



Northern
California

July 18, 2023

Sent via Email

Berkeley City Council
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Re: Civil Rights and Liberties Issues with Berkeley’s Proposed Automated License Plate Reader Proposal

Dear Berkeley City Council,

We write on behalf of the American Civil Liberties Union of Northern California. We share the concerns of Berkeley residents¹ and members of the Police Accountability Board² who have highlighted serious issues with Berkeley’s proposal for a vast surveillance network of Fixed Automated License Plate Reader (“ALPR”) units, included on the City Council’s July 25, 2023 Agenda as item 38a.³ We write to echo these community voices with the City’s proposed ALPR program and policies (the “ALPR proposal”) and to raise additional serious civil rights and liberties issues that the City must address.

ALPR systems represent a massive expansion of surveillance that frequently do not bring commensurate public safety benefits. Rather, in many circumstances, this technology causes more harm than good. We urge the Council to abandon this misguided proposal, and at a minimum table a vote on the proposal as long as these serious questions remain unaddressed.

¹ Berkeley Police Accountability Board Meeting Minutes (June 16, 2023), https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/3.%202023-06-16%20SpeMtg.Min_.pdf.

² Letter from John “Chip” Moore, Chair Police Accountability Board, to Chief Jennifer Louis re Objection to the Berkeley Police Department Surveillance Acquisition Report, (June 16, 2023), https://berkeleyca.gov/sites/default/files/city-council-meetings/2023-07-25%20Agenda%20Packet%20-%20Council_0.pdf.

³ This proposal includes the following policies: (1) Policy 422 – The policy that will establish guidelines for the Police Department on the use of Fixed Automated License Plate Readers (2) Policy 1305 - The Surveillance Use Policy related to Fixed Automated License Plate Readers, and (3) Surveillance Acquisition Report – Citywide Report regarding Fixed Automated License Plate Readers.

1. The proposal threatens residents' freedom of movement and risks reinforcing patterns of economic and racial discrimination.

ALPR technology is a powerful surveillance system that can be used to invade the privacy of individuals and violate the rights of entire communities. ALPR systems collect and store location information about drivers whose cars pass through ALPR cameras' fields of view, which, along with the date and time of capture, can be built into a database that reveals sensitive details about where individuals work, live, associate, worship, seek medical care, and travel.⁴ In other contexts, law enforcement would not be able to access this sensitive location information without a search warrant.

ALPR systems are easily misused to harm marginalized communities.⁵ As with other surveillance technologies, police often deploy license plate readers in poor and historically overpoliced areas, regardless of crime rates.⁶ When placed in fixed locations, ALPRs essentially create checkpoints throughout a city that log and monitor where residents go and when, threatening their freedom of movement and potentially reinforcing historical patterns of neighborhood segregation.⁷ When mounted to police cars, ALPRs turn those vehicles into mobile surveillance machines that indiscriminately capture the driving information of passersby. Such surveillance can amplify racial and economic disparities in our policing and incarceration systems, and also has serious psychological consequences.⁸

⁴See, e.g., *Automatic License Plate Readers*, ELECTRONIC FRONTIER FOUND., March 29, 2023, <https://www EFF.org/sls/tech/automated-license-plate-readers>; *You Are Being Tracked: How License Plate Readers Are Being Used to Record Americans' Movements*, AM. CIV. LIBERTIES UNION, July 2013, <https://www.aclu.org/documents/you-are-being-tracked-how-license-plate-readers-are-being-used-record-americans-movements>

⁵ See, e.g., Angel Diaz & Rachel Levinson-Waldman, *Automatic License Plate Readers: Legal Status and Policy Recommendations for Law Enforcement Use*, BRENNAN CRT. FOR JUST., Sept. 10, 2020, <https://www.brennancenter.org/our-work/research-reports/automatic-license-plate-readers-legal-status-and-policy-recommendations>; Matt Cagle, *San Francisco – Paying the Price for Surveillance Without Safeguards*, ACLU OF NORTHERN CAL., May 22, 2014, <https://www.aclunc.org/blog/san-francisco-paying-price-surveillance-without-safeguards>.

⁶ Dave Maass and Jeremy Gillula, *What You Can Learn from Oakland's Raw ALPR Data*, ELECTRONIC FRONTIER FOUND., Jan. 21, 2015, <https://www EFF.org/deeplinks/2015/01/what-we-learned-oakland-raw-alpr-data>; Barton Gellman and Sam Adler-Bell, *The Disparate Impact of Surveillance*, THE CENTURY FOUND., Dec. 21, 2017, <https://tcf.org/content/report/disparate-impact-surveillance/>; see also, e.g., Kaveh Waddell, *How License-Plate Readers Have Helped Police and Lenders Target the Poor*, THE ATLANTIC, Apr. 22, 2016, <https://www.theatlantic.com/technology/archive/2016/04/how-license-plate-readers-have-helped-police-and-lenders-target-the-poor/479436/> (summarizing data indicating that Oakland Police Department deployed ALPRs “disproportionately often in low-income areas and in neighborhoods with high concentrations of African-American and Latino residents”).

⁷ Laura Schenker, David Sylvan, Jean-Louis Arcand, and Ravi Bhavnani, *Segregation and 'Out-of-Placeness': The Direct Effect of Neighborhood Racial Composition on Police Stops*, POLITICAL RESEARCH QUARTERLY, April 2023, <https://doi.org/10.1177/10659129231171516>.

⁸ Chris Chambers, *NSA and GCHQ: The Flawed Psychology of Government Mass Surveillance*, THE GUARDIAN, August 26, 2013, <https://www.theguardian.com/science/head-quarters/2013/aug/26/nsa-gchq-psychology-government-mass-surveillance>

ALPR systems are often ineffective at preventing or addressing crime.⁹ And inaccurate reads are surprisingly common as well: one randomized control trial in Vallejo, California, found that 37 percent of all ALPR “hits” from fixed readers (the same type contemplated by Berkeley’s proposal) and 35 percent from mobile ALPRs were misreads — an astonishingly high error rate.¹⁰ Indeed, multiple Bay Area drivers have been pulled over and held at gunpoint due to ALPR misreads, database inaccuracies, and operator errors.¹¹

The proposal discusses the installation of “52 fixed ALPRs in the City of Berkeley.”¹² However, neither the policies nor accompanying materials specify where the ALPR cameras will be located, instead stating only that “[I]ocations will be determined using crime data, known locations of ingress or egress into the City of Berkeley, and commonly known direction of travel after criminal acts based on information provided from investigators.”¹³ This general statement fails to provide the Council or public with necessary information to assess the potential civil rights impact of the camera placements. It is unknown whether the ALPR cameras will be placed in locations that target low-income communities of color, who already face disproportionately high surveillance.¹⁴ This is not a hypothetical concern -- in Oakland, an investigation of license plate readers found that they were located predominantly in Black and Latino neighborhoods, despite the fact that automobile crimes and offenses predominantly occurred elsewhere. Separately, we are concerned that the potential placement of cameras at entrances and exits to Berkeley will enable the needless tracking of people who come to Berkeley, erecting a digital fence around the city that could deter activists, religious minorities, and those seeking refuge or care.

2. The proposal permits the sharing of driver locations that is at odds with California law, increasing risks to safety of Berkeley residents and visitors.

As currently written, Berkeley’s proposal would effectively permit the sharing of ALPR information with agencies in other states, making that information vulnerable to misuse by agencies seeking track, locate, and prosecute activists, politically targeted groups, and abortion

⁹ See, e.g., David Maass and Beryl Lipton, *Data Driven: Explore How Cops Are Collecting and Sharing Our Travel Patterns Using Automated License Plate Readers*, ELECTRONIC FRONTIER FOUND., November 15, 2018, <https://www.eff.org/pages/automated-license-plate-reader-dataset> (finding that between 2016 and 2017, the Los Angeles County Sheriff’s Department scanned 234.36 million license plates with a 0.22 percent hit rate, the San Bernardino County Sheriff’s Department scanned 162.69 million license plates with a 0.06 percent hit rate, and the Sacramento Police Department scanned 116.23 million license plates with a 0.1 percent hit rate).

¹⁰ Jason Potts, *Research in Brief: Assessing the Effectiveness of Automatic License Plate Readers*, THE POLICE CHIEF, March 2018, <https://theiacp.org/sites/default/files/2018-08/March%202018%20RIB.pdf>.

¹¹ Tim Cushing, *Deputies Sued after False ALPR Hit Leads to Guns-Out Traffic Stop of California Privacy Activist*, TECHDIRT (Floor64 blog), February 20, 2019, <https://www.techdirt.com/articles/20190217/08240241618/deputies-sued-after-false-alpr-hit-leads-to-guns-out-traffic-stop-california-privacy-activist.shtml>; and Cyrus Farivar, *Due to License Plate Reader Error, Cop Approaches Innocent Man, Weapon in Hand*, ARS TECHNICA, April 23, 2014, <http://arstechnica.com/tech-policy/2014/04/due-to-license-plate-reader-error-cop-approaches-innocent-man-weapon-in-hand>.

¹² 1305 Appendix A (C).

¹³ *Id.*

¹⁴ See Maass and Gillua, *What You Can Learn from Oakland’s Raw ALPR Data*.

seekers and providers whose locations were recorded in the City.¹⁵ Specifically, the proposal states that ALPR data “may only be shared with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law,” adding that ALPR data will not be shared with federal immigration agencies.¹⁶ This provision is far too narrow and at odds with state law, as the California Civil Code prohibits the City from sharing or transferring ALPR information with or to any out-of-state agencies.¹⁷ As a result, people residing in or visiting Berkeley could be particularly vulnerable to demands from outside agencies for their locations -- in communities like UC Berkeley, where nearly one in four students come from out-of-state, this concern is particularly acute.

The risks to civil liberties and civil rights created by ALPR technology and databases filled with sensitive location information are well documented. Even if the City takes steps to prevent the formal sharing of data with out-of-state agencies, the risk of informal sharing with these same agencies will remain. Thus, the best way to ensure that Berkeley’s residents and visitors are safe from unnecessary intrusion into their personal lives is to reject the use of ALPR technology altogether.

3. The proposal gives police broad discretion to track Berkeley drivers at will.

The proposal states that the ALPR system will only be used “for official and legitimate law enforcement purposes,”¹⁸ then lists several uses for the ALPR system that are specifically prohibited. However, the Policies do not define “official and legitimate law enforcement purposes,” a very vague term with a potentially sweeping meaning. We are concerned that this undefined term will effectively grant significant discretion to police operators of Berkeley ALPR cameras for surveillance in a broad array of scenarios, a number of which could violate Berkeley residents’ civil rights and liberties.¹⁹

¹⁵ See Letter from John “Chip” Moore, Chair Police Accountability Board, to Chief Jennifer Louis re Objection to the Berkeley police Department Surveillance Acquisition Report, (June 16, 2023), https://berkeleyca.gov/sites/default/files/city-council-meetings/2023-07-25%20Agenda%20Packet%20-%20Council_0.pdf; *Civil Liberties Groups Demand California Police Stop Sharing Drivers’ Location Data With Police in Anti-Abortion States*, ELECTRONIC FRONTIER FOUND. (May 25, 2023), <https://www.eff.org/press/releases/civil-liberties-groups-demand-california-police-stop-sharing-drivers-location-data>.

¹⁶ 1305.10.

¹⁷ See Cal. Civ. Code § 1798.90.55(b) (“[a] public agency shall not sell, share, or transfer ALPR information, except to another public agency, and only as otherwise permitted by law.”) and Civ. Code § 1798.90.5(f) (a “public agency” is defined as “the state, any city, county, or city and county, or any agency or political subdivision of the state.”) (emphasis added).

¹⁸ 442.5(g). Policy 1305.3 uses the language “official law enforcement business.”

¹⁹ For example, the Berkeley Police Department might assert an “official and legitimate law enforcement purpose” to monitor all vehicles travelling from low-income communities outside of or within Berkeley to the City’s high-income communities, based on speculative concerns and unfounded bias about property or other crimes. Similarly, the Department may attempt to monitor drivers coming to Berkeley to attend political protests for the “official and legitimate law enforcement purpose” of preventing harm more generally. These are among the many uses of ALPR under the proposal that would raise serious civil rights concerns.

4. The proposal may allow dangerous long-term stockpiling of Berkeley driver locations.

The proposal states that ALPR data “should be stored for no longer than 30 days.”²⁰ However, 30 days is still a very long period for retaining sensitive location information that the Berkeley Police Department has not found relevant to a specific criminal investigation or civil action. This retention period also appears to be undermined by a contradictory exception that states the 30-day rule “will not preclude Berkeley Police department from maintaining any relevant vehicle data obtained from the system after that period pursuant to the established City of Berkeley retention schedule mentioned above or outlined elsewhere.”²¹ Importantly, even if sharing were limited to ensure compliance with state law as discussed above, as long as the City chooses to retain information about the locations of drivers it may be subject to legal demands for that information from agencies outside the state and that do not share the City’s values.

5. The proposal imposes unacceptable secrecy on the City’s use of ALPR.

The Policies restrict public access to ALPR data, claiming that such data “may contain confidential information.”²² We appreciate the consideration that the ALPR system could collect sensitive and private information, but we are very concerned the proposal’s language mandating the secrecy over ALPR information would effectively block a key avenue of public scrutiny of any ALPR program. Such secrecy is not required by the California Public Records Act and is at odds with the City’s commitment to transparency and accountability. We urge the Berkeley Council to explicitly ensure that any ALPR program and its operators be responsive to public records requests under the CPRA and the Open Government Ordinance. Anticipating future public records requests for the program, the City should now consider ways that ALPR data could be anonymize personal information while also allowing the public to investigate and understand how the City monitors the residents and visitors with these systems.²³

Berkeley’s fixed camera ALPR proposal contemplates a vast surveillance network across the City that would involve the collection of sensitive information about the many drivers that travel through this community. The proposal leaves important questions unaddressed and raises a number of serious concerns about the proposed program’s impact on the rights and liberties of drivers, residents, and visitors in Berkeley. Our letter outlines some of these issues. The best way for Berkeley to protect the safety and civil rights of its residents is to abandon this ALPR proposal and instead focus on non-surveillance programs and solutions that are proven to measurably achieve these ends. At a minimum, we urge the Council to press pause on this proposal as long as these questions remain unaddressed. Please let us know if you have any questions.

²⁰ 1308.8.

²¹ *Id.*

²² 1305.9.

²³ See *Victory! EFF Wins Access to License Plate Reader Data to Study How Law Enforcement Uses the Privacy Invasive Technology*, ELECTRONIC FRONTIER FOUND. (Oct. 3, 2019), <https://www.eff.org/press/releases/victory-eff-wins-access-license-plate-reader-data-study-how-law-enforcement-uses>.

Sincerely,

A handwritten signature in black ink that reads "Nick Hidalgo". The signature is written in a cursive, flowing style.

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