



Office of the City Manager

SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: SEPTEMBER 13TH, 2022

Item Number: 32

**Item Description: Surveillance Technology Report, Surveillance Acquisition Report,
and Surveillance Use Policy for Automatic License Plate Readers**

Submitted by: INTERIM CHIEF OF POLICE, JEN LOUIS

This is a continuation of Technology Reports submitted by the City Manager on November of 2021.

The attached memo highlights three points that the Police Department doesn't align with the proposed most recent version of policy 1302-ALPR Surveillance Use Policy in the Supplemental Packet submitted on 9/08/22.

BPD isn't allowed to share in limiting circumstances with outside agencies. This would make BPD the only agency in the region that requires a Search Warrant to aid a neighboring agency with a criminal investigation involving the danger of, or imminent threat of death or serious physical injury to any person requires such a query or use, and the officer reasonably believes there is a nexus between a vehicle and the alleged crime scene.

The instances, that within policy allow for a query of the Berkeley Police Department's ALPR database require both the Chief of Police and City Manager's approval. Nearly no other agency requires the Chief of Police permission, let alone the City Manager's approval too. Request that the Chief of Police, or his or her designee's approval. This updated approval process is significantly more restrictive than the pre-existing policy.

The last point is the highly restrictive, but permissible use of ALPR's in Crowd Control situations that allow for their use once a riot has occurred, or upon a felonious crime associated with the event.



Berkeley Police Department Memorandum



To City Council Date Monday, September 12, 2022

From Interim Chief Jen Louis

Subject **ALPR Surveillance Use Policy, 1302**

Over the course of the last year, a working group consisting of Vice Mayor Harrison, her staff, Public Works, and Police staff have met on numerous occasions to collaboratively work and draft an ALPR Surveillance Use Policy. This collaboration was incredibly fruitful, the dialogue was rich, and everyone was able to explain their respective points of view. The draft policy presented by Vice Mayor Harrison reflects that collaboration, however it has three points where the Police Department wasn't in full alignment. Below in this memo I have outlined the three points where the working group didn't fully align, and I ask that City Council please review and consider the following edits to her proposed draft policy submitted on 09/08/22.

First section is 1302.9(b),

1302.9(b) defines how outside agencies might have access to our ALPR data. BPD recommends that outside agencies meet the same requirement that BPD uses. This would be congruent with every other agency in our region, with the proposed language BPD would be the only agency in the region that wouldn't share if asked, and within policy. Vice Mayor Harrison's proposed policy requires outside agencies to seek a court order or search warrant to access BPD's ALPR database. In the Bay Area with our porous borders this could severely hamper our neighboring agencies to investigate crimes that have spilled over into our city. Example, if Oakland PD has a kidnapping and a suspect is known to frequent San Pablo Park, there wouldn't be sufficient probable cause to allow them to seek a search warrant for our ALPR database and thereby we wouldn't be allowed to search our database. ALPR databases are often used as an investigative tool to help establish probable cause thus asking to have warrant (which requires probable cause) is unreasonable.

UPDATED 1302.9(b) first paragraph-

ALPR data obtained from Parking Enforcement Operations and retained pursuant to this use policy, including data and metadata associated with ALPR Reads and Hits, may be queried and used to support a specific BPD-criminal investigation when an officer has a good faith belief that an emergency involving the danger of, or imminent threat of death or serious physical injury to any person requires such a query or use, and the officer reasonably believes there is a nexus between a vehicle and the alleged crime scene. Approval to query the data must be granted by the Chief of Police, or his or her designee and City Manager. The City Manager shall log any queries or use of such information pursuant to this subsection in its Annual Surveillance Technology Report pursuant to BMC 2.99. ALPR data shall not be shared with federal immigration enforcement officials consistent with this policy and other applicable City policy.



Berkeley Police Department Memorandum



Second,

Necessitating the City Manager to approve investigative steps hampers expeditious investigative processes, and this isn't reflective of any other investigative work within the organization. To remove the requirement in the two sections 1302.3(b) and 1302.9(b) that require the City Manager's approval to query the database, and rather require just the Chief of Police, or his or her designee's permission. These few instances would be documented in our Annual Surveillance Report, and from an operational flow, it keeps the organizational movements more consistent with the other operations within the Police Department.

Third Vice Mayor Harrison's proposed policy doesn't allow for ALPR use in Crowd Control.

The Department recommends to allow, with limitations the use of ALPRs during Crowd Control (1302.3(e)(2)). The Department's recommendation is to allow the use of ALPR's once the crowd control escalates into a riot, or once a felonious crime had been committed. San Francisco Board of Supervisors just amended their Policy allowing the Police similar use. The proposed policy would keep the permission to use the ALPR's very restrictive, and would allow the use of ALPR's in a violent scenario for their respective use. From a privacy perspective, if someone engages in lawful first amendment activity and it remains that way the ALPR's wouldn't be used, but in an unlawful situation it would be permissible to activate the ALPRs. As a reminder, the ALPR's only capture alpha numeric combinations for license plate recognition, no imagery of faces or persons is captured.

Recommended language in 1302.3(e)(2) be changed to:

ALPRs shall not be deployed in crowd control operations except strictly for the purposes of Parking Enforcement Operations unless the event has turned into a riot, or a felonious crime associated with the event has taken place. If either of the aforementioned occur, the use of ALPRs would become permissible.

Thank you for your consideration.

Respectfully,

Jen Louis



**Berkeley Police Department
Memorandum**



Interim Chief of Police