide customer data to third parties. "We will never share or sell customer data to any third parties. While we cannot

speak for any other vendors, we have never and will never sell data to repossession companies or third-party organizations, including anti-abortion groups," the company said.

However, anyone can become a first party by purchasing the company's cameras. (Its customers often include neighborhoods and home owners associations.) Flock Safety says its cameras are installed in more than 1,500 cities in 42 states, which are connected to Flock's centralized camera network. A March 2021 Vice investigation based on Flock-related emails obtained from nearly 20 police departments allows anyone who administers a Flock camera to "make the data Flock captures available to, say, the police, the home owner association's board, or the individual members of an entire neighborhood." In addition to private customers, Flock has also reportedly partnered with hundreds of police departments across the US.

Motorola Solutions did not respond to a request for comment prior to publication.

Stanley says that ALPRs are more concentrated in metropolitan areas, but they're also common in rural areas. If someone is traveling out of state to get an abortion, police could likely repeatedly identify where their license plate was scanned during the trip and the times it was scanned. With that information, they may be able to sketch out that person's travel patterns. Police don't need a warrant to obtain this information because license plates are out in the open and can be seen by anyone, which is not necessarily the case when the police want to obtain someone's location data from their phone or use another tracking method.

"The more densely situated ALPR scanners are, the more they come to resemble GPS tracking," Stanley says.

Once the person seeking an abortion has left the state, a police department could look for license plate data in another state through the private databases, or they could obtain this data via a police department in that state. Police departments around the country regularly share ALPR data with each other, and the data is often shared with little oversight.

"It's a huge problem that people are sharing data without really being deliberate about who they're sharing it with and why," says Dave Maass, director of investigations for the Electronic Frontier Foundation (EFF).

Maass notes that police aren't the only ones who could utilize ALPR data to track people seeking abortion access. Thanks to the passage of Texas Senate Bill 8 (SB 8), he says anti-abortion groups could use license plate data in litigation against whole swaths of people. That law allows anyone in the US to sue abortion providers, anyone who "aids or abets" someone seeking an abortion after a fetal

heartbeat is detected (typically around six weeks)—or anyone with intent to help someone receive an illegal abortion in the state. Anti-abortion groups have also been known to write down people's license plate numbers at abortion clinics over the years, Maass notes, so they may even have a database of license plate numbers already available to them that they could search through.

"One of the things I'm concerned about is this big private database that is operated by DRN Data. It's not necessarily law enforcement but individual actors who might be trying to enforce abortion laws under things like Texas' SB 8," Maass says.

DRN Data operates a license plate reader database that receives its data from repo trucks and other vehicles equipped with ALPRs. (DRN Data did not yet respond to WIRED's request for comment.) Regardless of who's operating them, there's no shortage of license plate scanners, and both Maass and Stanley say it would be extremely difficult for someone seeking an abortion to avoid being surveilled along the way.

"You could take an Uber, but that's going to create a different data trail. You could rent a car, but that's a different data trail. You could ride the bus, but that's a different data trail," Maass says.

One policy change that could help address this issue is if states would adopt the same kind of legislation that New Hampshire has, Stanley says. Its statute states that ALPR data "shall not be recorded or transmitted anywhere and shall be purged from the system within three minutes of their capture, unless the number resulted in an arrest, a citation, or protective custody or identified a vehicle that was the subject of a missing or wanted person broadcast." This type of law would prevent police departments from retaining data that could be utilized for long periods.

Like abortion laws, ALPR regulations vary state by state. New Hampshire isn't storing this data for long, but Arkansas—which last month criminalized nearly all abortion care—allows the data to be stored for 150 days. Other states may limit license plate data storage to between 21 and 90 days. Georgia, whose pending law would ban abortions after the detection of fetal cardiac activity, allows police to store license plate data for up to 30 months after collection. Maass says these issues will have to be addressed throughout the country.

"Legislators need to be looking at this. Law enforcement needs to talk to their city council members about how they're going to address this," Maass says. "Attorneys general who are claiming they're going to protect abortion access need to look at their data systems. A lot of this is going to have to be dealt with in a policy context."

ALPRs are just one of the many surveillance tools police departments and anti-abortion groups will have available to them, but they'll become one of the most powerful tools available if states manage to make it illegal to cross state lines to obtain an abortion. For states that seek to safeguard access to abortion care, there's little time to assess how this technology is being utilized and whether policies need to be altered to limit its use.

Update 1:24 pm ET, July 7: Added comment from Flock Safety and additional contextual details about the company's data collection ecosystem.