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PUBLIC MEETING MATERIAL



**POLICE ACCOUNTABILITY BOARD
REGULAR MEETING AGENDA PACKET**

SUPPLEMENTAL NO. 2

**October 7, 2026
6:30 PM**

Board Members

Joshua Cayetano (Chair)	Leah Wilson (Vice-Chair)
Joshua Buswell-Charkow	Stephanie Allan
Patrick DeTemple	Jasmina Viteskic
Anay Sharma	Dwayne Phillips (Alternate)

MEETING LOCATION

Office of the Director of Police Accountability
1900 Addison Street, Floor 3
Berkeley, CA 94704

Agenda Item Materials

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ITEM 9.a.

**RESOLUTION OF THE POLICE ACCOUNTABILITY BOARD
THANKING INTERIM DIRECTOR KATHY LEE FOR HER
SERVICE AND COMMITMENT TO CIVILIAN OVERSIGHT**



RESOLUTION NO. 2026-0003

RESOLUTION OF THE POLICE ACCOUNTABILITY BOARD THANKING INTERIM DIRECTOR KATHY LEE FOR HER SERVICE AND COMMITMENT TO CIVILIAN OVERSIGHT

WHEREAS, the Police Accountability Board and the Office of the Director of Police Accountability (ODPA) is committed to promoting public trust through independent, objective, civilian oversight of the Berkeley Police Department; and

WHEREAS, Kathy Lee has served the City of Berkeley with distinction for more than three decades in a range of capacities, including as a Deputy City Attorney, as a Senior Hearing Examiner for the Rent Stabilization Board, and as the Police Review Commission Officer, heading the predecessor to the Police Accountability Board; and

WHEREAS, upon the establishment of the Police Accountability Board in 2021, Ms. Lee served as the first Interim Director of Police Accountability, helping to lay the foundation for the Office of the Director of Police Accountability (ODPA) and guiding Berkeley's civilian oversight system through its transition from the Police Review Commission; and

WHEREAS, in March 2026, Ms. Lee generously returned from retirement to serve once again as Interim Director of Police Accountability at a critical juncture of acute need for the Police Accountability Board, providing stability, continuity, and steady leadership to the Board and the ODPA; and

WHEREAS, Ms. Lee immediately assumed responsibility for ongoing workstreams concerning wide-ranging proposals to transform policing in Berkeley, ensuring that the Board's work continued without interruption; and

WHEREAS, Ms. Lee worked tirelessly alongside a group of stakeholders on the development of the Board's Regulations for handling investigations and complaints, contributing

substantial time, legal expertise, and institutional knowledge toward strengthening civilian oversight; and

WHEREAS, Ms. Lee represented the ODPa as an important stakeholder in the process for the Berkeley Police Department's surveillance technology Request for Proposals, ensuring that the perspective of civilian oversight was reflected in that process; and

WHEREAS, Ms. Lee served as a vital resource and source of historical knowledge regarding the Berkeley Police Department's Use of Force Policy, informing the Board's review and deliberations; and

WHEREAS, Ms. Lee assisted in the expeditious recruitment and hiring of a permanent Director of Police Accountability, positioning the ODPa for continued stability and success; and

WHEREAS, throughout her service, Ms. Lee has demonstrated exceptional professionalism, legal acumen, and an abiding dedication to public service and to the principles of independent civilian oversight;

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Police Accountability Board of the City of Berkeley that the Board expresses their deepest gratitude and appreciation to Interim Director Kathy Lee for her extraordinary service and enduring contributions to police accountability and civilian oversight in Berkeley.

BE IT FURTHER RESOLVED, that this resolution be presented to Kathy Lee as a token of sincere appreciation and recognition for her leadership, expertise, and decades of dedication to the City of Berkeley, and that a copy be transmitted to the Berkeley City Council for its awareness and acknowledgment.

Adopted on: [date]

RESOLUTION VOTING RESULTS

<u>Board member</u>	<u>Aye</u>	<u>No</u>	<u>Abstain</u>
Cayetano			
Wilson			
Allan			
Buswell-Charkow			
DeTemple			
Viteskic			
Sharma			

Total:

CERTIFICATION

I, Joshua Cayetano, as Chair of the Police Accountability Board, hereby certify the accuracy of the voting results contained in this document.

Joshua Cayetano,
Chair of the Police
Accountability Board

Date

I, Mary Opler, witnessed the signing of this document and can confirm that the signature, whether physical or electronic, belongs to Joshua Cayetano. I have signed this document below as a witness to the signing.

Mary Opler,
Director of Police
Accountability & Secretary
to the Police Accountability
Board

Date

ITEM 9.b.i.

**OCTOBER 6, 2026 MEMORADUM FROM CHAIR
CAYETANO TO THE PAB TITLED "ITEM 9.B. – RESPONSE
TO SECURE JUSTICE LETTER AND RECOMMENDATION
FOR A MORE ROBUST ALPR AUDIT PROCESS"**



MEMORANDUM

Date: October 6, 2026
To: Honorable Members of the Police Accountability Board (PAB)
From: Joshua Cayetano, Chair
Subject: Item 9.b. – Response to Secure Justice Letter and Recommendation for a More Robust ALPR Audit Process

Summary

Secure Justice's September 19, 2026 letter raises significant concerns about the Berkeley Police Department's January–June 2026 Flock ALPR audit. Although the Department likely conducted the audit consistent with Policy 1305, the audit generally reveals that the current audit parameters are too narrow to tell the Board or the public whether Berkeley's ALPR data is being accessed and used lawfully and appropriately. This memorandum recommends that the PAB work with BPD, the City Manager, the City Attorney, and the Office of the Director of Police Accountability (ODPA) to develop updated audit parameters. This recommendation is intended to supplement, not conflict with, the proposal to recommend the hiring of an independent auditor.

The Secure Justice Letter Raises Significant Issues

The audit measures compliance with Policy 1305 but does not evaluate compliance with California's ALPR statutes, Civil Code section 1798.90.5 et seq. (SB 34). Those statutes impose independent requirements for recordkeeping, disclosure, and access.

The audit's review of external access is also limited. BPD searched access records for federal and out-of-state agencies and for the terms "ICE" and "CBP." That method cannot detect searches run by a California user, such as a regional intelligence center analyst, on behalf of a federal or out-of-state agency under a facially legitimate stated purpose. The audit's sampling likewise appears to have been limited to BPD's own searches, even though third-party queries reportedly make up the vast majority of activity on Berkeley's network. The audit does not test whether data is deleted within the 30-day period required by Policy 1305.8. Finally, it provides conclusions without the underlying data the Board would need to evaluate them independently.

Of greatest concern is Secure Justice's statement that BPD's own Flock audit logs show federal agents affiliated with the Northern California Regional Intelligence Center (NCRIC) querying Berkeley ALPR data. The Board has not independently verified this claim. However, it is specific, it comes from an organization that states it has reviewed the logs, and it is consistent with a documented regional pattern. It warrants a direct written response from the Department.

Recent Audits Elsewhere Have Uncovered Both Unlawful Sharing and Officer Misconduct

Recent audits in other jurisdictions have documented unlawful data sharing. A San Francisco Police Department audit found that its license-plate data had been accessed 300 times on behalf of out-of-state and federal agencies, in violation of state law. SFPD identified the issue during a routine compliance audit in May, finding that NCRIC had queried SFPD's Flock network on behalf of those agencies.¹ Mountain View found violations and immediately terminated its Flock contract.² NCRIC is the same intermediary Secure Justice identifies in Berkeley's logs.

Audits have also uncovered significant officer misconduct. In Albany, Georgia, an upgraded audit system detected illegal use by five officers, leading to their termination and criminal charges.³ In Colleton County, South Carolina, a sheriff's lieutenant was terminated after an internal audit revealed more than 2,700 instances of unauthorized use over approximately one year.⁴ In Haines City, Florida, an officer was arrested after it was discovered that he had searched for his estranged wife's vehicle 717 times over nearly two years.⁵ In Arizona, an Apache Junction officer resigned after an internal investigation found he had used the system to track his wife.⁶

¹ KTVU/Fox, "SFPD audit shows Flock cameras accessed on behalf of federal, out-of-state agencies," <https://www.foxla.com/news/sfpd-audit-shows-flock-cameras-accessed-behalf-federal-out-of-state-agencies>.

² *Id.*

³ WALB, "Chief says FLOCK audit system exposed 5 APD officers who allegedly misused license plate cameras" (July 8, 2026), <https://www.walb.com/2026/07/08/chief-says-flock-audit-system-exposed-5-apd-officers-who-allegedly-misused-license-plate-cameras/>.

⁴ Cybernews, "South Carolina lieutenant fired for running over 2,700 unauthorized Flock searches," <https://cybernews.com/tech/unauthorized-flock-searches/>.

⁵ *Id.*

⁶ AZFamily, "Goodyear police officer investigated for possible Flock camera misuse" (Aug. 11, 2026), <https://azfamily.com/2026/08/11/goodyear-police-officer-investigated-possible-flock-camera-misuse>.

These cases carry three lessons for Berkeley. First, misuse often appears legitimate on the face of the record. A search for a personal acquaintance can carry a case number and a generic reason, so confirming that a search “aligns with” an incident does not rule out misuse. Effective audits examine the patterns behind the searches: repeated queries of the same plate, searches inconsistent with a user’s assignment, and searches supported only by generic justifications such as “investigation.”

Second, the vendor’s audit tool should be treated as a minimum rather than a complete safeguard. BPD relied on Flock’s audit-assistance tool, which flagged 35 search patterns. In Colleton County, however, the misuse came to light only after Flock activated AI updates enhancing its audit capabilities on August 12, 2026, which is after the close of BPD’s audit period.⁷ BPD should at minimum re-run the January–June 2026 period using the current tools.

Third, the Board may wish to consider audit parameters that go beyond identifying technical violations of law. A meaningful audit should also ask whether the system is being used as the Council and the community were told it would be. This could include reviewing searches connected to protest or other First Amendment activity, the geographic distribution of searches, and the proportion of searches that result in an arrest or recovery. A use may be lawful and still fall outside what this community authorized.

***United States v. Kyle* and Judicial Scrutiny of Surveillance Technology**

On October 1, 2026, the U.S. District Court for the Northern District of Oklahoma held in *United States v. Kyle*⁸ that a deputy’s warrantless search of a month of ALPR location data, including Flock data, constituted a search under the Fourth Amendment, and it suppressed the resulting evidence. Relying on *Carpenter v. United States*⁹ and the Supreme Court’s 2026 decision in *Chatrie v. United States*¹⁰, the court reasoned that individuals hold a reasonable expectation of privacy in the whole of their physical movements, and it characterized ALPR networks as a form of indiscriminate mass surveillance.

The decision is a significant recognition that the Supreme Court’s recent location-privacy decisions can apply to ALPR systems. Two features of the case are directly relevant here. The deputy’s stated reasons for the search were “traffic violation” and “investigation,” when the only actual basis was an out-of-state license plate. That is precisely the kind of entry a keyword-based audit would not flag. In addition, the deputy’s

⁷ Cybernews, *supra* note 4.

⁸ *United States v. Kyle*, No. 26-CR-00189-SEH, ECF No. 62 (N.D. Okla. Oct. 1, 2026).

⁹ *Carpenter v. United States*, 585 U.S. 296 (2018).

¹⁰ *Chatrie v. United States*, 609 U.S. ___, 146 S. Ct. 2193 (2026).

search returned more than 50 location records across multiple states within a 30-day window, the same retention period Berkeley used during the relevant audit period.

If this reasoning gains traction, warrantless queries of Berkeley's ALPR data, whether by BPD or by outside agencies with network access, could face constitutional challenge. That would create both suppression risk in criminal prosecutions and potential civil liability for the City. It also begs the question whether Berkeley's full surveillance package can be implemented without vitiating the civil liberties of Berkeleyans. Berkeley would be well served to assess its exposure now rather than in litigation.

Recommendation

I recommend that the Board adopt a motion to:

- Request that BPD provide a written response to the Secure Justice letter. The response should specifically address the reported NCRIC and federal access reflected in Berkeley's audit logs, including how that access was authorized, the number of searches involved, and any corrective action taken.
- Direct a PAB subcommittee or designee to work with BPD, the City Manager, and the City Attorney to develop updated audit parameters.
- Request that the City Attorney advise the Board on the impact of *Kyle*, *Carpenter*, and *Chatrie* on the pending surveillance technology RFP.
- Coordinate this work with Item 9.b.i, so that the updated parameters may serve as the scope of work for any independent auditor the City retains.