



Office of the Mayor

## **SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2**

**Meeting Date:** June 13, 2023

**Item Number:** #24

**Item Description:** Surveillance Ordinance items related to Fixed Surveillance Cameras and Unmanned Aerial Systems (UAS)

**Submitted by:** Mayor Arreguín and Councilmembers Hahn and Harrison

The Mayor and Councilmembers Hahn and Harrison are submitting additional amendments to BPD Policy 351 and 1304, Surveillance policies relating to Fixed Surveillance Cameras. These amendments build on the recent edits submitted by the Berkeley Police Department.

The purpose of these changes is to clarify that the use of fixed surveillance cameras in the public right of way to deter and use in the case of an active criminal or administrative investigation.

Other changes include clarifying changes on the use of and retention of video images and changing the retention period to 180 days instead of one full year.

## External Fixed Video Surveillance Cameras

### 351.1 PURPOSE AND SCOPE

This policy provides guidance for the use of City of Berkeley external fixed video surveillance cameras by the Berkeley Police Department (BPD).

This policy only applies to fixed, overt, marked external video surveillance systems utilized by the ~~Department~~BPD. It does not apply to mobile audio/video systems, covert audio/video systems or any other image-capturing devices used by the Department, as authorized by the City Council, for use by other City Departments. ~~Department~~BPD Personnel shall adhere to requirements for External Fixed Video Surveillance Cameras covered in this policy as well as the corresponding Surveillance Use Policy – 1304.

### 351.2 POLICY

The Berkeley Police Department utilizes a video surveillance system to enhance its anti-crime strategy, to effectively allocate and deploy personnel, and to enhance safety and security in public areas ~~and City property~~. As specified by this policy, Ccameras may be placed in strategic locations throughout the City to ~~detect, record, and deter~~ and solve crimes, to help the City safeguard against potential threats to the public, and to help manage emergency response situations during natural and human-made disasters, ~~to assist City officials in providing services to the community~~, among other uses specified in Section 351.3.1.

Video surveillance in public areas will be conducted in a legal and ethical manner while recognizing and protecting constitutional standards of privacy.

### 351.3 OPERATIONAL GUIDELINES

Only City Council-approved video surveillance equipment shall be utilized. BPD Members authorized to review video surveillance ~~should may~~ only record and monitor review public areas and public activities where no reasonable expectation of privacy exists and pursuant to Section 351.3.1. The City Manager shall obtain Council approval ~~for~~ of any proposed additional locations for the placement and use of video surveillance technology.

#### 351.3.1 PLACEMENT, REVIEW AND MONITORING

Camera placement will only occur in locations approved by the City Council and will be guided by this policy and the underlying purpose or strategy associated with the overall video surveillance plan. As appropriate, the Chief of Police should confer with other affected City departments when evaluating camera placement. Environmental factors, including lighting, location of buildings, presence of vegetation or other obstructions, should also be evaluated when determining placement.

Camera placement includes, ~~but is not limited to:~~ existing cameras such as those located at San Pablo Park, the Berkeley Marina, and cameras placed in Council identified and approved

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intersections throughout the City, and potential future camera locations as approved by City Council.

Current City Council approved locations:

- 6<sup>th</sup> Street at University Avenue
- San Pablo Avenue at University Avenue
- 7th Street at Dwight Way
- San Pablo Avenue at Dwight Way
- 7<sup>th</sup> Street at Ashby Avenue
- San Pablo Avenue at Ashby Avenue
- Sacramento Street at Ashby Avenue
- College Avenue at Ashby Avenue
- Claremont Avenue at Ashby Avenue
- 62<sup>nd</sup> Street at King Street

The cameras shall only record video images and not sound. Recorded images pursuant to Section 351.5 may be used for specific criminal or BPD administrative investigations and video surveillance may be accessed and reviewed by authorized BPD personnel for the following purposes:

- (a) To support specific and active criminal or ~~BPD administrative~~ police misconduct investigations, including traffic related investigations where a crime is involved.
- (b) To respond to and review critical incidents or natural disasters.

Unauthorized recording, viewing, reproduction, dissemination, or retention of video footage is prohibited.

#### 351.3.2 FIXED CAMERA MARKINGS

All public areas monitored by video surveillance equipment shall be marked in a conspicuous manner with unobstructed signs to inform the public that the area is under police surveillance.

#### 351.3.3 INTEGRATION WITH OTHER TECHNOLOGY

The Department is prohibited from integrating or accessing system capabilities of the video surveillance system with other systems, such as gunshot detection, automated license plate recognition, facial recognition and other video-based analytical systems.

#### 351.4 VIDEO SUPERVISION

Access to video surveillance camera data shall be limited to Berkeley Police Department (BPD) personnel utilizing the camera database for uses ~~described~~ authorized above, with technical

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assistance from Public Works Department and Department of Information Technology personnel. Information may be shared in accordance with Sections 351.6 or 1304.9 below. BPD Members seeking access to the camera system shall seek obtain the approval from of the Investigations Division Captain, or their designee.

Supervisors should monitor camera access and usage to ensure BPD members are complying with this policy, other applicable department policy, and applicable laws. Supervisors should ensure such use and access is appropriately documented.

#### 351.4.1 VIDEO LOG

No one without authorization will be allowed to login and view the recordings. Access to the data must be obtained through the Public Works Department according to this policy and published regulations that limit access and use of data by Public Works and other City Departments and personnel. All system access including system log-in, access duration, and data access points is accessible and reportable and shall be documented by the Public Works Department's authorized administrator. Those who are authorized and login should automatically trigger the audit trail function to ensure compliance with the guidelines and policy. This is further outlined in Section 1304.4 of the Surveillance Use Policy.

#### 351.4.2 PROHIBITED ACTIVITY

Video surveillance systems will not intentionally be used to invade the privacy of individuals or observe areas where a reasonable expectation of privacy exists.

Video surveillance systems shall not be used in an unequal or discriminatory manner and shall not target protected individual characteristics including, but not limited to race, ethnicity, national origin, religion, disability, gender or sexual orientation.

Video surveillance equipment shall not be used to harass, intimidate, or discriminate against any individual or group.

Video surveillance systems and recordings are subject to the Berkeley Police Department's Immigration Law Policy, and hence may not be shared with federal immigration enforcement officials.

#### 351.5 STORAGE AND RETENTION OF MEDIA

Video surveillance recordings are not government records pursuant to California Government Code 34090 in and of themselves. Except as otherwise permitted in this section, video surveillance recordings shall be purged within one hundred and eighty (180) days of recording. The cameras should record minimally for one year as guided by Government Code 34090. Recordings of incidents involving use of force by a police officer or involving detentions, arrests, or recordings relevant to a formal or informal complaint against a sworn police officer shall be retained for a minimum of two years and one month. Recordings relating to court cases and complaints against BPD personnel sworn officers that are being adjudicated will be manually deleted at the same time other evidence associated with the case is purged in line with the Department's evidence retention policy. Any recordings related to BPD administrative a police misconduct investigation or civil proceedings shall be maintained until such matter is fully

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adjudicated, at which time it shall be deleted in line with the Department's evidence retention policy, and any applicable orders from the court.

Any recordings needed as evidence in a criminal or ~~civil BPD administrative~~ police misconduct proceeding shall be copied to a suitable medium and booked into evidence in accordance with current evidence procedures.

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#### 351.5.1 EVIDENTIARY INTEGRITY

All media downloaded and retained pursuant to this Policy ~~media~~ shall be treated in the same manner as other evidence. Media shall be accessed, maintained, stored and retrieved in a manner that ensures its integrity as evidence, including strict adherence to chain of custody requirements. Electronic trails, including encryption, digital masking of innocent or uninvolved individuals to preserve anonymity, authenticity certificates and date and time stamping, shall be used as available and appropriate to preserve individual rights and to ensure the authenticity and maintenance of a secure evidentiary chain of custody.

#### 351.6 RELEASE OF VIDEO IMAGES

Data collected and used in a police report shall be made available to the public in accordance with department policy and applicable state or federal law, also referenced in Policy 1304.8.

Requests for recorded video images from the public or the media shall be processed in the same manner as requests for department public records pursuant to Policy 804.

Requests for recorded ~~images-video~~ from other law enforcement agencies shall be referred to the Investigations Division Captain, or their designee for release in accordance with this policy and must be related to a specific active criminal investigation. ~~and a specific and legitimate law enforcement and active criminal investigation purpose.~~

Recorded video images that are the subject of a court order or subpoena shall be processed in accordance with the established department subpoena process.

#### 351.7 VIDEO SURVEILLANCE AUDIT

The video surveillance software generates a site log each time the system is accessed. The site log is broken down by server, device, user or general access. The site log is kept on the server for two years and is exportable for reporting. System audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant on a regular basis, at least biennial.

BPD will enforce against prohibited uses of the cameras pursuant to Policy 1010, Personnel Complaints or other applicable law or policy. The City Manager shall enforce against any prohibited use of cameras and/or access to data by other City of Berkeley staff/personnel.

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 placed into the annual report filed with the City Council pursuant to BMC Section 2.99.020 2. d., published on the City of Berkeley website in an appropriate location, and retained within the

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Professional Standards Bureau.

**351.8 TRAINING**

All department members authorized to operate or access video surveillance systems shall receive appropriate training. Training should include guidance on the use of cameras, associated software, and review of relevant policies and procedures, including this policy, as well as review of relevant City of Berkeley laws and regulations. Training should also address state and federal law related to the use of video surveillance equipment and privacy. All relevant recordings that are utilized will be collected pursuant to Policy 802, Property and Evidence, and retained pursuant to Policy 804 Records and Maintenance.

**351.9 MAINTENANCE**

It shall be the responsibility~~ies~~ of the Public Works Department to facilitate and coordinate any updates and required maintenance, with access limited to that detailed in ~~to~~ the City Manager's promulgated policies.

## Surveillance Use Policy-External Fixed Video Surveillance Cameras

### 1304.1 PURPOSE

This policy provides guidance for the use of City of Berkeley external fixed video surveillance cameras by the Berkeley Police Department (BPD). This policy only applies to fixed, overt, marked external video surveillance systems utilized by ~~the Department~~BPD. It does not apply to mobile audio/video systems, covert audio/video systems or any other image-capturing devices used by the Department. Department Personnel shall adhere to requirements for External Fixed Video Surveillance Cameras covered in this policy as well as the corresponding Use Policy – 351.

This Surveillance Use Policy is legally-enforceable pursuant to BMC 2.99.

### 1304.2 AUTHORIZED USE

Only BPD members who receive training on this policy, who are then granted access by an administrator, may access the data from the video surveillance cameras. This data may only be accessed to further a legitimate law enforcement purpose, as listed in Use Policy - 351. Members must follow the necessary logging mechanisms, such as case number and case type when querying the database.

The cameras shall only record video images and not sound. Recorded images pursuant to BPD Policy Section 351.5 may be used for specific criminal or BPD administrative investigations and video surveillance may be accessed and reviewed by authorized BPD personnel for the following purposes:

- (a) To support specific and active criminal or ~~BPD administrative~~ police misconduct e investigations, including traffic related investigations where a crime is involved.
- (b) To respond to and review critical incidents or natural disasters.

The following are prohibited uses of the video surveillance system:

- (a) Unauthorized recording, viewing, reproduction, dissemination or retention is prohibited.
- (b) Video surveillance systems will not intentionally be used to invade the privacy of individuals or observe areas where a reasonable expectation of privacy exists.
- (c) Video surveillance systems shall not be used in an unequal or discriminatory manner and shall not target protected individual characteristics including, but not limited to race, ethnicity, national origin, religion, disability, gender or sexual orientation.
- (d) Video surveillance equipment shall not be used to harass, intimidate or discriminate against any individual or group.

- (e) Video surveillance systems and recordings are subject to the Berkeley Police Department's Immigration Law Policy, and hence may not be shared with federal immigration enforcement officials.

### 1304.3 DATA COLLECTION

The cameras will film and store video on City of Berkeley encrypted servers. License plate and facial recognition data hardware is not installed on the cameras and may not be installed or used unless approved by the City Council. Audio is a standard feature of the camera, but is deactivated by the system administrator and may not be activated or used unless approved by the City Council. The cameras and storage devices shall be wholly owned and operated/maintained by the City of Berkeley.

### 1304.4 DATA ACCESS

Access to video surveillance cameras data shall be limited to ~~Berkeley Police Department~~ BPD personnel utilizing the camera database for uses described above and pursuant to Use Policy - 351, with technical assistance from Public Works Department and Department of Information Technology personnel. Information may be shared in accordance with 1304.9 below. ~~BPD m~~Members seeking access to the video surveillance system shall seek-obtain the approval ~~from-of~~ the Investigations Division Captain, or their designee.

Supervisors should monitor camera access and usage to ensure BPD members are complying with this policy, other applicable department policy, and applicable laws. Supervisors should ensure such use and access is appropriately documented.

### 1304.5 DATA PROTECTION

All data transferred from the cameras and the servers shall be encrypted. Access to the data must be obtained through the Public Works Department according to this policy and published regulations that limit access and use of data by Public Works and other City Departments and personnel. All system access including system log-in, access duration, and data access points is accessible and reportable and shall be documented by the Public Works Department's authorized administrator. All relevant recordings that are utilized will be collected pursuant to Policy 802, Property and Evidence, and retained pursuant to Policy 804 Records and Maintenance.

### 1304.6 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. Provisions of this policy, including 1304.4 Data Access, 1304.5 Data Protection, 1304.7 Data Retention, 1304.8 Public Access and 1304.9 Third Party Data Sharing serve to protect against any unauthorized use of video surveillance camera data. License plate and facial recognition data hardware is not installed on the cameras. Audio is a standard feature of the camera, but is deactivated by the system administrator. These procedures 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.

### 1304.7 DATA RETENTION

~~The video surveillance camera system should record minimally for one year as guided by Government Code 34090. Video surveillance recordings are not government records pursuant to California Government Code 34090 in and of themselves. Except as otherwise permitted in this section, video surveillance recordings shall be purged within one hundred~~



and eighty (180) days. Recordings of incidents involving use of force by a police officer or involving- detentions, arrests, or recordings relevant to a formal or informal complaint against a police officer shall be retained for a minimum of two years and one month. Recordings relating to court cases and BPD personnel complaints that are being adjudicated will be manually deleted at the same time other evidence associated with the case is purged in line with the Department's evidence retention policy. Any recordings related to BPD administrative ~~or civil~~ proceedings pursuant to this section -shall be maintained until such matter is fully adjudicated, at which time it shall be deleted in line with the Department's evidence retention policy, and any applicable orders from the court. All data will automatically delete after the aforementioned retention period by the System Administrator from Public Works.

Any recordings needed as evidence in a criminal or ~~BPD administrative~~ civil police misconduct proceeding shall be copied to a suitable medium and booked into evidence in accordance with current evidence procedures.

# Berkeley Police Department

Law Enforcement Services Manual

## Surveillance Use Policy-External Fixed Video Surveillance Cameras

### 1304.8 PUBLIC ACCESS

Data collected and used in a police report shall be made available to the public in accordance with department policy and applicable state or federal law.

Requests for recorded video images from the public or the media shall be processed in the same manner as requests for department public records pursuant to Policy 804.

Recorded video images that are the subject of a court order or subpoena shall be processed in accordance with the established department subpoena process.

### 1304.9 THIRD-PARTY DATA-SHARING

Requests for recorded ~~video images~~ from other law enforcement agencies shall be referred to the Investigations Division Captain, or their designee for release in accordance with this policy and must be related to a specific active criminal investigation specific and legitimate law enforcement purposes.

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Data collected from the video surveillance system may be shared with the following:

- (a) The District Attorney's Office for use as evidence to aid in prosecution, in accordance with laws governing evidence;
- (b) Other law enforcement personnel as part of an active criminal investigation;
- (c) Recorded video images that are the subject of a court order or subpoena shall be processed in accordance with the established department subpoena process

### 1304.10 TRAINING

All ~~department BPD~~ members authorized to operate or access video surveillance systems shall receive appropriate training. Training should include guidance on the use of cameras, associated software, and review of relevant policies and procedures, including this policy, as well as review of relevant City of Berkeley laws and regulations. Training should also address state and federal law related to the use of video surveillance equipment and privacy. All relevant recordings that are utilized will be collected pursuant to Policy 802, Property and Evidence, and retained pursuant to Policy 804 Records and Maintenance.

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### 1304.11 AUDITING AND OVERSIGHT

The video surveillance software generates a site log each time the system is accessed. The site log is broken down by server, device, user or general access. The site log is kept on the server for two years and is exportable for reporting. Video surveillance system audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant on a regular basis, at least biennial.

BPD will enforce against prohibited uses of this policy pursuant to Policy 1010, Personnel Complaints or other applicable law or policy. The City Manager shall enforce against any prohibited use of cameras and/or access to data by other City of Berkeley staff personnel.

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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 placed into the annual report filed with the City Council pursuant to BMC Section 2.99.020 2. d., published on the City of Berkeley website in an appropriate location, and retained within the Professional Standards Bureau.

**1304.12 MAINTENANCE**

It shall be the responsibility~~ies~~ of the Public Works Department to facilitate and coordinate any updates and required maintenance, in accordance with the City Manager's regulations.