



Police Review Commission (PRC)

**LEXIPOL POLICIES SUBCOMMITTEE**  
Commissioners Perezvelez (Chair), Ramsey, Roberts

**AGENDA**

**Wednesday, August 7, 2019**  
**4:00 p.m.**

Sitka Spruce Conference Room  
1947 Center Street, 1st Floor,  
Berkeley

**1. CALL TO ORDER**

**2. PUBLIC COMMENT**

*(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on items on this agenda only.)*

**3. APPROVAL OF AGENDA**

**4. NEW BUSINESS (discussion and action)**

a. Review the following:

Policy 1302 – Surveillance Use Policy - Automated License Plate Readers

Policy 1302 Appendix A – Surveillance Acquisition Report - ALPRs

Policy 422 – Automated License Plate Readers

**5. SCHEDULE NEXT MEETING DATE**

**6. ADJOURNMENT**

**Communications Disclaimer**

Communications to the Police Review Commission, like all communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the PRC Secretary. If you do not want your contact information included in the public record, do not include that information in your communication. Please contact the PRC Secretary for further information.

**Communication Access Information (A.R.1.12)**

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

**SB 343 Disclaimer**

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at the Police Review Commission, located at 1947 Center Street, 1<sup>st</sup> floor, during regular business hours.

Contact the Police Review Commission at (510) 981-4950 or [prc@cityofberkeley.info](mailto:prc@cityofberkeley.info).

## Surveillance Use Policy - ALPR

### 1302.1 PURPOSE

This Surveillance Use Policy is issued in compliance with BMC 2.99, and incorporates by reference language from the Berkeley Police Department ALPR Policy #422 and adds elements as required by BMC 2.99.

The policy of the Berkeley Police Department is to utilize ALPR technology to capture and store digital license plate data and images 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. (Ref. policy 422.2)

### 1302.2 AUTHORIZED AND PROHIBITED USES USE

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). (Ref. policy 422.4)

- (a) An ALPR shall only be used for official law enforcement business.
- (b) An ALPR may be used in conjunction with any routine to support a patrol operation or criminal investigation. Reasonable suspicion or probable cause is not required before using an ALPR.
- (c) While an ALPR may be used to canvass license plates around any crime scene, particular consideration should be given to using ALPR-equipped cars to canvass areas around homicides, shootings and other major incidents. Partial license plates reported during major crimes should be entered into the ALPR system in an attempt to identify suspect vehicles.

### 1302.3 DATA COLLECTION

All data and images gathered by an ALPR are for the official use of the Berkeley Police Department. Such data may contain confidential CLETS information and is not open to public review. ALPR information gathered and retained by this department may be used and shared with prosecutors or other law enforcement agencies only as permitted by law. (Ref. policy 422.5)

### 1302.4 DATA ACCESS

- (a) No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.
- (b) No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so.
- (c) 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.

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### **1302.5 DATA PROTECTION**

All saved data will be safeguarded and protected by both procedural and technological means. The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code § 1798.90.51; Civil Code § 1798.90.53) (Ref. policy 422.6):

- (a) All ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code § 1798.90.52).
- (b) Berkeley Police Department members 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 and parking enforcement.
- (c) Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
- (d) Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units shall be marked, corrected or deleted in accordance with the type and severity of the error in question.

### **1302.6 CIVIL LIBERTIES AND RIGHTS PROTECTION:**

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

### **1302.7 DATA RETENTION**

The Investigations Division Captain, or his/her designee, is responsible for ensuring proper collection and retention of ALPR data. Technical support and assistance shall be provided by the City of Berkeley's Information Technology (IT) department and associated ALPR system providers/vendors as identified below. IT staff will not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT's role will be limited to providing initial infrastructure set-up, unless particular IT staff members have been cleared by DOJ background checks and authorized by the Chief of Police to receive ALPR records.

All ALPR data downloaded to the server should be stored for a minimum of one year (Government Code § 34090.6) 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 lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media

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and booked into evidence. (Ref. policy 422.5)

- (a) Collected images and metadata of hits will not be stored for more than 365 days. Metadata of reads will not be stored for more than 30 days. Images of reads will not be transferred to the server.

### **1302.8 PUBLIC ACCESS**

- (a) Non-law enforcement requests for access to stored ALPR data shall be processed according to the Records Maintenance and Release Policy in accordance with applicable law. (Ref. policy 422.6 (a))
- (b) Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requestor in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question. (Ref. policy 422.6 (b))

### **1302.9 THIRD-PARTY DATA-SHARING**

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. ALPR data is subject to the provisions of BPD Policy 415, and hence may not be shared with federal immigration enforcement officials.

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).

Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager. (Ref. policy 422.6 (e))

### **1302.10 TRAINING**

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

### **1302.11 AUDITING AND OVERSIGHT**

ALPR system audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant on a regular basis, at least biannually. (Ref. policy 422.6 (g))

### **1302.12 MAINTENANCE**

Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain. The Investigations Division Captain will assign members under his/her command to administer the day-to-day operation of the ALPR equipment and data. (Ref. policy 422.3)

#### **1302.12.1 ALPR ADMINISTRATOR**

The Investigations Division Captain, or his/her designee, shall be responsible for developing

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guidelines and procedures to comply 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) (Ref. policy 422.3.1):

- (a) A description of the job title or other designation of the members and independent contractors who are authorized to use or access the ALPR system or to collect ALPR information.
- (b) Training requirements for authorized users.
- (c) A description of how the ALPR system will be monitored to ensure the security of the information and compliance with applicable privacy laws.
- (d) Procedures for system operators 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.
- (f) Ensuring this policy and related procedures are conspicuously posted on the City's website.

## AUTOMATED LICENSE PLATE READER (ALPR) DEVICES

### A. DESCRIPTION

Automated License Plate Readers (ALPRs) are high-speed, computer controlled camera systems that are typically mounted on Berkeley Police Department Parking Enforcement Vehicles.

ALPRs capture license plate numbers which come into view, along with the location, date and time. The data, which includes a photo of the front or the back of the car displaying the license plate, is then uploaded to a central server.

### B. PURPOSE

The Berkeley Police Department's Parking Enforcement Unit utilizes vehicles equipped with ALPRs to conduct enforcement of posted time limits in commercial areas and Residential Preferential Parking (RPP) permit areas. These ALPR's also access information in the California Law Enforcement Telecommunications System's (CLETS) Stolen Vehicle System (SVS) database, which provides information on matches for stolen and wanted vehicles.

The Berkeley Police Department's Scofflaw Enforcement program (often referred to as the "booting" program) utilizes an ALPR to scan license plates, and check the scanned "reads" against a list of vehicles which have five or more outstanding parking citations exceeding 30 days old. Typically, upon a confirmed "hit," the vehicle is immobilized with a "boot", or towed, and the owner has to pay the outstanding citations and fees in order to release the boot and/or recover their car from storage. This allows the City to recover outstanding parking citation fees.

### C. LOCATION

Parking Enforcement vehicles travel throughout the city; using the ALPRs as described above.

### D. IMPACT

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. The procedures utilized with ALPR Units will help to ensure unauthorized use of its data. The procedures will ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

**E. MITIGATION**

All saved data will be safeguarded and protected by both procedural and technological means which are implemented to safeguard the public from any impacts identified in subsection (D). See subsection (G) for further.

**F. DATA TYPES AND SOURCES**

Photographs of license plates and location data may be obtained through the use of ALPR Units.

**G. DATA SECURITY**

The Berkeley 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):

1. All ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code § 1798.90.52).
2. Berkeley Police Department members 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 and parking enforcement.
3. Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
4. Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units shall be marked, corrected or deleted in accordance with the type and severity of the error in question.

**H. FISCAL COST**

In 2015, Public Works brought an ALPR Contract to City Council. Council approved a contract for Public Works to buy five Genetec ALPR Units with PCS Mobile communication, for a pilot program for \$450,000.

In 2017, after success with the program, City Council approved an amendment to the contract, allowing Public Works to purchase 15 more ALPR Units for Parking Enforcement vehicles, and to continue its use of PCS Mobile, for 1,200,000. The money was allocated from the goBerkeley/Federal Highway Administration Parking Meter Fund.

Yearly service for the ALPR Units includes warranties, hosting services, cellular connection, mobile computing, and training which varies. The costs through fiscal year 2022 are currently estimated at \$1,175,000.



Personnel costs are minimal in that the ALPR Units are used as a resource during normal working hours.

#### I. THIRD PARTY DEPENDENCE AND ACCESS

1. Vendor Access-Scofflaw Enforcement: The contracted vendor for the City's Scofflaw Enforcement program is currently Paylock. Paylock stores data on a secure server, and provides access to authorized personnel via Paylock's "Bootview" secure website, as described below:
  - a. All data captured by the ALPR is stored on the laptop for 30 days, and is only accessible during that period via the ALPR proprietary software. This includes reads, hits, and photographs associated with each.
  - b. When a car is booted and/or towed, the read, hit and photographic data relating to the booting and/or towing of scofflaw vehicles is uploaded to Paylock's secure server. No other data is uploaded to Paylock's secure server.
2. Vendor Access-General Parking Enforcement and goBerkeley Program: The contracted vendor for the City's Parking Enforcement ALPR is currently Genetec. The city uses Genetec ALPRs to support efficient enforcement of posted time limit parking and Residential Preferential Parking permits.
  - a. In addition, Genetec periodically provides reports to the City of Berkeley Transportation Division's "goBerkeley" parking management program so that the City's program can analyze data about parking demand. These reports do not contain any information about a vehicle's license plate number, the name of the registered owner, address of registered owner, or any other information gleaned from the license plate number associated with a particular vehicle. Rather, the reports consist of completely anonymized information, using identification numbers that are not associated with a particular license plate or registered owner.
  - b. The reports will provide only the date, time, location, approximate address, "goBerkeley" blockface ID, and Residential Permit Pass (RPP) area in which a vehicle was observed. If a citation was not issued for an RPP or other time limit violation, the report may also provide the reason a parking enforcement officer concluded there was no parking violation, e.g., RPP visitor pass, disabled placard or license plate, etc.
3. Department of Information Technology Access: Technical support and assistance for ALPR's is provided by the City of Berkeley's Department of Information Technology (IT) and associated ALPR system providers/vendors as identified herein. IT staff who

do not have the proper clearance and training do not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT provides initial infrastructure set-up, and continued systems support as needed to ensure efficient and accurate performance of the ALPR hardware and software. Only IT staff members who have successfully undergone DOJ background checks and training are authorized by the Chief of Police to view specific ALPR records.

4. **Other Law Enforcement Agency Access:** ALPR data may only be shared with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law. 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). Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
5. **Member Access:** No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training. No ALPR operator may access CLETS data unless otherwise authorized to do so. If practicable, the officer should verify an ALPR response through CLETS before taking enforcement action that is based solely on an ALPR alert.
6. **Public Access:** Non-law enforcement requests for access to stored ALPR data shall be processed according to the Records Maintenance and Release Policy in accordance with applicable law. Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requestor in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question.

#### **J. ALTERNATIVES**

None.

#### **K. EXPERIENCE OF OTHER ENTITIES**

The use of ALPR technology is common amongst law enforcement agencies throughout the country, in support of parking enforcement, and law enforcement criminal investigations.

## Automated License Plate Readers (ALPRs)

**422.1 PURPOSE AND SCOPE** *New language; same intent as first sentence of AO sec. 1. Omits details of how ALPR technology works.*

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.

### 422.2 POLICY

The policy of the Berkeley 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. *New.*

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. *Similar to AO sec. 4, 1st two sentences.*

**422.3 ADMINISTRATION** *Same as AO sec. 2 except omits reference to "through the Traffic Bureau."*

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

**422.3.1 ALPR ADMINISTRATOR** *All of 422.3.1 is new.*

The Investigations Division Captain, or his/her designee, shall be responsible for developing guidelines and procedures to comply 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): *(SB 34, Collection of License Plate Information)*

- (a) A description of the job title or other designation of the members and independent contractors who are authorized to use or access the ALPR system or to collect ALPR information.
- (b) Training requirements for authorized users.
- (c) A description of how the ALPR system will be monitored to ensure the security of the information and compliance with applicable privacy laws.
- (d) Procedures for system operators 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.
- (f) Ensuring this policy and related procedures are conspicuously posted on the City's website.

**422.4 OPERATIONS** *1st sentence new. Remainder same as AO sec. 3 except as noted.*

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). *All references to Civil Code throughout this policy are new.*

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- (a) An ALPR shall only be used for official law enforcement business. ("and legitimate" after "official" omitted.)
  - (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. 1st sentence new.
  - (c) While an ALPR may be used to canvass license plates around any crime scene, particular consideration should be given to using ALPR-equipped cars to canvass areas around homicides, shootings and other major incidents. Partial license plates reported during major crimes should be entered into the ALPR system in an attempt to identify suspect vehicles. New section.
  - (d) No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.
  - (e) No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so.
  - (f) If practicable, the officer should verify an ALPR response through the California Law CLETS before taking enforcement action that is based solely on an ALPR alert. New section.

#### 422.5 DATA COLLECTION AND RETENTION

All data and images gathered by an ALPR are for the official use of the Berkeley Police Department. Such data may contain confidential CLETS information and is not open to public review. ALPR information gathered and retained by this department may be used and shared with prosecutors or other law enforcement agencies only as permitted by law. Same as AO sec. 4.

The [Investigations Division Captain, or his/her designee,] is responsible for ensuring proper collection and retention of ALPR data. [formerly "Parking Enforcement Manager"] All else from AO sec. 5.

Technical support and assistance for ALPR's is provided by the City of Berkeley's Department of Information Technology (IT) and associated ALPR system providers/vendors as identified herein. IT staff [who do not have the proper clearance and training] do not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. [IT provides initial infrastructure set-up, and continued systems support as needed to ensure efficient and accurate performance of the ALPR hardware and software.] Only IT staff members who have successfully undergone DOJ background checks and training are authorized by the Chief of Police to view specific ALPR records. [new]  
Revised; formerly IT role limited to initial set-up.]

All ALPR data downloaded to the server should be stored for a minimum of one year (Government Code § 34090.6) 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 lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media and booked into evidence. Same as AO sec. 6 w/ slight rewording.

- (a) Collected images and metadata of hits will not be stored for more than 365 days. Metadata of reads will not be stored for more than 30 days. Images of reads will not be transferred to the server. Same as AO sec. 6(a).

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**422.6 ACCOUNTABILITY** Same as AO sec. 7 except as noted.

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

- (a) Non-law enforcement requests for access to stored ALPR data shall be processed according to the Records Maintenance and Release Policy in accordance with applicable law.
- (b) Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requestor in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question.
- (c) All ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code § 1798.90.52).
- (d) Berkeley Police Department members 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[or]parking enforcement. [formerly "and"]  
Release to other law enforcement officials omitted from this sec. and incorporated into 422.7 below.
- (e) Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
- (f) Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units shall be marked, corrected or deleted in accordance with the type and severity of the error in question
- (g) ALPR system audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant on a regular basis, at least biannually. [Added.]

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

**422.7 RELEASING ALPR DATA** Mostly new. Expands on former AO sec. 7. e.\*

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, using the following procedures:

- (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.

\* "ALPR data may be released to other authorized and verified law enforcement officials and agencies for legitimate law enforcement purposes only in connection with specific criminal investigations."

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- (b) The request is reviewed by the Investigations Division Captain, or his/her designee, and approved before the request is fulfilled.
  - (c) 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).

#### 422.8 GENERAL PARKING AND SCOFFLAW ENFORCEMENT

The Berkeley Police Department's Parking Enforcement Unit utilizes vehicles equipped with ALPRs to conduct enforcement of posted time limits in commercial areas and Residential Preferential Parking (RPP) permit areas. These ALPR's also access information in the CLETS Stolen Vehicle System (SVS) database, which provides information on matches for stolen and wanted vehicles. Similar to AO sec. 9 &10.

The Berkeley Police Department's Scofflaw Enforcement program (often referred to as the "booting" program) utilizes an ALPR to scan license plates, and check the scanned "reads" against a list of vehicles which have five or more outstanding parking citations exceeding 30 days old. Typically, upon a confirmed "hit," the vehicle is immobilized with a "boot", or towed, and the owner has to pay the outstanding citations and fees in order to release the boot and/or recover their car from storage. This allows the City to recover outstanding parking citation fees. Almost identical to AO sec. 11. Omits where ALPR equipment is installed.

The contracted vendor for the City's Scofflaw Enforcement program is currently Paylock. Paylock stores data on a secure server, and provides access to authorized personnel via Paylock's "Bootview" secure website, as described below: Same as AO sec. 12.

All data captured by the ALPR is stored on the <sup>[New]</sup> booting vehicle's laptop for 30 days, and is only accessible during that period via the ALPR proprietary software. This includes reads, hits, and photographs associated with each. Similar to AO sec. 12.a.

When a car is booted and/or towed, the read, hit and photographic data relating to the booting and/or towing of scofflaw vehicles is uploaded to Paylock's secure server. No other data is uploaded to Paylock's secure server. Same as AO sec. 13.

The contracted vendor for the City's Parking Enforcement ALPR is currently Genetec. The city uses Genetec ALPRs to support efficient enforcement of posted time limit parking and Residential Preferential Parking permits. 1st sentence similar; 2nd one new.

In addition, Genetec periodically provides reports to the City of Berkeley Transportation Division's "goBerkeley" parking management program so that the City's program can analyze data about parking demand. These reports do not contain any information about a vehicle's license plate number, the name of the registered owner, address of registered owner, or any other information gleaned from the license plate number associated with a particular vehicle. Rather, the reports consist of completely anonymized information, using identification numbers that are not associated with a particular license plate or registered owner. Substantially similar to AO sec. 14

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The reports will provide only the date, time, location, approximate address, “goBerkeley” blockface ID, and Residential Permit Pass (RPP) area in which a vehicle was observed. If a citation was not issued for an RPP or other time limit violation, the report may also provide the reason a parking enforcement officer concluded there was no parking violation, e.g., RPP visitor pass, disabled placard or license plate, etc.

## DEPARTMENT ORDER

ADMINISTRATIVE ORDER #001-2016

DATE ISSUED: 02/18/16

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**SUBJECT: AUTOMATED LICENSE PLATE READER (ALPR)**

### PURPOSE

- 1 - This order establishes guidelines for the use of the Berkeley Police Department's Automated License Plate Reader (ALPR) technology and data. ALPR technology functions by automatically capturing an image of a vehicle's license plate, transforming that image into alphanumeric characters using optical character recognition software, and storing that information, along with relevant metadata (e.g. geo-location and temporal information, as well as data about the ALPR). ALPRs may be used by the Berkeley Police Department Parking Enforcement and Traffic Units for official law enforcement purposes.

### POLICY

#### **Administration of ALPR Data**

- 2- Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain through the Traffic Bureau. The Investigations Division Captain will assign personnel under his/her command to administer the day-to-day operation of the ALPR equipment and data.

#### **ALPR Operation**

- 3- Department personnel shall not use, or allow others to use, the ALPR equipment or database records for any unauthorized purpose.
  - a. An ALPR shall only be used for official and legitimate law enforcement business.
  - b. Reasonable suspicion or probable cause is not required before using an ALPR.
  - c. No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.
  - d. No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so.



## DEPARTMENT ORDER

ADMINISTRATIVE ORDER #001-2016

DATE ISSUED: 02/18/16

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### ALPR Data Collection and Retention

- 4- All data and images gathered by an ALPR are for the official use of the Berkeley Police Department. Such data may contain confidential CLETS information and is not open to public review. ALPR information gathered and retained by this department may be used and shared with prosecutors or other law enforcement agencies only as permitted by law.
- 5- The Parking Enforcement Manager is responsible for ensuring proper collection and retention of ALPR data. Technical support and assistance shall be provided by City Department of Information Technology personnel and associated ALPR system providers/vendors as identified below. IT staff will not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT's role will be limited to providing initial infrastructure set-up, unless particular IT staff members have been cleared by DOJ background checks and authorized by the Chief of Police to receive ALPR records.
- 6- All ALPR data shall be stored as described in this order and thereafter shall 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 lawful action to produce records. In those circumstances the applicable data shall be downloaded from the server onto portable media and booked into evidence. The records will then be subject to standard evidence retention policies and statutes.
  - a. Collected images and metadata of hits will not be stored for more than 365 days. Metadata of reads will not be stored for more than 30 days. Images of reads will not be transferred to the server.

### Accountability and Safeguards

- 7- All saved data will be safeguarded and protected by both procedural and technological means. The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data:
  - a. Non-law enforcement requests for access to stored ALPR data shall be processed according to General Order R-23 in accordance with applicable law.
  - b. Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requestor is the registered owner of the vehicle in question, and when providing such

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information will not invade the privacy of a third party. The requestor in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question.

- c. ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time.
- d. Berkeley Police personnel 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 relates to a specific criminal investigation or department-related civil or administrative action and parking enforcement.
- e. ALPR data may be released to other authorized and verified law enforcement officials and agencies for legitimate law enforcement purposes only in connection with specific criminal investigations.
- f. Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state, or federal agency or entity without the express written consent of the City Manager.
- g. Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units are marked, corrected, or deleted in accordance with the type and severity of the error in question.
- h. ALPR system audits will be conducted by personnel assigned to the Professional Standards Bureau on a regular basis, at least biennially.

### **Current ALPR Deployments**

- 9- The Berkeley Police Department uses ALPR technology in the Parking Enforcement Unit for parking and scofflaw enforcement.
- 10- Effective 2/18/16, the Parking Enforcement Unit will utilize five (5) Parking Enforcement Go-4 vehicles equipped with ALPR units to conduct enforcement of posted time limits in commercial areas and Residential Preferential Parking (RPP) permit areas. These ALPR's will also access information in the DMV/SVS database (stolen and wanted vehicles). The

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current contracted vendor for this system is PCS Mobile using Genetec ALPR technology.

- 11- The Scofflaw Enforcement program (often referred to as the "booting" program) utilizes an ALPR to scan license plates, and checks scanned "reads" against a file of vehicles which have five or more outstanding parking citations exceeding 30-days old. Typically, upon a confirmed "hit," the vehicle is immobilized with a "boot", or towed, and the owner has to pay the outstanding citations and fees in order to release the boot and/or recover their car from storage. This allows the city to recover outstanding citation fees and penalties. ALPR equipment is installed in the Parking Enforcement Unit's Scofflaw Enforcement vehicle.
- 12- The contracted vendor for the City's Scofflaw Enforcement program is currently Paylock. Paylock stores data on a secure server, and provides access to authorized personnel via Paylock's "Bootview" secure website, as described below:
  - a. All data captured by the ALPR is stored on the laptop for 30 days, and is only accessible during that period via the ALPR proprietary software. This includes reads, hits, and photographs associated with each.
- 13- When a car is booted and/or towed, the read, hit, and photographic data relating to the booting and/or towing of scofflaw vehicles is uploaded to Paylock's secure server. No other data is uploaded to Paylock's secure server.
- 14- The City's Parking Enforcement ALPR vendor (currently Genetec) will periodically provide reports to the City of Berkeley Transportation Division's goBerkeley parking management program so that it can analyze data about parking demand. These reports will not contain any information about a vehicle's license plate number, the name of the registered owner, address of registered owner, or any other information gleaned from the license plate number associated with a particular vehicle. Rather, the reports will consist of 100 percent anonymized information using identification numbers that are not associated with a particular license plate or registered owner. The reports will provide only the date, time, location, approximate address, goBerkeley blockface ID, and RPP area in which a vehicle was observed. If a citation was not issued for an RPP or other time limit violation, the report may also provide the reason a parking enforcement

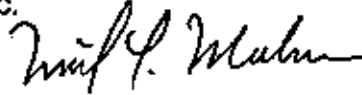
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officer concluded there was no parking violation, e.g., RPP visitor pass, disabled placard or license plate, etc.



Michael K. Meehan  
Chief of Police

References: NCRIC ALPR Policy  
SB 34  
General Order R-23

Cc: All BPD Personnel





VIA EMAIL

May 22, 2019

To: Christopher Jensen, Berkeley Assistant City Attorney ([CJensen@cityofberkeley.info](mailto:CJensen@cityofberkeley.info))

To: Berkeley Police Review Commission ([PRC@cityofberkeley.info](mailto:PRC@cityofberkeley.info))

**RE: Proposed Surveillance Use and Acquisition Policies 1300 (Body Worn Cameras), 1301 (GPS Tracking), 1302 (ALPR)**

Mr. Jensen, Oakland Privacy thanks you for forwarding the above-listed proposed surveillance use policies and surveillance technology acquisition documents and for affording us the chance to comment on them. We look forward to continued discussion and perhaps a sit-down with you to go over in detail our concerns.

Oakland Privacy is a citizen's coalition that works regionally to defend the right to privacy, enhance public transparency, and increase oversight of law enforcement, particularly regarding the use of surveillance techniques and equipment. We were instrumental in the creation of the first standing municipal citizens' privacy advisory commission in the City of Oakland, and we have engaged in privacy enhancing legislative efforts with several Northern California cities and regional entities. As experts on municipal privacy reform, we have written use policies and impact reports for a variety of surveillance technologies, conducted research and investigations, and developed frameworks for the implementation of equipment with respect for civil rights, privacy protections and community control.

A general concern we have is the use of boilerplate in the texts, especially around authorized uses and in the Impacts and Civil Liberties and Rights Protection sections (which are all identical).

For example, we do not believe that "any valid law enforcement purpose" (1302.2 (a)), language commonly found in Lexpol policies, is a reasonable specification for authorized uses. The ordinance requires policies to list "uses that are prohibited" - none of which are included in the ALPR documents - as well as uses that are authorized. On use policies in other municipalities we have strongly urged that lists of specific authorized uses, and lists of specifically prohibited uses (or a statement that no other uses are permitted), be provided. One of the principal aims of surveillance regulation ordinances is to guard against 'carte blanche' deployment of surveillance technology.

We have a set of concerns about the ALPR use policy.

1) The ALPR use policy provides no restrictions on the use of ALPR readers, as best we can tell. When the City Council debated obtaining prototypes and then again expanding the program, we believe it was made clear that their use would be limited to being mounted on parking carts. But there is apparently no restriction on, e.g.,

Berkeley Police (or any other city agency) taking these units and mounting them on other vehicles and patrolling with them all over Berkeley with no parking enforcement rationale.

2) In section 1302.5, it says "All ALPR data downloaded to any workstation or server shall be accessible only..." We believe a better wording would be "All ALPR data shall be accessible only..."

3) The ALPR retention section cites CA Government code 34090.6. We believe this part of the code does not apply to ALPR data, and in fact there is no California law specifying how long ALPR data must be kept. The BART Board recently passed an ALPR surveillance use policy (under similar surveillance ordinance legislation) that mandates no more than a 30 day retention. We believe it would be appropriate to consider a significantly reduced retention period. FYI, the California Legislature is currently considering AB 1782, which would require purging of ALPR data after 60 days.

4) The acquisition policy says that Berkeley's ALPR data may be shared "with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law." It is not clear that this is consistent with Berkeley's Sanctuary ordinance which should prevent this data from being shared or obtained by ICE. Similar, but slightly different, language appears in the use policy. (1302 revised to clarify subject to Policy 415 so no sharing w/ ICE.)

5) In the ALPR policy, Section 1302.4 says "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." We believe, again, that this should say "the officer shall." In fact this is a critically important detail, because the error rate on ALPR reads is significant: we have seen numbers quoted of between a 1% and 5% chance of error per license plate read. Translated to hundreds of license plates a day, errors become a certainty, and the chance of a tragedy based on an error becomes all too real).

We have specific concerns with the GPS documents:

1. The use policy states in one place (section 1301.2) that "GPS trackers shall only be used pursuant to a valid search warrant" but in another place that "Data collected from the GPS trackers may be shared with the following: ... (b) Other law enforcement personnel as part of an active criminal investigation." The acquisition report has similar language. This seems to be somewhat inconsistent, a bit of a loophole, allowing another law enforcement agency to potentially obtain GPS data authorized by a BPD warrant, but in a circumstance where the case being investigated by the outside agency has nothing to do with the alleged crime the warrant was issued about, and for which no warrant for the information was obtained.

2. The GPS acquisition report, says that the devices may be used "with consent as described below." But there is no elaboration in the document. The Use policy simply says "with consent," omitting the "as described below" phrasing. In any case how consent is to be obtained should be laid out as part of the use policy.

Finally, we have a few, smaller points.

1. In the BWC use policy, section 1300.2, in the last paragraph it reads "Members should activate their BWC when conducting custodial interviews unless there are other recording devices being used." We believe that 'should' should be a 'shall.'

2. In the BWC use policy, section 1300.3, it states that "BWC use is limited to enforcement and investigative activities involving members of the public." But body camera recordings are also used to investigate possible criminal or policy violations by police officers. In fact, section 1300.4.2 states that "Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct." We believe the policy needs

to clearly state - so that there is absolutely no ambiguity - that body camera footage can be used to investigate police officer possible policy issues, misconduct, civil rights violations and crimes.

3. In the BWC use policy, section 1300.7 specifies specific retention parameters, but later in section 1300.12 (f) it says that the Chief of Police shall work with the City Attorney's office to ensure an appropriate retention schedule, which seems like an unnecessary clause given 1300.7

Thank you for your time and consideration.

JP Massar  
Member of, and on behalf of, Oakland Privacy.  
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