



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

**Monday, November 1, 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/89051605410>. 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: **890 5160 5410**. 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 - October 4, 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. Presentation by the Fire Department on Evacuation Plan

### 3. 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

- 4. Budget referral: Automated license plate readers for community safety improvement** *(Item Contains Revised Material)*  
**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 including bicycle and pedestrian safety infractions, 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 to standards in City of Vallejo Police Department Policy 426; and study feasibility of data access standards for some ALPRs to those set forth in Senate Bill 210 (Wiener, 2021).  
**Financial Implications:** See report  
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120
- 5. Restoration of Red Light Camera Program**  
**From: Councilmember Taplin (Author)**  
**Referred: October 12, 2021**  
**Due: March 14, 2022**  
**Recommendation:** Refer the City Manager to pursue the reestablishment of the City's Red Light Camera Program and enter into any third party contracts necessary to reinstall red light cameras at the following locations:  
University Avenue and Shattuck Avenue, University Avenue and Sixth Street, Martin Luther King Jr. Way and Adeline Street, San Pablo Avenue and Ashby Avenue, San Pablo Avenue and University Avenue, San Pablo Avenue and Dwight Avenue, Sacramento Street and Ashby Avenue, Sacramento Street and University Avenue, Sacramento Street and Dwight Avenue, Sacramento Street and Alcatraz Avenue.  
Additional intersections to be determined by the Transportation Division of the Public Works Department and the Berkeley Police Department.  
**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.*

- None

## 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 October 28, 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  
REGULAR MEETING MINUTES**

**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**

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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.

## MINUTES

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

**Public Comment on Non-Agenda Matters:** 4 Speakers

### Minutes for Approval

*Draft minutes for the Committee's consideration and approval.*

#### 1. Minutes - August 9 and September 27, 2021

**Action:** M/S/C (Bartlett/Wengraf) to approve the minutes as presented.

**Vote:** All Ayes

### 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

**Action:** The item was continued at the request of the author.

**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

**Action:** 25 speakers. Supplemental material submitted and a presentation made by the author. Discussion held. The item was continued to the next regular meeting.

## 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

- None

## Adjournment

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

**Vote:** All Ayes

Adjourned at 12:35 p.m.

I hereby certify that this is a true and correct record of Public Safety Policy Committee meeting held on October 4, 2021.


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Michael MacDonald, Assistant City Clerk

### **Communications**

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No Material  
Available for  
this Item

There is no material for this item.

**City Clerk Department**  
2180 Milvia Street  
Berkeley, CA 94704  
(510) 981-6900

**The City of Berkeley Public Safety Policy Committee Webpage:**

[https://www.cityofberkeley.info/Clerk/Home/Policy\\_Committee\\_Public\\_Safety.aspx](https://www.cityofberkeley.info/Clerk/Home/Policy_Committee_Public_Safety.aspx)





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.**

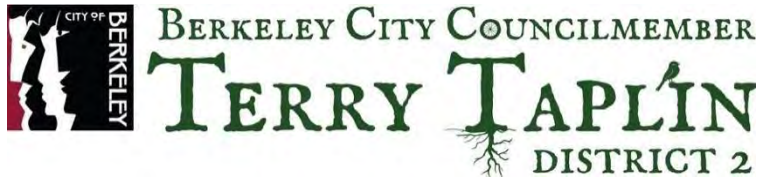
In enacting and implementing this ordinance, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately 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 including bicycle and pedestrian safety infractions, 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 to standards in City of Vallejo Police Department Policy 426 ordinance and distribution; and study feasibility of data access standards for some ALPRs to those 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.

<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.

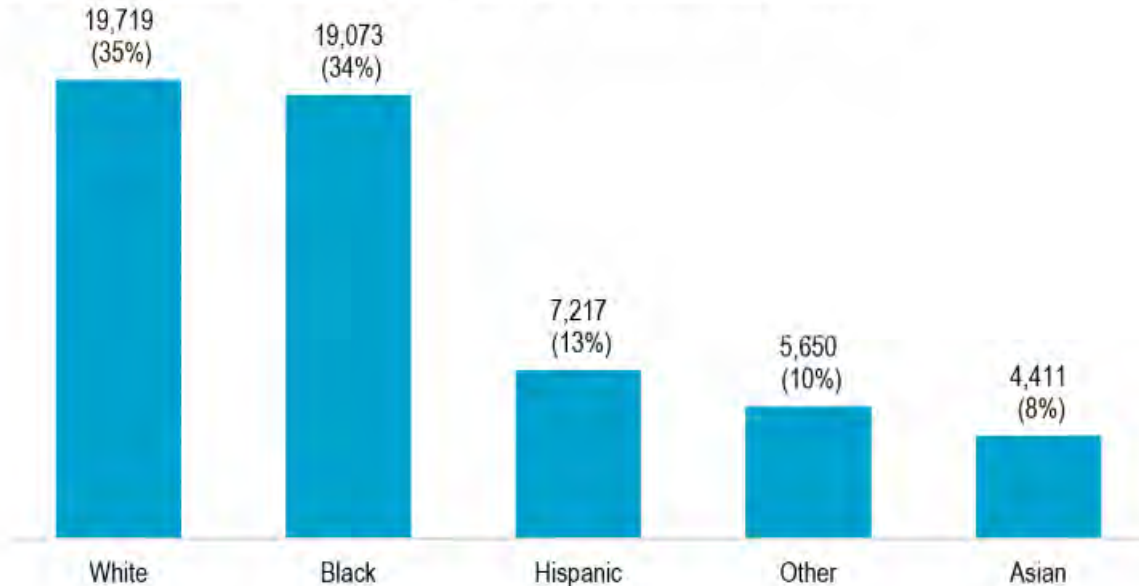
<sup>9</sup> Koper, C. S., & Lum, C. (2019). The Impacts of Large-Scale License Plate Reader Deployment on Criminal Investigations. *Police Quarterly*, 22(3), 305–329. <https://doi.org/10.1177/1098611119828039>

<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.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160SB34](https://leginfo.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.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180SB54](https://leginfo.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> These may be infeasible for local jurisdictions with current and anticipated staffing levels but merit some consideration.

#### ALTERNATIVES CONSIDERED

1. Gun buyback programs have not demonstrated significant efficacy except in limited circumstances within more holistic community-based violence prevention programs.<sup>24</sup>

2. With the stalling of Assembly Bill 550<sup>25</sup> in this year's legislative session, automated speeding cameras are not currently permitted in the state of California.

3. On October 27, 2020, the City Council referred to the Community Engagement Process for Reimagining Public Safety the creation of a Group Violence Intervention Program (GVI), or "Operation Ceasefire," that will assemble a Berkeley-centered interjurisdictional working group of community members, law enforcement personnel, and supportive services providers to address gun violence. Current staffing capacity in the City Manager's office is insufficient to develop such a program before the process is complete.

#### ENVIRONMENTAL IMPACTS

None.

#### FISCAL IMPACTS

In 2017, an amendment to Contract No. 9977<sup>26</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

Councilmember Terry Taplin, District 2, (510) 981-7120, [ttaplin@cityofberkeley.info](mailto:ttaplin@cityofberkeley.info)

#### ATTACHMENTS

1. City of Vallejo ALPR Policy

<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> [Makarios, M. D., & Pratt, T. C. \(2012\). The Effectiveness of Policies and Programs That Attempt to Reduce Firearm Violence: A Meta-Analysis. Crime & Delinquency, 58\(2\), 222-244. https://doi.org/10.1177/0011128708321321.](https://doi.org/10.1177/0011128708321321)

<sup>25</sup> [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220AB550](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB550)

<sup>26</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)



Policy

# 426

## Automated License Plate Readers (ALPRs)

### 426.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance for the capture, storage, and use of digital data obtained through the use of Automated License Plate Reader (ALPR) technology.

### 426.2 DEFINITIONS

- (a) **Automated License Plate Reader (ALPR):** A device that uses cameras and computer technology to compare digital images to lists of known information of interest.
- (b) **ALPR Operator:** Trained Department members who may utilize ALPR system/equipment. ALPR operators may be assigned to any position within the Department, and the ALPR Administrator may order the deployment of the ALPR systems for use in various efforts.
- (c) **ALPR Administrator:** The Investigations Bureau Captain or the Chief's designee, serves as the ALPR Administrator for the Department.
- (d) **Hot List:** A list of license plates associated with vehicles of interest compiled from one or more databases including, but not limited to, NCIC, CA DMV, Local BOLO's, etc.
- (e) **Vehicles of Interest:** Including, but not limited to vehicles which are reported as stolen; display stolen license plates or tags; vehicles linked to missing and/or wanted persons and vehicles flagged by the Department of Motor Vehicle Administration or law enforcement agencies.
- (f) **Detection:** Data obtained by an ALPR of an image (such as a license plate) within public view that was read by the device, including potential images (such as the plate and description of vehicle on which it was displayed), and information regarding the location of the ALPR system at the time of the ALPR's read.
- (g) **Hit:** Alert from the ALPR system that a scanned license plate number may be in the National Crime Information Center (NCIC) or other law enforcement database for a specific reason including, but not limited to, being related to a stolen car, wanted person, missing person, domestic violation protective order or terrorist-related activity.

### 426.3 ADMINISTRATION

The ALPR technology, also known as License Plate Recognition (LPR), allows for the automated detection of license plates along with the vehicle make, model, color and unique identifiers through the Vallejo Police Department's ALPR's system and the vendor's vehicle identification technology. The technology is used by the Vallejo Police Department to convert data associated with vehicle license plates and vehicle descriptions for official law enforcement purposes, including identifying stolen or wanted vehicles, stolen license plates and missing persons. It may also be used to gather information related to active warrants, homeland security, electronic surveillance, suspect interdiction and stolen property recovery.

All installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Department Information Technology Manager. The Department Information Technology Manager will assign members under his/her command to administer the day-to-day operation of the ALPR equipment and data.

#### **426.3.1 ALPR ADMINISTRATOR**

The Investigations Bureau 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):

- (a) Only properly trained sworn officers, crime analysts, and police assistants are allowed access to the ALPR system or to collect ALPR information.
- (b) Ensuring that training requirements are completed for authorized users.
- (c) ALPR system monitoring to ensure the security of the information and compliance with applicable privacy laws.
- (d) Ensuring that procedures are followed for system operators and to maintain records of access in compliance with Civil Code § 1798.90.52.
- (e) The title and name of the current designee in overseeing the ALPR operation is maintained. Continually working with the Custodian of Records on the retention and destruction of ALPR data.
- (f) Ensuring this policy and related procedures are conspicuously posted on the department's website.

#### **426.4 OPERATIONS**

Use of an ALPR is restricted to the purposes outlined below. Department members shall not use, or allow others to use the equipment or database records for any unauthorized purpose (Civil Code § 1798.90.51; Civil Code § 1798.90.53).

- (a) An ALPR shall only be used for official law enforcement business.
- (b) An ALPR may be used in conjunction with any routine patrol operation or criminal investigation; reasonable suspicion or probable cause is not required before using an ALPR.
- (c) Partial license plates and unique vehicle descriptions reported during major crimes should be entered into the ALPR system in an attempt to identify suspect vehicles.
- (d) No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.
- (e) If practicable, the officer should verify an ALPR response through the California Law Enforcement Telecommunications System (CLETS) before taking enforcement action that is based solely on an ALPR alert. Once an alert is received, the operator should confirm

that the observed license plate from the system matches the license plate of the observed vehicle. Before any law enforcement action is taken because of an ALPR alert, the alert will be verified through a CLETS inquiry via MDC or through Dispatch. Members will not take any police action that restricts the freedom of any individual based solely on an ALPR alert unless it has been validated. Because the ALPR alert may relate to a vehicle and may not relate to the person operating the vehicle, officers are reminded that they need to have reasonable suspicion and/or probable cause to make an enforcement stop of any vehicle. (For example, if a vehicle is entered into the system because of its association with a wanted individual, Officers should attempt to visually match the driver to the description of the wanted subject prior to making the stop or should have another legal basis for making the stop.)

- (f) Hot Lists. Designation of hot lists to be utilized by the ALPR system shall be made by the ALPR Administrator or his/her designee. Hot lists shall be obtained or compiled from sources as may be consistent with the purposes of the ALPR system set forth in this Policy. Hot lists utilized by the Department's LPR system may be updated by agency sources more frequently than the Department may be uploading them and thus the Department's LPR system will not have access to real time data. Occasionally, there may be errors in the LPR system's read of a license plate. Therefore, an alert alone shall not be a basis for police action (other than following the vehicle of interest). Prior to initiation of a stop of a vehicle or other intervention based on an alert, Department members shall undertake the following:

(1) **Verification of status on a Hot List.** An officer must receive confirmation, from a Vallejo Police Department Communications Dispatcher or other department computer device, that the license plate is still stolen, wanted, or otherwise of interest before proceeding (absent exigent circumstances).

(2) **Visual verification of license plate number.** Officers shall visually verify that the license plate of interest matches identically with the image of the license plate number captured (read) by the LPR, including both the alphanumeric characters of the license plate, state of issue, and vehicle descriptors before proceeding. Department members alerted to the fact that an observed motor vehicle's license plate is entered as a Hot Plate (hit) in a specific BOLO (be on the lookout) list are required to make a reasonable effort to confirm that a wanted person is actually in the vehicle and/or that a reasonable basis exists before a Department member would have a lawful basis to stop the vehicle.

(3) Department members will clear all stops from hot list alerts by indicating the positive ALPR Hit, i.e., with an arrest or other enforcement action. If it is not obvious in the text of the call as to the correlation of the ALPR Hit and the arrest, then the Department member shall update with the Communications Dispatcher and original person and/or a crime analyst inputting the vehicle in the hot list (hit).

(4) General Hot Lists (SVS, SFR, and SLR) will be automatically downloaded into the ALPR system a minimum of once a day with the most current data overwriting the old data.

(5) All entries and updates of specific Hot Lists within the ALPR system will be documented by the requesting Department member within the appropriate general offense report. As such, specific Hot Lists shall be approved by the ALPR

Administrator (or his/her designee) before initial entry within the ALPR system. The updating of such a list within the ALPR system shall thereafter be accomplished pursuant to the approval of the Department member's immediate supervisor. The hits from these data sources should be viewed as informational; created solely to bring the officers attention to specific vehicles that have been associated with criminal activity.

All Hot Plates and suspect information entered into the ALPR system will contain the following information as a minimum:

- Entering Department member's name
- Related case number.
- Short synopsis describing the nature of the originating call

(g) Training. No member of this Department shall operate ALPR equipment or access ALPR data without first completing Department-approved training.

(h) Login/Log-Out Procedure. To ensure proper operation and facilitate oversight of the ALPR system, all users will be required to have individual credentials for access and use of the systems and/or data, which has the ability to be fully audited.

**Permitted/Impermissible Uses.** The ALPR system, and all data collected, is the property of the Vallejo Police Department. Department personnel may only access and use the ALPR system for official and legitimate law enforcement purposes consistent with this Policy. The following uses of the ALPR system are specifically prohibited:

- (1) Invasion of Privacy: Except when done pursuant to a court order such as a search warrant, is a violation of this Policy to utilize the ALPR to record license plates except those of vehicles that are exposed to public view (e.g., vehicles on a public road or street, or that are on private property but whose license plate(s) are visible from a public road, street, or a place to which members of the public have access, such as the parking lot of a shop or other business establishment).
- (2) Harassment or Intimidation: It is a violation of this Policy to use the ALPR system to harass and/or intimidate any individual or group.
- (3) Use Based on a Protected Characteristic. It is a violation of this policy to use the LPR system or associated scan files or hot lists solely because of a person's, or group's race, gender, religion, political affiliation, nationality, ethnicity, sexual orientation, disability, or other classification protected by law.
- (4) Personal Use: It is a violation of this Policy to use the ALPR system or associated scan files or hot lists for any personal purpose.
- (5) First Amendment Rights. It is a violation of this policy to use the LPR system or associated scan files or hot lists for the purpose or known effect of infringing upon First Amendment rights.

Anyone who engages in an impermissible use of the ALPR system or associated scan files or hot lists may be subject to:

- criminal prosecution,
- civil liability, and/or
- administrative sanctions, up to and including termination, pursuant to and consistent with the relevant collective bargaining agreements and Department policies.

#### **426.4 DATA COLLECTION AND RETENTION**

The Investigations Bureau Captain is responsible for ensuring systems and processes are in place for the proper collection and retention of ALPR data. Data will be transferred from vehicles to the designated storage in accordance with department procedures.

All ALPR data downloaded to the server should be stored for no longer than one year, and in accordance with the established records retention schedule. Thereafter, ALPR data should be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a discovery request or other lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media and booked into evidence.

ALPR vendor, Flock Safety will store the data (data hosting) and ensure proper maintenance and security of data stored in their data towers. Flock Safety will purge their data at the end of the 30 days of storage. However, this will not preclude VPD from maintaining any relevant vehicle data obtained from the system after that period pursuant to the established City of Vallejo retention schedule mentioned above or outlined elsewhere.

Restrictions on use of ALPR Data: Information gathered or collected, and records retained by Flock Safety cameras or any other VPD ALPR system will not be sold, accessed, or used for any purpose other than legitimate law enforcement or public safety purposes.

#### **426.5 ACCOUNTABILITY and SAFEGUARDS**

All data will be closely safeguarded and protected by both procedural and technological means. The Vallejo Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) All non-law enforcement requests for access to stored ALPR data shall be processed in accordance with applicable law.
- (b) All ALPR data downloaded to the mobile workstation shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date, and time.
- (c) Persons approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action.

- (d) Such ALPR data may be released to other authorized and verified law enforcement officials and agencies for legitimate law enforcement purposes.
- (e) Every ALPR Detection Browsing Inquiry must be documented by either the associated Vallejo Police case number or incident number, and/or a reason for the inquiry.

For security or data breaches, see the Records Release and Maintenance Policy.

#### **426.6 POLICY**

The policy of the Vallejo Police Department is to utilize ALPR technology to capture and store digital license plate data and images while recognizing the established privacy rights of the public.

All data and images gathered by the ALPR are for the official use of this department. Because such data may contain confidential information, it is not open to public review.

The Vallejo Police Department does not permit the sharing of ALPR data gathered by the City or its contractors/subcontractors for 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).

#### **462.7 ALPR DATA DETECTION BROWSING AUDITS**

It is the responsibility of the Professional Standards Division (PSD) Lieutenant or the Chief's designee to ensure that an audit is conducted of ALPR detection browsing inquiries at least once during each calendar year. The Department will audit a sampling of the ALPR system utilization from the prior 12-month period to verify proper use in accordance with the above-authorized uses. The audit shall randomly select at least 10 detection browsing inquiries conducted by department employees during the preceding six-month period and determine if each inquiry meets the requirements established in policy section 462.5(e).

The audit shall be documented in the form of an internal department memorandum to the Chief of Police. The memorandum shall include any data errors found so that such errors can be corrected. After review by the Chief of Police, the memorandum and any associated documentation shall be filed and retained by PSD.

#### **426.8 RELEASING ALPR DATA**

The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law.

- (a) The agency makes a written request for the ALPR data that includes:
  - (1) The name of the agency.
  - (2) The name of the person requesting.
  - (3) The intended purpose of obtaining the information.

- (b) The request is reviewed by the Chief of Police or the authorized designee and approved before the request is fulfilled.
- (c) The Chief of Police or the authorized designee will consider the California Values Act (Government Code § 7282.5; Government Code § 7284.2 et seq), before approving the release of ALPR data. The Vallejo Police Department does not permit the sharing of ALPR data gathered by the City or its contractors/subcontractors for purpose of federal immigration enforcement, these federal immigration agencies include Immigrations and Customs Enforcement (ICE) and Customs and Border Patrol (CPB).
- (d) The approved request is retained on file. Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55).

#### **426.9 TRAINING**

The Training Sergeant should ensure that members receive department-approved training for those authorized to use or access the ALPR system (Civil Code § 1798.90.51; Civil Code § 1798.90.53).







Consent Calendar  
October 26, 2021

PUBLIC SAFETY COMMITTEE

To: Honorable Mayor and Members of the City Council

From: Councilmember Terry Taplin

Subject: Restoration of Red Light Camera Program

#### RECOMMENDATION

Refer the City Manager to pursue the reestablishment of the City's Red Light Camera Program and enter into any third party contracts necessary to reinstall red light cameras at the following locations:

- University Avenue and Shattuck Avenue
- University Avenue and Sixth Street
- Martin Luther King Jr. Way and Adeline Street
- San Pablo Avenue and Ashby Avenue
- San Pablo Avenue and University Avenue
- San Pablo Avenue and Dwight Avenue
- Sacramento Street and Ashby Avenue
- Sacramento Street and University Avenue
- Sacramento Street and Dwight Avenue
- Sacramento Street and Alcatraz Avenue
- Additional intersections to be determined by the Transportation Division of the Public Works Department and the Berkeley Police Department

#### BACKGROUND

From 2004 to 2008, the City of Berkeley operated a Red Light Camera Program at three intersections: University and Shattuck, University and Sixth, and MLK Jr. and Adeline. The cameras, which were operated through a contract with the third party vendor Transol USA, captured pictures of vehicles running red lights and referred the images and license plate details to the Berkeley Police Department for the issuance of citations. In December 2008, the City's contract with Transol USA expired and the Red Light Camera Program ended its operations.

Since the end of the program, drivers running red lights have continued to be a serious safety threat for Berkeley's pedestrians, cyclists, and drivers. Nationally, red light

violations are responsible for an estimated 165,00 injuries per year<sup>1</sup>, including injuries at Sacramento & Cedar this past June.<sup>2</sup> Studies have shown that cities that implement red light cameras see a definitive decline in injuries and fatalities caused by red light camera violations.<sup>3</sup> Furthermore, studies have shown that high-injury intersections with red light cameras have shown a decline in total citations issued over time, offering promising evidence of the ability of red light cameras to discourage violations rather than simply punish them.<sup>4</sup> Berkeley's own Vision Zero Action Plan identifies red light cameras as a possible tool for eliminating all traffic injuries.<sup>5</sup> The reestablishment of a Red Light Camera Program would also further Berkeley's own Strategic Plan goals for creating "a resilient, safe, connected, and prepared City" and providing "state-of-the-art, well-maintained infrastructure, amenities, and facilities."<sup>6</sup> It is time that red light cameras return to use in making our streets safer for all.

#### FISCAL IMPACTS

Staff time and costs related to contracting with a third-party red light camera vendor.

#### ENVIRONMENTAL IMPACTS

None.

#### CONTACT

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

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<sup>1</sup><https://krasneylaw.net/red-light-accidents-in-california/#:~:text=An%20estimated%20165%2C000%20motorists%2C%20cyclists,in%20the%20past%2030%20days.>

<sup>2</sup> <https://www.berkeleyside.org/2021/06/23/berkeley-collisions-cedar-sacramento-traffic-safety>

<sup>3</sup> <https://www.cdc.gov/motorvehiclesafety/calculator/factsheet/redlight.html>

<sup>4</sup> <https://www.cdc.gov/motorvehiclesafety/calculator/factsheet/redlight.html>

<sup>5</sup>[https://www.cityofberkeley.info/uploadedFiles/Public\\_Works/Level\\_3\\_-\\_Transportation/Vision\\_Zero\\_Annual\\_Report\\_April\\_2021%20-%20REVISED.pdf](https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Transportation/Vision_Zero_Annual_Report_April_2021%20-%20REVISED.pdf)

<sup>6</sup> <https://www.cityofberkeley.info/strategic-plan/>