



**BERKELEY CITY COUNCIL PUBLIC SAFETY COMMITTEE
REGULAR MEETING**

**Monday, March 20, 2023
10:30 AM**

2180 Milvia Street, 6th Floor – Redwood Room
1404 Le Roy Ave, Berkeley 94708 – Teleconference Location

Committee Members:

Councilmembers Rashi Kesarwani, Terry Taplin, and Susan Wengraf
Alternate: Councilmember Rigel Robinson

This meeting will be conducted in a hybrid model with both in-person attendance and virtual participation. For in-person attendees, face coverings or masks that cover both the nose and the mouth are encouraged. If you are feeling sick, please do not attend the meeting in person.

Remote participation by the public is available through Zoom. To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL - <https://cityofberkeley-info.zoomgov.com/j/1602030774>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon on the screen. To join by phone: Dial **1-669-254-5252** or **1-833-568-8864 (Toll Free)** and Enter Meeting ID: **160 203 0774**. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized by the Chair.

To submit a written communication for the Committee's consideration and inclusion in the public record, email policycommittee@cityofberkeley.info.

Written communications submitted by mail or e-mail to the Public Safety Policy Committee by 5:00 p.m. the Friday before the Committee meeting will be distributed to the members of the Committee in advance of the meeting and retained as part of the official record.

AGENDA

Roll Call

Public Comment on Non-Agenda Matters

Minutes for Approval

Draft minutes for the Committee's consideration and approval.

1. Minutes - January 30, 2023

Committee Action Items

The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.

Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.

2. **Berkeley Police Department Surveillance Ordinance Policies Related to Fixed Surveillance Cameras (Policy 351, Policy 1304 and Related Surveillance Acquisition Report) and Unmanned Aerial System (drones) (Policy 611, Policy 1303 and Related Surveillance Acquisition Report)**
From: City Manager
Recommendation: Review the draft policies and provide direction to staff.
Financial Implications: See report
Contact: Jennifer Louis, Police, (510) 981-5900

Unscheduled Items

These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.

- 3. Information Report Request: Alternatives to Chemical Agents for Response to Violent Large-Scale Crowd Scenarios**
From: Councilmember Taplin (Author)
Referred: August 29, 2022
Due: June 30, 2023

Recommendation: Direct the City Manager to study alternatives to chemical agents to improve the Berkeley Police Department's ability and capacity to respond to and de-escalate large-scale crowd scenarios, including violent militias, and return a report to the City Council by the end of Fiscal Year 2023. Report should include but not be limited to the following factors: -BPD intelligence-gathering capabilities on potentially violent large crowd scenarios; - BPD response protocols including procedures for protecting bystanders, peaceful protesters, and businesses; -Tools and tactics available for crowd control in potentially violent scenarios; -Mutual aid and support from other local/state/federal agencies; -Applicable state and federal laws on crowd control and First Amendment rights.

Financial Implications: Staff time

Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

Items for Future Agendas

- Discussion of items to be added to future agendas

Adjournment

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*Written communications addressed to the Public Safety Committee and submitted to the City Clerk Department will be distributed to the Committee prior to the meeting.*

*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Members of the City Council who are not members of the standing committee may attend a standing committee meeting even if it results in a quorum being present, provided that the non-members only act as observers and do not participate in the meeting. If only one member of the Council who is not a member of the committee is present for the meeting, the member may participate in the meeting because less than a quorum of the full Council is present. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900.*



### COMMUNICATION ACCESS INFORMATION:

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date.

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I hereby certify that the agenda for this meeting of the Standing Committee of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on Thursday, March 16, 2023.



Mark Numainville, City Clerk

Communications

Communications submitted to City Council Policy Committees are on file in the City Clerk Department at 2180 Milvia Street, 1st Floor, Berkeley, CA, and are available upon request by contacting the City Clerk Department at (510) 981-6908 or policycommittee@cityofberkeley.info.

**BERKELEY CITY COUNCIL PUBLIC SAFETY COMMITTEE
SPECIAL MEETING MINUTES**

**Monday, January 30, 2023
10:30 AM**

Committee Members:

Councilmembers Rashi Kesarwani, Terry Taplin, and Susan Wengraf
Alternate: Councilmember Rigel Robinson

**PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH
VIDEOCONFERENCE AND TELECONFERENCE**

Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting of the City Council Public Safety Committee will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available.

To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL <https://cityofberkeley-info.zoomgov.com/j/1604574711>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon on the screen.

To join by phone: Dial **1-669-254-5252 or 1-833-568-8864 (Toll Free)** and Enter Meeting ID: **160 457 4711**. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized by the Chair.

Written communications submitted by mail or e-mail to the Public Safety Policy Committee by 5:00 p.m. the Friday before the Committee meeting will be distributed to the members of the Committee in advance of the meeting and retained as part of the official record.

MINUTES

Roll Call: 10:35 am. All present.

Minutes for Approval

Draft minutes for the Committee's consideration and approval.

1. Minutes - December 5, 2022

Action: M/S/C (Kesarwani/Taplin) to approve the December 5, 2022 minutes.

Vote: All Ayes.

Committee Action Items

The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.

Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.

2. Election of Chairperson

Action: M/S/C (Wengraf/Kesarwani) to select Councilmember Taplin as Chair.

Vote: All Ayes.

3. Review of Policy 1043 Extra Duty Employment (Item contains supplemental materials)

From: City Manager

Contact: Jennifer Louis, Police, (510) 981-5900

Action: 3 speakers. M/S/C (Kesarwani/Wengraf) to: 1) Approve Policy 1043 Extra Duty Employment, with the inclusion of administrative costs at 35% to align with the Indirect Cost Rate Proposal - Federal Plan; 2) Requesting that the Police Department report back to the committee annually in January regarding the administrative rate and the terms and conditions of service agreements, including revenues received from extra duty employment; and 3) Requesting the action taken on 1/30/23 be sent to the City Council as an Information Report.

Vote: All Ayes.

Unscheduled Items

These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.

4. **Information Report Request: Alternatives to Chemical Agents for Response to Violent Large-Scale Crowd Scenarios**
From: Councilmember Taplin (Author)
Referred: August 29, 2022
Due: February 28, 2023

Recommendation: Direct the City Manager to study alternatives to chemical agents to improve the Berkeley Police Department's ability and capacity to respond to and de-escalate large-scale crowd scenarios, including violent militias, and return a report to the City Council by the end of Fiscal Year 2023. Report should include but not be limited to the following factors: -BPD intelligence-gathering capabilities on potentially violent large crowd scenarios; - BPD response protocols including procedures for protecting bystanders, peaceful protesters, and businesses; -Tools and tactics available for crowd control in potentially violent scenarios; -Mutual aid and support from other local/state/federal agencies; -Applicable state and federal laws on crowd control and First Amendment rights.

Financial Implications: Staff time

Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

Item due date extended to June 30, 2023.

Items for Future Agendas

- The committee requested an informational report from Public Works on mudslides in Berkeley as a future agenda item

Adjournment

Action: M/S/C (Kesarwani/Wengraf) to adjourn the meeting.

Vote: All Ayes.

Adjourned at 11:18 am.

I hereby certify that this is a true and correct record of the special Public Safety Committee meeting held on January 30, 2023.

Sarah K. Bunting, Assistant City Clerk

Communications

Communications submitted to City Council Policy Committees are on file in the City Clerk Department at 2180 Milvia Street, 1st Floor, Berkeley, CA, and are available upon request by contacting the City Clerk Department at (510) 981-6908 or policycommittee@cityofberkeley.info.



Office of the City Manager

ACTION CALENDAR

March 20, 2023

To: Public Safety Policy Committee

From: Dee Williams-Ridley, City Manager

Submitted by: Jennifer Louis, Interim Chief of Police

Subject: Berkeley Police Department Surveillance Ordinance Policies Related to Fixed Surveillance Cameras (Policy 351, Policy 1304 and Related Surveillance Acquisition Report) and Unmanned Aerial System (drones) (Policy 611, Policy 1303 and Related Surveillance Acquisition Report)

RECOMMENDATION

Review the draft policies and provide direction to staff.

INTRODUCTION

The City of Berkeley enacted the Surveillance Ordinance in 2018 to establish a thoughtful process regarding the procurement and use of Surveillance Technology that carefully balances the City's interest in protecting public safety with its interest in protecting the privacy and civil rights of its community members. To ensure that our general policies maintained consistent format with other department policies the Department developed parallel 'use' policies where appropriate so that the 'Surveillance Use Policy' could directly follow all the requirements explicitly set forth in BMC 2.99.020(4). Both policies are equally important, and all members are required to abide by the legal parameter of both policies. Thereby in nearly every piece of equipment that the Department has that is reportable under BMC 2.99, there are generally two nearly identical policies, a Use Policy and a Surveillance Use Policy. Recognizing the important of the Surveillance Use Policies, the Department has a chapter in our Departmental Policies dedicated to the Surveillance Use Policies.

CURRENT SITUATION AND ITS EFFECTS

There are two surveillance technologies that are undergoing the process of the Surveillance Ordinance in order to obtain City Council approval. These technologies are External Fixed Video Surveillance Cameras and Unmanned Aerial System (UAS). As part of the Surveillance Ordinance process the department must complete

acquisition and use policies which must undergo review by the Police Accountability Board and ultimately receive Council approval.

City owned fixed surveillance cameras are in place in several locations in the City of Berkeley and Council has approved future installation of these cameras at a number of intersections in the City. Acquisition and Use Policies are being submitted through the Surveillance Ordinance process to ensure clear guidelines regarding the technologies used and the manner in which they will be used.

The Berkeley Police Department has made several exigent circumstances uses of Unmanned Aerial System (UAS) technology and believes circumstances may arise in the future necessitating further use. The Surveillance Ordinance provides guidance for Temporary Acquisition and Use of Surveillance Equipment (BMC 2.99.040) which requires the following: notifications, and presumes that if the uses will continue beyond exigent circumstances that the Department bring forward an acquisition report and use policy.

Crime trends regionally and in the City of Berkeley indicate there has been a steady increase in shootings in the City the last five years and Part 1 Crimes reached their highest level in ten years in 2022. The department has developed and submitted acquisition and use policies for these surveillance technologies as we believe that they support our mission to safeguard our diverse community through proactive law enforcement and problem solving, treating all people with dignity and respect. These law enforcement tools enhance policing practices and create greater safeguards toward fair and impartial policing and safer outcomes during law enforcement interactions.

The External Fixed Video Surveillance Camera Policies are covered by three policies:

1. Policy 351 – The policy that will establish guidelines for the Police Department on the use of External Fixed Video Surveillance Cameras
2. Policy 1304 - The Surveillance Use Policy related to Fixed Video Surveillance Cameras
3. Surveillance Acquisition Report – Citywide Report regarding Cameras

These policies are attached to this report.

Each of the External Fixed Video Surveillance Camera Policies received City Attorney Office review with Public Works staff being the primary author of the Acquisition Report and Berkeley Police Department staff being the primary author of Policies 351 and 1304.

The Unmanned Aerial System (UAS) policies are covered by the following policies:

1. Policy 611 – The policy that will establish guidelines for the Police Department on the use of an Unmanned Aerial System (UAS – commonly referred to as drones)

2. Policy 1303 - The Surveillance Use Policy related to UAS
3. An Acquisition Report related to UAS. (The Department is not seeking to acquire UAS technology at this time but per the City Attorney's Office, the Surveillance Ordinance requires completion of an Acquisition Report as well)

These policies are attached to this report.

Pursuant to the Surveillance Ordinance, BMC Section 2.99.030.2, upon receipt of acquisition and use policies from the Police Department, the Police Accountability Board (PAB) has a 30-day deadline "to recommend approval of the policy, object to the proposal, recommend modifications, or take no action." The PAB has reviewed and made recommendations on both of the above technologies. Their correspondence regarding these proposals is attached here.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None identified.

CONTACT PERSON

Captain Mike Durbin, Police, Professional Standards Division (510) 981-5760

ATTACHMENTS:

1. Policy 351- External Fixed Video Surveillance Cameras
2. 1304- Surveillance Use Policy External Fixed Video Surveillance Cameras
3. Acquisition Report- External Fixed Video Surveillance Camera
4. 611- Unmanned Aerial System (UAS)
5. 1303-Surveillance Use Policy Unmanned Aerial System (UAS)
6. Acquisition Report- Unmanned Aerial System (UAS)
7. PAB Recommendations-External Fixed Video Surveillance Cameras
8. PAB Recommendations- Unmanned Aerial System (UAS)

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.

This policy only applies to fixed, overt, marked external video surveillance systems utilized by the Department. It does not apply to mobile audio/video systems, covert audio/video systems or any other image-capturing devices used by the Department. This policy is intended to be the Use Policy, however all aspects of the Surveillance Use Policy, 1304 which corresponds with the External Fixed Video Surveillance Cameras is equally applicable.

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. Cameras may be placed in strategic locations throughout the City to detect and deter crime, to help safeguard against potential threats to the public, 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.

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. Members authorized to review video surveillance should only monitor public areas and public activities where no reasonable expectation of privacy exists. The City Manager shall obtain Council approval for any proposed additional locations for the use of video surveillance technology.

351.3.1 PLACEMENT AND MONITORING

Camera placement will be guided by 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 intersections throughout the City, and potential future camera locations as approved by City Council.

Current City Council approved locations:

- 6th Street at University Avenue

- San Pablo Avenue at University Avenue
- 7th Street at Dwight Way
- San Pablo Avenue at Dwight Way
- 7th 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
- 62nd Street at King Street

The cameras shall only record video images and not sound. Recorded images may be used for a variety of purposes, including criminal or civil investigations. The video surveillance system may be useful for the following purposes:

- (a) To prevent, deter and identify criminal activity.
- (b) To address identified areas of criminal activity.
- (c) To respond to critical incidents.
- (d) To assist in identifying, apprehending and prosecuting offenders.
- (e) To document officer and offender conduct during interactions to safeguard the rights of the public and officers.
- (f) To augment resources in a cost-effective manner.
- (g) To monitor pedestrian and vehicle traffic activity in order to assist with traffic related investigations.
- (h) To document employee, employer, and/or customer conduct during interactions to safeguard the employee, employer, and customer from misconduct

Unauthorized recording, viewing, reproduction, dissemination or retention 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 cameras data shall be limited to Berkeley Police Department (BPD) personnel utilizing the camera database for uses described above, with technical assistance from Public Works personnel. Information may be shared in accordance with 351.6 or 1304.9 below. Members seeking access to the camera system shall seek the approval from the Investigations Division Captain, or their designee.

Supervisors should monitor camera access and usage to ensure members are within 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. All system access including system login, access duration, and data access points is accessible and reportable 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 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

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, detentions, arrests, or recordings relevant to a formal or informal complaint shall be retained for a minimum of two years and one month. Recordings relating to court cases and 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 administrative or civil proceedings 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.

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

351.5.1 EVIDENTIARY INTEGRITY

All downloaded and retained 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 from other law enforcement agencies shall be referred to the Investigations Division Captain, or their designee for release in accordance with a specific and legitimate law enforcement 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 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 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. 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 responsibilities of the Public Works Department to facilitate and coordinate any updates and required maintenance.

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. It does not apply to mobile audio/video systems, covert audio/video systems or any other image-capturing devices used by the Department.

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. Members must follow the necessary logging mechanisms, such as case number and case type when querying the database.

Recorded images may be used for a variety of purposes, including criminal or civil investigations. The video surveillance system may be useful for the following purposes:

- (a) To prevent, deter and identify criminal activity.
- (b) To address identified areas of criminal activity.
- (c) To respond to critical incidents.
- (d) To assist in identifying, apprehending and prosecuting offenders.
- (e) To document officer and offender conduct during interactions to safeguard the rights of the public and officers.
- (f) To augment resources in a cost-effective manner.
- (g) To monitor pedestrian and vehicle traffic activity in order to assist with traffic related investigations.
- (h) To document employee, employer, and/or customer conduct during interactions to safeguard the employee, employer, and customer from misconduct

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. Audio is a standard feature of the camera, but is deactivated by the system administrator. 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 personnel utilizing the camera database for uses described above, with technical assistance from Public Works personnel. Information may be shared in accordance with 1304.9 below. Members seeking access to the video surveillance system shall seek the approval from the Investigations Division Captain, or their designee.

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. All system access including system log-in, access duration, and data access points is accessible and reportable 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. Recordings of incidents involving use of force by a police officer, detentions, arrests, or recordings relevant to a formal or informal complaint shall be retained for a minimum of two years and one month. Recordings relating to court cases and 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 administrative or civil proceedings 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 civil proceeding shall be copied to a suitable medium and booked into evidence in accordance with current evidence procedures.

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 images from other law enforcement agencies shall be referred to the Investigations Division Captain, or their designee for release in accordance with specific and legitimate law enforcement purposes.

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 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. 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.

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 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 Professional Standards Bureau.

1304.12 MAINTENANCE

It shall be the responsibilities of the Public Works Department to facilitate and coordinate any updates and required maintenance.

PUBLIC WORKS DEPARTMENT SURVEILLANCE ACQUISITION REPORT

SURVEILLANCE CAMERAS**A. DESCRIPTION**

The Avigilon camera system consists of three main components: The camera, the server, and a remote information management system referred to as the Avigilon Control Center Client application (ACC).

The first component, the Avigilon camera, is a device that incorporates a video recording from an image. The cameras are affixed to City of Berkeley-owned infrastructure including utility poles on City streets and parks. The cameras provide protection to indoor and outdoor spaces with high-resolution images of up to 5 MP, a wide field of view, and efficient bandwidth management in a compact design without compromising building aesthetics. Although license plate and facial recognition hardware is available, neither was purchased or installed. Without the hardware, these features cannot be activated. Audio is a standard feature of the camera, but will remain deactivated by the authorized administrators of the system.



The second component of the system is the server. Once the Avigilon camera captures the imagery, a local device called a server, functions as a repository for the data. Servers are physically secured on City property and video recordings are protected within the City's network. Servers are designed to store recorded events in real time for secure retrieval and analysis. Recorded videos are transferred from the server's storage into an information management system, Avigilon Control Center (ACC) application. ¹

¹ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=200320040AB839

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The third component is the Avigilon Control Center Client application (ACC) which streamlines data management and allows users to access videos on one secure platform. The ACC software provides various levels of analytics to sort stored videos faster and is a standard feature. These include pixel motion detection of vehicles and people. Vehicular characteristics are searchable by vehicle type and color. Personal characteristics are searchable by gender (gender is a binary search, female or male), hair color, age, and upper and lower body clothing color. Authorized users of the system can only access data stored on a server through the ACC application. The ACC application is located on the server and accessed solely through the City's secured intranet by protected login and password. The application does not allow the authorized administrator or system users to alter, manipulate, or edit any of the footage recorded by the server.

B. PURPOSE

Surveillance cameras will be utilized for the following business purposes:

- i. To prevent, deter and identify criminal activity.
- ii. To address identified areas of criminal activity.
- iii. To respond to critical incidents.
- iv. To assist in identifying, apprehending and prosecuting offenders.
- v. To document officer and offender conduct during interactions to safeguard the rights of the public and officers.
- vi. To augment resources in a cost-effective manner.
- vii. To monitor pedestrian and vehicle traffic activity in order to assist with traffic related investigations.
- viii. To document employee, employer, and/or customer conduct during interactions to safeguard the employee, employer, and customer from misconduct

C. LOCATION

Surveillance cameras encompassed by this report, are located at, or will be installed at, the following locations.

Future Projects:

- 6th Street at University Avenue

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- San Pablo Avenue at University Avenue
- 7th Street at Dwight Way
- San Pablo Avenue at Dwight Way
- 7th 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
- 62nd Street at King Street

Completed Projects:

- San Pablo Park
- City of Berkeley Marina
- Transfer Station

D. IMPACT

The primary intent of these cameras is to deter and address crime in the City of Berkeley. The Public Works Department will work to ensure that the video recordings are secured and only accessible to authorized personnel. The right to maintain someone's anonymity versus the need to collect information to maintain public safety is of paramount concern. The Department recognizes that all people have a right to privacy and is committed to protecting and safeguarding civil rights by adhering to the strictest requirements concerning the release of video recordings. There should not be any impact on anyone's civil liberties or civil rights. The camera system lacks the hardware to conduct license plate reader or facial recognition technology. Audio is a standard feature of the cameras, but will remain deactivated by the authorized administrators of the system. Staff is explicitly prohibited from using any facial recognition technology as outlined in BMC 2.99.

The Public Works Department will ensure responsible data management, transparency, and accountability including the posting of video surveillance notices.

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E. MITIGATION

In order to minimize violations of privacy, data shall be maintained in a secure, non-public accessible location, such locations require specialized system access including a dedicated password and log in. Data will be obtained or released in accordance with the use policy. Data will not be used to unlawfully discriminate against people based on race, ethnicity, political opinions, religious or philosophical beliefs, trade union membership, gender identity, disability status, sexual orientation or activity, or genetic and/or biometric data. Additionally, the Department will not use the camera surveillance system to scan footage and identify individuals based on any of the categories listed in the preceding sentence.

Employees are prohibited from retaining, duplicating, or distributing video recordings except for departmental business purposes in accordance with the use policy.

F. DATA TYPES AND SOURCES

The surveillance camera system's use is limited to capturing non-audio, video recordings on affixed City buildings, including utility poles on streets and within park boundaries. The Camera Surveillance system collects video recordings in high-resolution imagery that is stored securely on a local server and accessible by authorized users on the ACC application. As video images are recorded, the ACC application automatically stamps the video with the current date/time and the camera's identity.

G. DATA SECURITY

External users will not have access to the ACC application. The authorized administrator and designated staff will have access to video recordings. To gain system access, staff must obtain approval from system management. Authorized users will access the ACC application via a single sign-on and password administered by Information Technology. All system access including system log-in, access duration, and data access points is accessible and reportable by the Public Works authorized administrator. The application prohibits the authorized administrator and users from altering, manipulating, tampering, or editing video recordings.

The Public Works Director or his/her designee shall appoint a member of the department as the authorized administrator to coordinate the use and maintenance of the Surveillance Camera system and the storage of recordings, including:

1. Establishing a system for downloading, storing, and securing of recordings.
2. Designating persons responsible for downloading recorded data.
3. Establishing a maintenance system to ensure the working order of surveillance cameras.
4. Monitoring the system to prevent tampering, deleting, and copying recordings.

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5. Working in alignment with the State of California record retention policy, AB 839 to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
6. Maintaining an audit trail record for all access to video recording files, wherein access information for each file is logged using a secure log-in system. The ACC application associates an audit trail record with each user access information, thereby logging the date, time, user name, and activity occurring during each video recording file access.

H. FISCAL COST

Costs for future projects listed in Section C of this report are unknown at this time. Future costs will depend on additional maintenance, equipment, and parts. Ongoing costs include associated staff time relative to the system administrator’s role of administering and maintaining the surveillance camera program. All cameras are purchased and wholly owned and operated by City of Berkeley.

Initial Purchase Costs:

San Pablo Park: \$64,829.46 – 1 server and 21 camera views

Zero Waste Transfer Station – Weigh Station: \$15,962.35 – 1 server and 10 camera views

Marina: \$106,620.14 – 2 servers and 45 camera views

Ongoing Costs:

Personnel, maintenance, and other ongoing costs, including compliance and other reporting and oversight requirements - \$13,443.20 per year.

I. THIRD PARTY DEPENDENCE AND ACCESS

All Camera Surveillance data is accessed by a secure network login and password and stored on servers maintained by the Department of Information Technology. There is no third-party dependence or external access to information other than the ACC is a proprietary technology which requires all the components to be Avigilon.

J. ALTERNATIVES

The City can decide to rely on traditional policing techniques as a method for addressing crime such as deploying sworn officers to patrol City buildings and parks.

There is a broad consensus – among the community– that surveillance cameras can be an important tool for deterring criminal activities.

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K. EXPERIENCE OF OTHER ENTITIES

Neighboring cities including San Francisco, Oakland, and San Jose have adopted the use of Surveillance Cameras as a tool for reducing crime on city streets and parks. Many cities have developed their own usage policies which may include standards for use, data retention standards, and system controls.

Unmanned Aerial System (UAS) Operations

611.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for the use of an unmanned aerial system (UAS) and for the storage, retrieval and dissemination of images and data captured by the UAS.

611.1.1 DEFINITIONS

Definitions related to this policy include:

Unmanned Aerial System (UAS) - An unmanned aircraft of any type that is capable of sustaining directed flight, whether preprogrammed or remotely controlled (commonly referred to as an unmanned aerial vehicle (UAV)), and all of the supporting or attached systems designed for gathering information through imaging, recording or any other means.

611.2 POLICY

Unmanned aerial systems may be utilized for the purpose of enhancing the department's mission of protecting lives and property by enabling remote surveillance and monitoring in the situations specified in 611.5 below when other means and resources are not available or are less effective. Any use of a UAS will be in strict accordance with constitutional and privacy rights and Federal Aviation Administration (FAA) regulations. All uses of the UAS shall be reported in compliance with the Surveillance Technology Ordinance, BMC 2.99.

611.3 PRIVACY

The use of the UAS potentially involves privacy considerations. Absent a warrant or exigent circumstances, operators and observers shall adhere to FAA altitude regulations and shall not intentionally record or transmit images of any location where a person would have a reasonable expectation of privacy (e.g., residence, yard, enclosure). Operators and observers shall take reasonable precautions to avoid inadvertently recording or transmitting images of areas where there is a reasonable expectation of privacy. Reasonable precautions can include, for example, deactivating or turning imaging devices away from such areas or persons during UAS operations.

611.4 PROHIBITED USE

The UAS video surveillance equipment shall not be used:

- To conduct random surveillance activities.
- To target a person based solely on actual or perceived characteristics, such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, economic status, age, cultural group, or disability.
- To harass, intimidate, or discriminate against any individual or group.
- To conduct personal business of any type.

The UAS shall not be weaponized.

Unmanned Aerial System (UAS) Operations

611.5 AUTHORIZED USE

The use of a UAS shall only occur as the result of a mutual assistance request, and no BPD personnel will be allowed to operate a UAS. UAS may only be requested for the purpose of remote surveillance and monitoring in the following specified situations:

- (a) Mass casualty incidents (e.g. large structure fires with numerous casualties, mass shootings involving multiple deaths or injuries);
- (b) Disaster management;
- (c) Missing or lost persons;
- (d) Hazardous material releases;
- (e) Sideshow events where many vehicles and reckless driving is present;
- (f) Rescue operations;
- (g) Training;
- (h) Hazardous situations which present a high risk to officer and/or public safety, to include:
 - i. Armed suicidal persons;
 - ii. Hostage situations;
 - iii. Barricaded suspects;
- (i) Arrest of armed and/or dangerous persons
- (j) Service of high-risk search and arrest warrants involving armed and/or dangerous persons
- (k) Other unforeseen exigent circumstances.

Unmanned Aerial Systems shall only be utilized for law enforcement purposes.

611.6 REQUEST PROCESS

Pursuant to BMC 2.99, the Surveillance Technology Ordinance governing the use of drones, the following steps must occur to seek permission to temporarily use a drone. The requests shall be made to the City Manager via the Chain of Command, as follows:

- (a) All requests shall be routed to the Watch Commander, if they are not available, the Duty Command Officer (DCO)
- (b) The Watch Commander or DCO should contact the Chief of Police, or the Acting Chief of Police in his/her absence.
- (c) The Chief of Police, Acting Chief of Police, or in exigent circumstances the DCO shall obtain approval from the City Manager authorizing the use of a Drone. The City Manager is responsible for logging the use and ensuring the notifications and reporting requirements are met pursuant to BMC 2.99.040.

611.7 RETENTION OF UAS DATA

If available, any data collected by the use of a UAS should be purged by BPD within 60 days if it doesn't contain any data of evidentiary value. If the data has evidentiary value, it should be

Unmanned Aerial System (UAS) Operations

uploaded into BPD's evidence database and kept pursuant to the established retention guidelines set forth in policy 804-Records Maintenance and Release.

Surveillance Use Policy-Unmanned Aerial System (UAS)

1303.1 PURPOSE

The purpose of this policy is to establish guidelines for the use of an unmanned aerial system (UAS) and for the storage, retrieval and dissemination of images and data captured by the UAS.

1303.2 AUTHORIZED USE

The use of a UAS shall only occur as the result of a mutual assistance request, and no BPD personnel will be allowed to operate a UAS. UAS may only be requested for the purpose of remote surveillance and monitoring in the following specified situations:

- (a) Mass casualty incidents (e.g. large structure fires with numerous casualties, mass shootings involving multiple deaths or injuries);
- (b) Disaster management;
- (c) Missing or lost persons;
- (d) Hazardous material releases;
- (e) Sideshow events where many vehicles and reckless driving is present
- (f) Rescue operations;
- (g) Training;
- (h) Hazardous situations which present a high risk to officer and/or public safety, to include:
 - i. Armed suicidal persons;
 - ii. Hostage situations;
 - iii. Barricaded suspects;
- (i) Arrest of armed and/or dangerous persons
- (j) Service of high-risk search and arrest warrants involving armed and/or dangerous persons
- (k) Other unforeseen exigent circumstances

Unmanned Aerial Systems shall only be utilized for law enforcement purpose.

1303.3 DATA COLLECTION

If equipped, it shall be the request on all BPD deployments that the "video recording only" function of the UAS be activated whenever the UAS is deployed, and deactivated whenever the UAS deployment is completed. The UAS operator will rely on SD Cards for video recordings.

Surveillance Use Policy-Unmanned Aerial System (UAS)

1303.4 DATA ACCESS

Access to UAS data shall be limited to Berkeley Police Department (BPD) personnel and the mutual assistance agency, in connection with an active investigation. Information may be shared in accordance with 1303.9 below. It shall be at the discretion of the Commander or senior supervisor to discern which members have a need to know, and limit access to those members. BPD is prohibited from selling any data obtained from the UAS.

1303.5 DATA PROTECTION

Whenever feasible, the data from the UAS should be encrypted by the vendor or operator. The data should only be accessible to BPD personnel who have been granted security access.

1303.6 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 Unmanned Aerial Systems (UAS). 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.

1303.7 DATA RETENTION

If available, any data collected by the use of a UAS should be purged by BPD within 60 days if it doesn't contain any data of evidentiary value. If the data has evidentiary value, it should be uploaded into BPD's evidence database and kept pursuant to the established retention guidelines set forth in policy 804-Records Maintenance and Release.

1303.8 PUBLIC ACCESS

UAS data which is collected and retained under this policy is considered a "law enforcement investigatory file" pursuant to Government Code § 6254, and shall be exempt from public disclosure. UAS data which is retained pursuant to this policy shall be available via public records request pursuant to applicable law regarding Public Records Requests as soon as the criminal or administrative investigation has concluded and/or adjudicated.

1303.9 THIRD-PARTY DATA-SHARING

Data collected from the UAS 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) Other third parties, pursuant to a Court Order or Search Warrant.

Surveillance Use Policy-Unmanned Aerial System (UAS)

1303.10 TRAINING

The use of a UAS shall only occur as the result of a mutual assistance request, and no BPD personnel will be allowed to operate a UAS. All BPD personnel shall be provided with this Surveillance Use Policy. BPD recognizes that the assisting agency will need to satisfy their respective training requirements to operate the UAS, however BPD personnel shall follow this policy and all relevant policies, including Records Management, Policy 804 while access or retaining any of the captured data from the UAS.

1303.11 AUDITING AND OVERSIGHT

Division Captains or their designee shall ensure compliance with this Surveillance Use Policy.

The security and integrity of the Surveillance Technology and collected information will be completed in the form of a random biennial audit of the uses from the Audit and Inspection's Sergeant. This audit will be routed to the Captain of Professional Standards Bureau and the Chief of Police for review.

Intentional violation of this policy may serve as grounds for disciplinary action pursuant to Policy 1010, Personnel Complaints.

1303.12 MAINTENANCE

UAS's will only be used in a mutual assistance request, and thereby must be obtained from the City Manager via the Chain of Command. All UAS maintenance shall be conducted by the owner/operator of the device consistent with all other mutual assistance response agreements.

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BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT – UNMANNED AERIAL SYSTEM (UAS)

UNMANNED AERIAL SYSTEM (UAS)**A. DESCRIPTION**

An Unmanned Aerial System (UAS) is an unmanned aircraft of any type that is capable of sustaining directed flight, whether pre-programmed or remotely controlled and all of the supporting or attached components designed for gathering information through imaging, recording, or any other means. Generally, a UAS consists of:

- An unmanned aircraft which consists of the chassis with several propellers for flight, radio frequency and antenna equipment to communicate with a remote-control unit, control propellers and other flight stabilization technology (e.g. accelerometer, a gyroscope), a computer chip for technology control, a camera for recording, and a digital image/video storage system for recording onto a secure digital card (SD card);
- A remote-control unit that communicates with the unmanned aircraft via radio frequency; and
- A battery charging equipment for the aircraft and remote control.

UAS are controlled from a remote-control unit (similar to a tablet computer). Wireless connectivity lets pilots view the UAS and its surroundings from a bird's-eye perspective. UAS have cameras so the UAS pilot can view the aerial perspective. UAS record image and video data onto a secure digital (SD) memory cards. SD cards can be removed from UAS after flights to input into a computer for evidence.

B. PURPOSE

UAS offer to significantly improve the capacity of law enforcement (LE) to provide a variety of foundational police services. This technology has already been used with many law enforcement agencies to save lives and help capture dangerous criminal suspects. UAS can support first responders in hazardous incidents that would benefit from an aerial perspective.

Responding to violent crime in Berkeley often requires officers to face risks to their safety – in addition to the clear risks faced by members of the public when violent crime is present. From 2018 to 2022, the yearly average number of shootings has doubled. In 2021 Berkeley had 265 robberies, 210 aggravated assaults, 57 sexual assaults, and 118 firearms recovered.

Technology such as UAS can play a vital role in mitigating these omnipresent dangers, by providing a greater view into the immediate surroundings of crime scenes and active pursuits. The use of a UAS is also in line with the Department's philosophy around de-escalation, as this tool can provide greater time and distance, which are the critical components in offering officers the greatest likelihood of a peaceful, or less violent resolution.

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BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT – UNMANNED AERIAL SYSTEM (UAS)

Searches for armed and dangerous suspects are more effective and controlled with UAS support; an armed suspect can be hiding in a tree or on a roof. LE can respond accordingly and more safely when provided with this critical information (see Section #10 below “Alternatives Considered” for more information on how UAS compares to alternatives for situational awareness). More informed responses also lead to less injury and less uses of force.

LE agencies have successfully used UAS to locate missing persons, especially in more remote areas – as well as for rescue missions. UAS is also being used during disasters and during any hazardous material releases. The situational awareness UAS provides has also become an important tool for large events (e.g. sport events, parades, and festivals); the aerial view provides information that would otherwise require a much larger deployment of LE personnel to maintain the same level of public safety support. Furthermore, smaller UAS can be equipped with a loud speaker to communicate (e.g. hostage situations/providing verbal commands and directions to the subject).

BPD must seek approval from the City Manager prior to any use. BPD may then make a mutual assistance request to ACSO for their UAS. This approval process could be rapid or take several hours depending if their resources are deployed elsewhere, and there is no guarantee that the equipment will be available.

C. LOCATION

BPD proposes to use UAS as outlined in policy 611- Unmanned Aerial System (UAS), and further guided by policy 1303-Surveillance Use Policy Unmanned Aerial System (UAS). BPD proposes to only use UAS as the result of a mutual assistance request, and no BPD personnel will be allowed to operate a UAS.

UAS may only be requested for the following specified situations:

- a. Mass casualty incidents (e.g. large structure fires with numerous casualties, mass shootings involving multiple deaths or injuries);
- b. Disaster management;
- c. Missing or lost persons;
- d. Hazardous material releases;
- e. Sideshow events where many vehicles and reckless driving is present;
- f. Rescue operations;
- g. Training;
- h. Hazardous situations which present a high risk to officer and/or public safety, to include:
 - i. Barricaded suspects;
 - ii. Hostage situations;

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- iii. Armed suicidal persons;
 - i. Arrest of armed and/or dangerous persons
 - j. Service of high-risk search and arrest warrants involving armed and/or dangerous persons
 - k. Other unforeseen exigent circumstances

Unmanned Aerial Systems shall only be used for law enforcement purposes.

Potentially, UAS could be deployed in any location in the City of Berkeley where one or more of the above situations occur and where the proper authorizations are provided. Fortunately, several of these situations rarely occur – but some do occur regularly, such as arresting armed/dangerous person. BPD occasionally arrests individuals for violent homicides, shootings, robberies, violent sexual assaults, and other crimes– UAS can provide situational awareness in all of these critical incidents to provide a greater level of safety for officers, as well as for nearby civilians

D. IMPACT

BPD recognizes that the use of UAS raises privacy concerns. UAS are becoming ubiquitous in the United States, and there is a growing concern that people can be surveilled without notice or reason. There is concern that UAS can be utilized to observe people in places, public or private, where there is an expectation of privacy. The level of potential privacy impact depends upon factors such as flight elevation and camera zoom magnitude, as well as where the UAS is flown.

The results of the research study titled, “Mission-based citizen views on UAV usage and privacy: an affective perspective¹,” published in February 2016 found that people’s perceptions of how UAS impacts privacy relate to use type. The researchers from College of Aeronautics, Florida Institute of Technology, and the Aeronautical Science at Embry-Riddle Aeronautical University (ERAU), College of Aviation UAS Lab found that people tend to be less concerned about police UAS use when the technology is only used for specific uses - “concerns for privacy were less in the condition where the UAV was only used for a specific mission than when it was operated continuously.” Policy 611 and 1303 provide strict acceptable guidelines, and Authorized Uses which explains when BPD personnel can request the use of a UAS for specific missions.

E. MITIGATION

BPD’s policy 611 restricts BPD’s use of UAS in several ways to promote greater privacy protections.

¹ <https://www.nrcresearchpress.com/doi/abs/10.1139/juvs-2015-0031#.XkHEAWWhKiU>

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BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT – UNMANNED AERIAL SYSTEM (UAS)

BPD will only request use UAS for specific missions rather than operating continuously, mitigating concerns raised in the February 2016 study cited above.

Policy 611 and 1303. Authorized Use lists the only allowable uses of UAS (e.g. mass casualty incidents, disaster management, missing or lost persons, hazardous material releases, sideshow events where many vehicles and reckless driving is present, rescue operations, training, hazardous situations which present a high risk to officer and/or public safety to armed suicidal persons, hostage situations, barricaded suspects, arrest of armed and/or dangerous persons, service of high risk search and arrest warrants involving armed and/or dangerous persons, and other unforeseen exigent circumstances). Policy 611 also articulates the Request Process which indicates the approval must come from the City Manager via the Chain of Command for all use approvals.

The Federal Aviation Administration (FAA) sets strict flight regulations for all UAS users, including for law enforcement. The FAA provides two law enforcement options for creating acceptable UAS under 14 Code of Federal Regulation (CFR) part 107, subpart E, Special Rule for Model Aircraft; the agency can designate individual members to earn FAA drone pilot certificates and fly under the rules for small UAS, or receive a FAA certificate to function as a “public aircraft operator” to self-certify agency drone pilots and drones. Either way, these options allow for BPD to use systems under 55 pounds, for flying at or below 400 feet above ground level. Absent an emergency situation warranting a FAA COA/Part 107 waiver- permitted law enforcement response, law enforcement is also restricted from using UAS to fly over or near the following locations:

- Stadiums and Sporting Events;
- Near Airports; and
- Emergency and Rescue Operations (wildfires and hurricanes).

Policy 611 “Privacy Considerations,” outlines several other protocols for mitigating against privacy abuse:

BPD UAS mutual assistance personnel must adhere to FAA altitude guidelines – flying below 400 feet helps to ensure that UAS is not used for surveilling overly large geographic areas; BPD will use UAS to focus on specific areas.

BPD UAS operators shall not intentionally record or transmit images of any location where a person would have a reasonable expectation of privacy (e.g. residence, yard, enclosure, place of worship, medical provider’s office).

Mutual assistance operators and observers shall take reasonable precautions, such as turning imaging devices away, to avoid inadvertently recording or transmitting images of areas where there is a reasonable expectation of privacy.

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Policy 611 “Prohibited Use” explains that:

UAS shall not be used for the following activities:

- To conduct random surveillance activities.
- To target a person based solely on individual characteristics, such as, but not limited to race, ethnicity, national origin, religion, disability, gender or sexual orientation when not connected to actual information about specific individuals related to criminal investigations;
- For the purpose of harassing, intimidating, or discriminating against any individual or group; or
- To conduct personal business of any type.

BPD is prohibited from weaponizing any UAS.

F. DATA TYPES AND SOURCES

UAS will record using industry standard file types such as (e.g. jpeg, mov, mp4, wav or RAW). Such files may contain standard color photograph, standard color video, or other imaging technology such as thermal. Although UAS can transmit one-way audio from the operator, the UAS technology available today does not currently record sound.

G. DATA SECURITY

BPD takes data security seriously and safeguards UAS data by both procedural and technological means. The video recording function of the UAS shall be activated whenever the UAS is deployed. Video data will be recorded onto Secure Digital (SD) Cards. Any data collected by the use of a UAS should be kept by BPD minimally for 60 days. The data should be uploaded into BPD’s evidence database and kept pursuant to the established retention guidelines set forth in policy 804-Records Maintenance and Release.

H. FISCAL COST

The only costs will be staff time, since at this time BPD is only proposing this acquisition for the purposes of leveraging our neighboring agencies UAS during the proposed policy guidelines. Use of UAS by neighboring agencies in a mutual assistance scenario will not result in additional costs to the City.

I. THIRD-PARTY DEPENDENCE AND ACCESS

BPD is primarily reliant upon the Alameda County Sheriff’s Office (ACSO) and Oakland Police Department when exigent circumstances occur that warrant UAS requests. BPD requested and received UAS support from ACSO two times in 2021/2022.

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BPD proposes that any data collected from the UAS may be shared with the following:

The District Attorney's Office for use as evidence to aid in prosecution, in accordance with laws governing evidence;

Other law enforcement personnel as part of an active criminal investigation;

Other third parties, pursuant to a Court Order or Search Warrant.

J. ALTERNATIVES

In some instances, BPD could rely on requesting the assistance of an outside agency's helicopter, which cause significant carbon emissions, especially when considering the footprint of a UAS.

Another alternative is the deployment of additional police resources. The inherent problem with this alternative is that this may be counterproductive to the Department's philosophy on de-escalation as it reduces the Department's ability to leverage time and distance to reduce the likeliness of a physical or violent confrontation.

K. EXPERIENCE OF OTHER ENTITIES

Currently, in Alameda County, the following cities have UAS programs, The Alameda County Sheriff's Office, the Oakland Police Department, Fremont Police Department, Hayward Police Department, and Newark Police Department. At the time of publication, the author had not received a response from Oakland and Fremont Police Departments.

Alameda County Sheriff's Office

A Alameda County Sheriff's Office representative indicated the only financial burden is the changing technology every 12-18 months, including improved batteries and cameras that require possible updates.

In 2015 when the Sheriff's Office proposed the use of UAS' to the Board of Supervisors, several community groups expressed opposition due to the fear of an invasion of privacy and spying on the public. Since the approval by the Board of Supervisors, ACSO created a website for the public to voice their complaints. As of January 2023, they have received one complaint from a community member in Alameda County. That specific complaint was deemed not relate to ACSO UAS.

No community costs. No unintended video was captured, and if it was, it would be deleted per their policy.

Successes in their program were described as follows:

- 1) Community and Officers are Safer
- 2) UAVs contributed to the arrest of fleeing suspects

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- 3) Reported Missing Person suffering from a Health Condition (Alzheimer's) have been located
- 4) Documenting crime scenes are conducted more efficiently and conducted in a shorter time

No noted failures to date from the program that were reported to Berkeley Police Department.

Hayward Police Department

Hayward Police Department did not have any unintended financial burdens. Their initial drone purchase (4 drones) was budgeted, and they also have a CIP (Capitol Improvement Budget) item where every three years they get \$50,000 to purchase new drones as new equipment becomes available or just as a replacement plan.

Hayward Police Department did not report any unintended community costs or backlash. Hayward Police Department reported that since the program began, it's paid dividends past what they thought it would. For instance, a lieutenant with Hayward Police Department stated that several drone deployments have resulted in a significant risk reduction when trying to stabilize potentially critical incidents.

Hayward Police Department held two community meetings (separate from the council sessions) and had an outside agency bring a done, and they included an educational training for all persons who attended. This is believed to have mitigated many issues (and educated the city council members as well), which addressed many of the initial concerns. Hayward Police Department also worked closely with ACSO to craft their policy and create their program. Hayward Police Department has deployed their UAS approximately 75 times since March of 2022 with 0 citizen complaints.

Newark Police Department

Newark Police Department reported no unintended financial burdens associated with the UAS. Newark Police Department spent \$1,200 to purchase a drone from BestBuy, which came from their organization's operating funds. Newark Police Department obtained a grant which funded the purchase of three additional drones at a cost of \$30,000.

Newark Police Department has not had any unintended community costs or backlash. Newark Police Department has a community academy in which the Department provides training on the program and the uses associated with the UAS.

1303 APPENDIX A

BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT – UNMANNED AERIAL SYSTEM (UAS)

Newark Police Department reported that the program had the unintended benefit of working more closely with ACSO and Fremont, garnering a better working relationship which was unanticipated.

Newark Police Department used many of the processes that ACSO used in creating their UAS program. Newark Police Department relied heavily on the policies and practices developed by Alameda County Sheriff's Office due to their very robust input from various stakeholders. This helped create a solid foundation they could build upon. From this, they have succeeded in the creation and implementation of their UAS program.

DRAFT

Public



Friday, March 10, 2023

Via Electronic Transmittal

Interim Chief Jennifer Louis
Berkeley Police Department
2100 Martin Luther King Jr. Way
Berkeley, CA 94704

Re: Fixed Video Surveillance Cameras

Dear Interim Chief Jennifer Louis:

The Police Accountability Board (PAB) would like to provide its recommendations on the proposed policies¹ regarding fixed video surveillance cameras being considered by the Berkeley Police Department. As mandated by Berkeley Municipal Code Section 2.99 "Acquisition and Use of Surveillance Technology," specifically section 2.99.030.2, the PAB conducted a review of the proposed policies and voted to provide the attached report at their March 8th, 2023 special meeting.

The PAB brings to your attention several points. First, these policies state that the surveillance cameras are to be used for "a variety of purposes", which appears to be inconsistent with the Council's intent to use the cameras "solely for the purpose of solving criminal investigations", as passed in their budget referral and adoption in 2021. Second, because the two use policies provided to the PAB appear to be duplicative, the PAB recommends that to avoid confusion the Department make it clear what the intended purpose of each policy is. Thirdly, several sections of these policies are ambiguous and require further clarification. Lastly, the data retention policies should be further elaborated

¹ BPD Draft Policy 351 "External Fixed Video Surveillance Cameras" & Policy 1304 "Surveillance Use Policy – External Fixed Video Surveillance Cameras"

to provide additional clarity on the proposed uses of the data. For more information, please refer to the attached report.

The PAB understands the importance of maintaining public safety and does not wish to limit the effectiveness of the BPD in ensuring the safety of the community. We strive to balance the needs of public safety with the protection of civil liberties and privacy. We hope that by addressing the aforementioned points, we can work together to maintain a safe and secure environment for all members of the Berkeley community while respecting their rights and privacy.

Sincerely,

Police Accountability Board

cc: Honorable Mayor & Members of the Berkeley City Council
City Manager

Attachments: PAB POLICY REVIEW REPORT
BPD Draft Policies 351 & 1304:
External Fixed Video Surveillance Cameras & Surveillance Use Policy -
External Fixed Video Surveillance Cameras

Public



**Police Accountability Board
&
Office of the Director of
Police Accountability**

POLICY REVIEW REPORT

BPD Draft Policies 351 & 1304:

External Fixed Video Surveillance Cameras & Surveillance Use Policy -
External Fixed Video Surveillance Cameras



Mayor

Jesse Arreguin

City Council

Rashi Kesarwani, District 1

Terry Taplin, District 2

Ben Bartlett District 3

Kate Harrison, District 4

Sophie Hahn, District 5

Susan Wengraf, District 6

Rigel Robinson, District 7

Mark Humber, District 8

City Manager

Dee Williams-Ridley

Berkeley Police Department

Interim Chief Jennifer Louis

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Office of the Director of Police Accountability

Hansel Aguilar, Director of Police Accountability

Jose Murillo, Policy Analyst

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Police Accountability Board
&
Office of the Director of
Police Accountability

POLICY REVIEW REPORT

BPD Draft Policies 351 & Policy 1304:

“External Fixed Video Surveillance Cameras” & “Surveillance Use Policy – External
Fixed Video Surveillance Cameras”

Date of Report: March 10, 2023

Summary Review:

The Police Accountability Board (PAB) has reviewed these policies and notes several primary points. First, these policies state that the surveillance cameras are to be used for “a variety of purposes”, which appears to be inconsistent with the Council’s intent to use the cameras “solely for the purpose of solving criminal investigations”, as passed in their budget referral and adoption in 2021. Second, because the two use policies provided to the PAB appear to be duplicative, the PAB recommends that to avoid confusion the Department make it clear what the intended purpose of each policy is.

Background:

On February 8th, 2023, in compliance with the BMC Section 2.99.030.2, Interim Chief Louis presented to the Police Accountability Board (PAB) a triad of documents for their review. A Surveillance Technology Acquisition Report, which was crafted by the Public

Works Department, was accompanied by two proposed policies, Policy 351 entitled "External Fixed Video Surveillance Cameras," and Policy 1304 entitled "Surveillance Use Policy - External Fixed Video Surveillance Cameras," both of which were drafted by the Berkeley Police Department (BPD). Please refer to Attachment 1, which includes a copy of the Surveillance Technology Acquisition Report, as well as the proposed policies.

The acquisition report and proposed policies state that the cameras will serve several business purposes that will include, *but not be limited to*: the prevention, deterrence, and identification of criminal activity; the addressing of areas of criminal activity; and the response to critical incidents. Additionally, the cameras will assist in identifying, apprehending, and prosecuting offenders, documenting officer and offender conduct during interactions to safeguard the rights of the public and officers, cost-effectively augmenting resources, monitoring pedestrian and vehicle traffic activity to aid traffic-related investigations, and documenting employee, employer, and/or customer conduct during interactions to protect them from any potential misconduct. See Attachment 1. However, these proposed uses of surveillance cameras—which are not inclusive of all possible uses—may be inconsistent with the implied purpose seen throughout the procedural history of these policies.

On October 12, 2021, Councilmember Taplin and Councilmember Kesarwani presented a budget referral to the City Council for "Security Cameras in the Public Right of Way at Intersections Experiencing Increased Violent Crime, and Environmental Safety Assessment of High Crime Areas." The presented recommendation aimed to deter gun violence and obtain evidence to solve criminal investigations, with an understanding that the cameras would not be used for any type of surveillance purposes. The recommendation was approved with revisions that included referring to the City Manager to develop a use policy for the security cameras, based on active investigations only and including a data retention schedule. Staff was also required to provide the council with an off-agenda memo commemorating the use policy, and the locations of the cameras would be based on calls-for-service data, with a list of locations brought to the council and referred to the AA01 budget process. See attachment 2 for a copy of the consent item 20

with Council actions from the October 12, 2021, City Council regular meeting and the relevant supplemental material.

On December 14, 2021, the City Council voted to adopt the budget recommendations that included the proposal for security cameras in certain locations. However, funding for the cameras was made conditional on the development and implementation of a Use Policy before their deployment and siting in District 1, District 2, and District 8 locations as proposed by the Police Department and at 62nd & King (District 3). The policy was set to be adopted administratively and presented to the City Council as an off-agenda memo. See attachment 3 for a copy of the action item with Council actions from the December 14, 2021, City Council regular meeting. City Manager Dee Williams-Ridley presented an off-agenda memorandum to Council on January 25, 2022, providing an early version of Policy 351. See attachment 4 for a copy of that memorandum.

The PAB has thoroughly examined all pertinent materials, and procedural history relating to the development of these policies and conducted independent research to present recommendations to the City Council and City Manager about the proposed policies of the Berkeley Police Department (BPD).

Recommendation:

The PAB recommends that the BPD revise the proposed policies to align with the initial scope of the budget referral, as well as the conditions placed by the City Council when the budget referral was approved. This will involve implementing changes such as clarifying language and limiting use to the intended purpose. In addition to these changes, the PAB recommends that to avoid confusion the Department make it clear what the intended purpose of each policy is and clearly define which policy is intended for internal training purposes and which is intended to ensure compliance with BMC 2.99.

Reasoning:

In developing its recommendation, the PAB considered the following:

The misalignment between the proposed policies and the City Council's intended Direction

Upon careful analysis of the proposed policies, the PAB determined that the language included within these policies is not reflective of the Council's original intent when approving the budget for these cameras. Policy 351 and Policy 1304 state that "recorded images may be used for a variety of purposes, including criminal or civil investigations." Among the potential uses, the policies note that the video images may be used "to document officer and offender conduct during interactions to safeguard the rights of the public and officers," "to augment resources in a cost-effective manner," "to monitor pedestrian and vehicle traffic related to investigations," and "to document employee, employer, and/or customer conduct during interactions to safeguard the employee, employer, and customer from misconduct." See attachment 1, proposed policy 351 section 351.3.1, and proposed policy 1304 section 1304.2. The proposal made by Councilmembers Taplin and Kesarwani made it clear that these cameras would be "used solely to solve criminal investigations." The proposed application of these cameras by the BPD is not in alignment with the Council's original objective of restricting their use as a crime deterrent and solely for solving ongoing criminal investigations. See attachment 2, the revised agenda material for supplemental packet 1 of the Council's October 12, 2021, regular meeting. Therefore, we recommend that the authorized use section should be revised to reflect Council's intent. The PAB's suggested changes to Policy 351 are included hereto as Attachment 5.

If, after a careful review of all relevant information, the City Council determines that it would be appropriate to expand the permissible uses of these systems beyond their original intent, the policy must specify what those allowable uses are. The current lack of clarity surrounding the proposed uses leaves too much room for interpretation, which could result in unintended uses that are not aligned with the Council's intent or the needs of the general public. Therefore, a well-defined policy that explicitly outlines the acceptable uses of these systems is necessary to ensure that they are used only for their intended purposes and to maintain public trust in their implementation.

The adoption of two similar policies could cause implementation confusion.

The BPD's Draft Policy 351, "External Fixed Video Surveillance Cameras," and Policy 1304, "Surveillance Use Policy - External Fixed Video Surveillance Cameras," are almost identical. While one policy is a "use" policy intended to provide internal training guidelines and the other is a "surveillance use" policy, it is difficult to distinguish between the two. The Police Accountability Board recommends these policies be consolidated into a comprehensive single policy or that the policies are revised to better reflect their intended purpose. If the Council and the BPD deem it appropriate to merge the policies, please refer to Attachment 5.

Other Notes:

Doubts on the effectiveness of the proposed surveillance camera installation.

In their Budget Referral memo to City Council on October 12, 2021, Council Members Taplin and Kesarwani cite a 2011 Urban Institute study entitled "Evaluating the Use of Public Surveillance Cameras for Crime Control and Prevention." That study of three large cities—Baltimore, Chicago, and Washington DC—concluded that fixed surveillance cameras could reduce crime, but only "when actively monitored" in real-time, a condition that raises personnel and other costs substantially (La Vigne et al., Page xii). Proposed policies 351 and 1304 appear to limit the cameras to the sole use of recording only video without sound and explicitly prohibit the integration of additional technologies.

The PAB's stance is not to advocate for the removal of restrictions on the integration of surveillance technology. Rather, the PAB suggests that all parties consider the possible advantages of implementing these cameras in comparison to the costs of maintenance, implementation, and training associated with the systems. According to the Urban Institute's study, "analysis results indicate that cameras, when actively monitored, have a cost-beneficial impact on crime with no statistically significant evidence of displacement to neighboring areas. However, in some contexts and locations, these crime reduction benefits are not realized" (La Vigne et al., Page xii). The study also specifies two reasons why certain locations do not observe a reduction in crime. As previously mentioned, the first explanation is that the cameras are not consistently monitored in real-time, and the

second is those areas with fewer cameras and restricted coverage limit the potential for crime prevention (La Vigne et al., Page xii).

All stakeholders must evaluate the limitations identified in the Urban Institute's study and assess whether the infrastructure necessary to make these cameras effective is already established. As the PAB acknowledges, as do other interested parties, these cameras can serve as a vital tool for deterring crime. Nonetheless, to ensure that crime is not merely being displaced to other regions, we encourage additional research to be conducted. Such research should consider the long-term effects of surveillance technology in specific areas and assess whether crime rates have decreased, remained constant, or relocated to neighboring regions. By conducting additional research, we can better comprehend the impacts of surveillance technology and make informed decisions that prioritize public safety.

Doubts on the interpretation of Government Code 34090 as implemented in proposed policies 351.5 and 1304.7

The PAB questions the relevance of California Government Code 34090 concerning the proposed data retention schedule in the proposed policies—specifically sections 351.5 and 1304.7. The PAB has interpreted the proposed policies to say that all video recordings, including recordings of citizen engaging in non-criminal activity, is subject to section 34090.6.a which states “the head of a department of a city or city and county, after one year, may destroy recordings of routine video monitoring, and after 100 days destroy recordings of telephone and radio communications maintained by the department.” Within this section, the following definitions are provided:

- “recordings of telephone and radio communications” means the routine daily recording of telephone communications to and from a city, city and county, or department, and all radio communications relating to the operations of the departments.
- “routine video monitoring” means video recording by a video or electronic imaging system designed to record the regular and ongoing operations of the departments described in subdivision (a), including mobile in-car video systems, jail observation, and monitoring systems, and building security recording systems.

- “department” includes a public safety communications center operated by the city or city and county.”

The PAB believes this government code, based on the definition provided, may not apply to all the data gathered by the proposed technology and that the activity of private citizens may be deleted before one year.

Based on the definitions provided by the government code, the PAB believes that the one-year retention period only applies to the monitoring of routine or departmental activities (i.e building security videos, routine video monitoring of maintenance and repair activities, police officer dash camera footage). Under this definition and the context of the proposed surveillance camera use, members of the public are not part of the “regular and ongoing operations” of city agents and their video recording would not be considered routine video monitoring and could be deleted much earlier than a year. However, if the video recording of members of the public is part of the regular and ongoing operations of any of these departments (such as a routine traffic stop), then it would fall under the definition of routine video monitoring. Otherwise, the PAB believes the retention period should be shorter than what is currently included in the proposed policies.

Works Cited

La Vigne, Nancy G, et al. "Evaluating the Use of Public Surveillance Cameras for Crime Control and Prevention." *Www.urban.org*, Urban Institute, 19 Sept. 2011, <https://www.urban.org/research/publication/evaluating-use-public-surveillance-cameras-crime-control-and-prevention>.

Additional Research on the topic

Piza, E. L., Welsh, B. C., Farrington, D. P., & Thomas, A. L. (2019). CCTV surveillance for crime prevention: A 40-year systematic review with meta-analysis. *Criminology & public policy*, 18(1), 135-159.

Piza, E. L. (2018). The crime prevention effect of CCTV in public places: A propensity score analysis. *Journal of Crime and Justice*, 41(1), 14-30.

National Academies of Sciences, Engineering, and Medicine. (2018). *Proactive policing: Effects on crime and communities*. National Academies Press.

Alexandrie, G. (2017). Surveillance cameras and crime: a review of randomized and natural experiments. *Journal of Scandinavian Studies in Criminology and Crime Prevention*, 18(2), 210-222.

Lum, C., Koper, C. S., & Willis, J. (2017). Understanding the limits of technology's impact on police effectiveness. *Police Quarterly*, 20(2), 135-163.

Attachment List

Attachment	Description
1	Surveillance Technology Acquisition Report and Proposed Policies 351 and 1304
2	Copy of Consent Item Number 20, City Council Actions from the October 12, 2021, Regular Meeting, and Related Supplementary Materials.
3	Copy of Action Item Number 44 with City Council Actions from the December 14, 2021, Regular Meeting.
4	Copy of City Manager Dee Williams-Ridley's Off-Agenda Memorandum to Council on January 25, 2022, Presenting an Early Version of Policy 351.
5	PAB's Proposed Revisions to Policy 351 and 1304 Which Consolidates Both Policies.

ATTACHMENT 1

PUBLIC WORKS DEPARTMENT SURVEILLANCE ACQUISITION REPORT

SURVEILLANCE CAMERAS**A. DESCRIPTION**

The Avigilon camera system consists of three main components: The camera, the server, and a remote information management system referred to as the Avigilon Control Center Client application (ACC).

The first component, the Avigilon camera, is a device that incorporates a video recording from an image. The cameras are affixed to City of Berkeley-owned infrastructure including utility poles on City streets and parks. The cameras provide protection to indoor and outdoor spaces with high-resolution images of up to 5 MP, a wide field of view, and efficient bandwidth management in a compact design without compromising building aesthetics. Although license plate and facial recognition hardware is available, neither was purchased or installed. Without the hardware, these features cannot be activated. Audio is a standard feature of the camera, but will remain deactivated by the authorized administrators of the system.



The second component of the system is the server. Once the Avigilon camera captures the imagery, a local device called a server, functions as a repository for the data. Servers are physically secured on City property and video recordings are protected within the City's network. Servers are designed to store recorded events in real time for secure retrieval and analysis. Recorded videos are transferred from the server's storage into an information management system, Avigilon Control Center (ACC) application. ¹

¹ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=200320040AB839

PUBLIC WORKS DEPARTMENT SURVEILLANCE ACQUISITION REPORT



The third component is the Avigilon Control Center Client application (ACC) which streamlines data management and allows users to access videos on one secure platform. The ACC software provides various levels of analytics to sort stored videos faster and is a standard feature. These include pixel motion detection of vehicles and people. Vehicular characteristics are searchable by vehicle type and color. Personal characteristics are searchable by gender (gender is a binary search, female of male), hair color, age, and upper and lower body clothing color. Authorized users of the system can only access data stored on a server through the ACC application. The ACC application is located on the server and accessed solely through the City's secured intranet by protected login and password. The application does not allow the authorized administrator or system users to alter, manipulate, or edit any of the footage recorded by the server.

B. PURPOSE

Surveillance cameras will be utilized for the following business purposes:

- i. To prevent, deter and identify criminal activity.
- ii. To address identified areas of criminal activity.
- iii. To respond to critical incidents.
- iv. To assist in identifying, apprehending and prosecuting offenders.
- v. To document officer and offender conduct during interactions to safeguard the rights of the public and officers.
- vi. To augment resources in a cost-effective manner.
- vii. To monitor pedestrian and vehicle traffic activity in order to assist with traffic related investigations.
- viii. To document employee, employer, and/or customer conduct during interactions to safeguard the employee, employer, and customer from misconduct

C. LOCATION

Surveillance cameras encompassed by this report, are located at, or will be installed at, the following locations.

Future Projects:

- 6th Street at University Avenue

PUBLIC WORKS DEPARTMENT SURVEILLANCE ACQUISITION REPORT

- San Pablo Avenue at University Avenue
- 7th Street at Dwight Way
- San Pablo Avenue at Dwight Way
- 7th 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
- 62nd Street at King Street

Completed Projects:

- San Pablo Park
- City of Berkeley Marina
- Transfer Station

D. IMPACT

The primary intent of these cameras is to deter and address crime in the City of Berkeley. The Public Works Department will work to ensure that the video recordings are secured and only accessible to authorized personnel. The right to maintain someone's anonymity versus the need to collect information to maintain public safety is of paramount concern. The Department recognizes that all people have a right to privacy and is committed to protecting and safeguarding civil rights by adhering to the strictest requirements concerning the release of video recordings. There should not be any impact on anyone's civil liberties or civil rights. The camera system lacks the hardware to conduct license plate reader or facial recognition technology. Audio is a standard feature of the cameras, but will remain deactivated by the authorized administrators of the system. Staff is explicitly prohibited from using any facial recognition technology as outlined in BMC 2.99.

The Public Works Department will ensure responsible data management, transparency, and accountability including the posting of video surveillance notices.

PUBLIC WORKS DEPARTMENT SURVEILLANCE ACQUISITION REPORT

E. MITIGATION

In order to minimize violations of privacy, data shall be maintained in a secure, non-public accessible location, such locations require specialized system access including a dedicated password and log in. Data will be obtained or released in accordance with the use policy. Data will not be used to unlawfully discriminate against people based on race, ethnicity, political opinions, religious or philosophical beliefs, trade union membership, gender identity, disability status, sexual orientation or activity, or genetic and/or biometric data. Additionally, the Department will not use the camera surveillance system to scan footage and identify individuals based on any of the categories listed in the preceding sentence.

Employees are prohibited from retaining, duplicating, or distributing video recordings except for departmental business purposes in accordance with the use policy.

F. DATA TYPES AND SOURCES

The surveillance camera system's use is limited to capturing non-audio, video recordings on affixed City buildings, including utility poles on streets and within park boundaries. The Camera Surveillance system collects video recordings in high-resolution imagery that is stored securely on a local server and accessible by authorized users on the ACC application. As video images are recorded, the ACC application automatically stamps the video with the current date/time and the camera's identity.

G. DATA SECURITY

External users will not have access to the ACC application. The authorized administrator and designated staff will have access to video recordings. To gain system access, staff must obtain approval from system management. Authorized users will access the ACC application via a single sign-on and password administered by Information Technology. All system access including system log-in, access duration, and data access points is accessible and reportable by the Public Works authorized administrator. The application prohibits the authorized administrator and users from altering, manipulating, tampering, or editing video recordings.

The Public Works Director or his/her designee shall appoint a member of the department as the authorized administrator to coordinate the use and maintenance of the Surveillance Camera system and the storage of recordings, including:

1. Establishing a system for downloading, storing, and securing of recordings.
2. Designating persons responsible for downloading recorded data.
3. Establishing a maintenance system to ensure the working order of surveillance cameras.
4. Monitoring the system to prevent tampering, deleting, and copying recordings.

PUBLIC WORKS DEPARTMENT SURVEILLANCE ACQUISITION REPORT

5. Working in alignment with the State of California record retention policy, AB 839 to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
6. Maintaining an audit trail record for all access to video recording files, wherein access information for each file is logged using a secure log-in system. The ACC application associates an audit trail record with each user access information, thereby logging the date, time, user name, and activity occurring during each video recording file access.

H. FISCAL COST

Costs for future projects listed in Section C of this report are unknown at this time. Future costs will depend on additional maintenance, equipment, and parts. Ongoing costs include associated staff time relative to the system administrator’s role of administering and maintaining the surveillance camera program. All cameras are purchased and wholly owned and operated by City of Berkeley.

Initial Purchase Costs:

San Pablo Park: \$64,829.46 – 1 server and 21 camera views
Zero Waste Transfer Station – Weigh Station: \$15,962.35 – 1 server and 10 camera views
Marina: \$106,620.14 – 2 servers and 45 camera views

Ongoing Costs:

Personnel, maintenance, and other ongoing costs, including compliance and other reporting and oversight requirements - \$13,443.20 per year.

I. THIRD PARTY DEPENDENCE AND ACCESS

All Camera Surveillance data is accessed by a secure network login and password and stored on servers maintained by the Department of Information Technology. There is no third-party dependence or external access to information other than the ACC is a proprietary technology which requires all the components to be Avigilon.

J. ALTERNATIVES

The City can decide to rely on traditional policing techniques as a method for addressing crime such as deploying sworn officers to patrol City buildings and parks.

There is a broad consensus – among the community– that surveillance cameras can be an important tool for deterring criminal activities.

PUBLIC WORKS DEPARTMENT SURVEILLANCE ACQUISITION REPORT

K. EXPERIENCE OF OTHER ENTITIES

Neighboring cities including San Francisco, Oakland, and San Jose have adopted the use of Surveillance Cameras as a tool for reducing crime on city streets and parks. Many cities have developed their own usage policies which may include standards for use, data retention standards, and system controls.

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.

This policy only applies to fixed, overt, marked external video surveillance systems utilized by the Department. It does not apply to mobile audio/video systems, covert audio/video systems or any other image-capturing devices used by the Department. This policy is intended to be the Use Policy, however all aspects of the Surveillance Use Policy, 1304 which corresponds with the External Fixed Video Surveillance Cameras is equally applicable.

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. Cameras may be placed in strategic locations throughout the City to detect and deter crime, to help safeguard against potential threats to the public, 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.

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. Members authorized to review video surveillance should only monitor public areas and public activities where no reasonable expectation of privacy exists. The City Manager shall obtain Council approval for any proposed additional locations for the use of video surveillance technology.

351.3.1 PLACEMENT AND MONITORING

Camera placement will be guided by 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 intersections throughout the City, and potential future camera locations as approved by City Council.

Current City Council approved locations:

- 6th Street at University Avenue

- San Pablo Avenue at University Avenue
- 7th Street at Dwight Way
- San Pablo Avenue at Dwight Way
- 7th 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
- 62nd Street at King Street

The cameras shall only record video images and not sound. Recorded images may be used for a variety of purposes, including criminal or civil investigations. The video surveillance system may be useful for the following purposes:

- (a) To prevent, deter and identify criminal activity.
- (b) To address identified areas of criminal activity.
- (c) To respond to critical incidents.
- (d) To assist in identifying, apprehending and prosecuting offenders.
- (e) To document officer and offender conduct during interactions to safeguard the rights of the public and officers.
- (f) To augment resources in a cost-effective manner.
- (g) To monitor pedestrian and vehicle traffic activity in order to assist with traffic related investigations.
- (h) To document employee, employer, and/or customer conduct during interactions to safeguard the employee, employer, and customer from misconduct

Unauthorized recording, viewing, reproduction, dissemination or retention 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 cameras data shall be limited to Berkeley Police Department (BPD) personnel utilizing the camera database for uses described above, with technical assistance from Public Works personnel. Information may be shared in accordance with 351.6 or 1304.9 below. Members seeking access to the camera system shall seek the approval from the Investigations Division Captain, or their designee.

Supervisors should monitor camera access and usage to ensure members are within 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. All system access including system login, access duration, and data access points is accessible and reportable 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 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

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, detentions, arrests, or recordings relevant to a formal or informal complaint shall be retained for a minimum of two years and one month. Recordings relating to court cases and 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 administrative or civil proceedings 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.

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

351.5.1 EVIDENTIARY INTEGRITY

All downloaded and retained 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 from other law enforcement agencies shall be referred to the Investigations Division Captain, or their designee for release in accordance with a specific and legitimate law enforcement 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 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 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. 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 responsibilities of the Public Works Department to facilitate and coordinate any updates and required maintenance.

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. It does not apply to mobile audio/video systems, covert audio/video systems or any other image-capturing devices used by the Department.

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. Members must follow the necessary logging mechanisms, such as case number and case type when querying the database.

Recorded images may be used for a variety of purposes, including criminal or civil investigations. The video surveillance system may be useful for the following purposes:

- (a) To prevent, deter and identify criminal activity.
- (b) To address identified areas of criminal activity.
- (c) To respond to critical incidents.
- (d) To assist in identifying, apprehending and prosecuting offenders.
- (e) To document officer and offender conduct during interactions to safeguard the rights of the public and officers.
- (f) To augment resources in a cost-effective manner.
- (g) To monitor pedestrian and vehicle traffic activity in order to assist with traffic related investigations.
- (h) To document employee, employer, and/or customer conduct during interactions to safeguard the employee, employer, and customer from misconduct

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. Audio is a standard feature of the camera, but is deactivated by the system administrator. 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 personnel utilizing the camera database for uses described above, with technical assistance from Public Works personnel. Information may be shared in accordance with 1304.9 below. Members seeking access to the video surveillance system shall seek the approval from the Investigations Division Captain, or their designee.

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. All system access including system log-in, access duration, and data access points is accessible and reportable 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. Recordings of incidents involving use of force by a police officer, detentions, arrests, or recordings relevant to a formal or informal complaint shall be retained for a minimum of two years and one month. Recordings relating to court cases and 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 administrative or civil proceedings 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 civil 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 images from other law enforcement agencies shall be referred to the Investigations Division Captain, or their designee for release in accordance with specific and legitimate law enforcement purposes.

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 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. 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.

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 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 Professional Standards Bureau.

1304.12 MAINTENANCE

It shall be the responsibilities of the Public Works Department to facilitate and coordinate any updates and required maintenance.

ATTACHMENT 2

Council Consent Items

20. Budget Referral: Security Cameras in the Public Right Of Way at Intersections Experiencing Increased Violent Crime, and Environmental Safety Assessment for High Crime Areas

From: Councilmember Taplin (Author), Councilmember Kesarwani (Author)

Recommendation: In order to deter gun violence and obtain evidence to solve criminal investigations, adopt the following recommendations: 1. Authorize the City Manager to install security cameras, prominent signage, and increased lighting in the public right-of-way at intersections experiencing a rise in violent crime, including appropriate arterial streets serving as entry into and exit out of the City of Berkeley; 2. Refer to the City Manager an environmental safety assessment of the high crime areas specifically in South and West Berkeley; 3. Refer costs for security cameras and lighting to the Annual Appropriations Ordinance (AAO) #1 budget process.

We note that the security camera footage would be used solely for the purpose of solving criminal investigations. The cameras are not intended and would not be used for any kind of surveillance purposes whatsoever. Key intersections entering and leaving Berkeley for security camera installation could include those listed below. Arterial intersections along University, Ashby and Alcatraz in close proximity to gun violence in South and West Berkeley should be prioritized: 6th/University, 7th/Ashby, San Pablo Ave./Ashby, Sacramento/Alcatraz, Alcatraz/Adeline, Ashby/Telegraph, Gilman/6th, College/Alcatraz, Ashby/Domingo, Ashby/Claremont. Other locations within Berkeley may include the following: University/San Pablo, University/Sacramento, Sacramento/Ashby, George Florence Park, 10th/Bancroft, 8th/Channing, 8th/Addison.

Financial Implications: See report

Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

Action: Approved recommendation as revised in Supplemental Communications Packet #1 from Councilmember Taplin, and further revised to include the amendments below.

- Refer to the City Manager to develop a use policy for the security cameras that includes provisions that the data may be used for active investigations only and that the policy will include the data retention schedule. Staff to provide Council with an off-agenda memo commemorating the use policy.
- The locations of the cameras will be based on calls-for-service data; that staff will bring a list of locations to Council; and to refer the item to the AAO1 budget process.



Terry Taplin
Councilmember District 2
Rashi Kesarwani
Councilmember District 1

REVISED AGENDA MATERIAL for Supplemental Packet 1

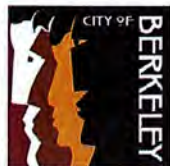
Meeting Date: October 12, 2021

Item Number: 20

Item Description: Budget Referral: Security Cameras in the Public Right Of Way at Intersections Experiencing Increased Violent Crime, and Environmental Safety Assessment for High Crime Areas

Submitted by: Councilmember Taplin, Councilmember Kesarwani

- Removed several locations from recommended intersections for camera placement
- Specified compatibility with existing cameras
- Revised fiscal estimate
- Revised background section to include updated gunfire statistics
- Added statistics on private security cameras registered with BPD



CONSENT CALENDAR
Oct. 12, 2021

To: Honorable Mayor and Members of the City Council
From: Councilmember Taplin (Author), Councilmember Kesarwani (Author)
Subject: Budget Referral: Security Cameras in the Public Right Of Way at Intersections Experiencing Increased Violent Crime, and Environmental Safety Assessment for High Crime Areas

RECOMMENDATION

In order to deter gun violence and obtain evidence to solve criminal investigations, adopt the following recommendations:

1. Authorize the City Manager to install security cameras, prominent signage, and increased lighting in the public right-of-way at intersections experiencing a rise in violent crime, including appropriate arterial streets serving as entry into and exit out of the City of Berkeley;
2. Refer to the City Manager an environmental safety assessment of the high crime areas specifically in South and West Berkeley;
3. Refer costs for security cameras and lighting to the Annual Appropriations Ordinance (AAO) #1 budget process.

We note that the security camera footage would be used solely for the purpose of solving criminal investigations. The cameras are not intended and would not be used for any kind of surveillance purposes whatsoever. Cameras should be compatible with those already in use at San Pablo Park under Contract Nos. 31900080 and 31900205.

Key intersections entering and leaving Berkeley for security camera installation as recommended by the Berkeley Police Department could include those listed below. Arterial intersections along University and Ashby and Alcatraz in close proximity to gun violence in South and West Berkeley should be prioritized.

- Sixthth/University
- Seventhth/Ashby
- San Pablo Ave/Ashby
- Sacramento/Alcatraz
- Alcatraz/Adeline
- University/San Pablo
- Sacramento/Ashby
-
- MLK/Ashby

- Dwight/7th
- San Pablo and Dwight
- ~~Gilman/6th~~
- ~~College/Alcatraz~~
- ~~Ashby/Domingo~~
- ~~Ashby/Claremont~~

Other locations within Berkeley as requested by residents may include the following:

- ~~University/Sacramento~~
- Sacramento/Oregon
- George Florence Park
- ~~10th/Bancroft~~
- ~~Eighth⁸/Channing~~
- ~~108th/Addison~~

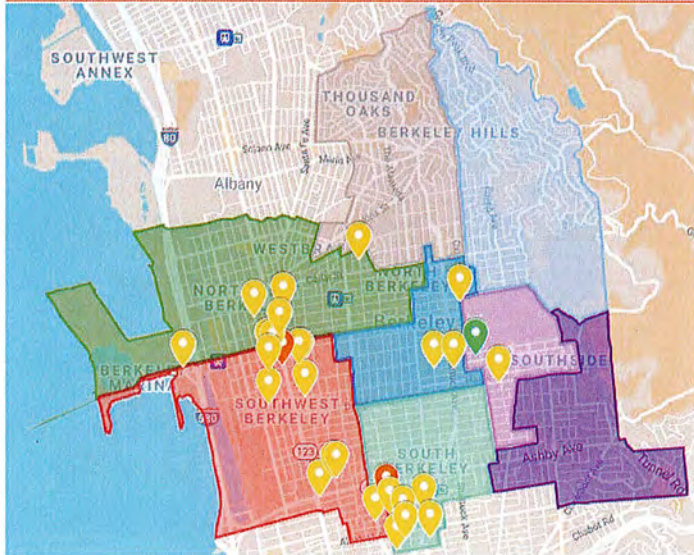
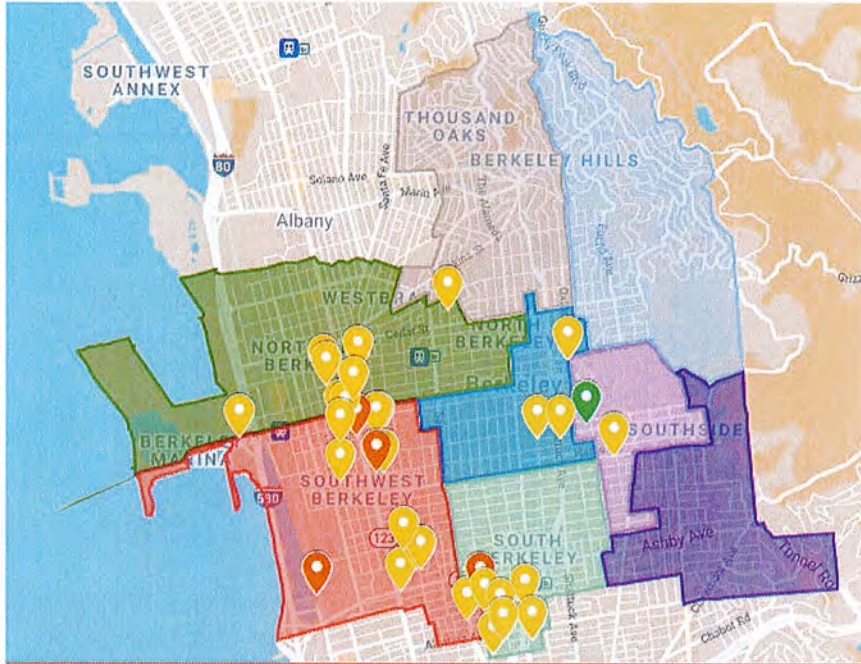
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FINANCIAL IMPLICATIONS

Estimated one-time costs to install cameras, signage and lighting are likely to range from \$75,000 to \$150,000 per intersection, plus \$40,000 annually for data, software and maintenance. Total costs would vary based on the number of intersections selected. Specifically, total one-time costs for prioritizing seven intersections recommended by the Berkeley Police Department would be \$525,000 to \$1,050,000 plus ongoing data, software and maintenance costs of \$280,000.
~~Approximately \$975,000 to \$1,950,000 to \$100,000 to \$1 million for purchasing security cameras including camera storage and maintenance, as well as signage installation and increased lighting. Estimated one-time costs to install cameras, signage and lighting are likely to range from \$75,000 to \$150,000 per intersection, plus \$40,000 annually for data, software and maintenance.~~

CURRENT SITUATION AND ITS EFFECTS

According to the Berkeley Police Department, there were ~~29-35~~ shootings in 2021 as of September ~~624~~, compared to ~~22-24~~ shootings by the same date in 2020. Only 10 of the investigations on those shootings have been closed with an identified suspect, and the Department has recovered 70 firearms this year so far; 22 of those firearms, including 4 rifles, were recovered during detective follow-up investigations.



*2021 Berkeley Gunfire Map*¹

[West Berkeley neighborhoods have experienced repeated terrorizing incidents of gunfire in recent weeks.](#) On the morning of Saturday, September 4, 2021, West Berkeley residents reported 8 to -10 gunshots from two cars driving on [Tenth](#)^{10th} St. past George Florence Park.² Panicked parents grabbed their children and ran for cover, but the park is fenced in on [three](#)³ sides, and is only open on the side of the street where the gunfire was identified. Police responded to the scene and found evidence of a second shooting just two blocks away at [Ninth](#)^{9th} and Allston. This follows recent shootings at [Eighth](#)^{8th} and Channing on August 20, and one that injured a man at San Pablo and Allston on August 14.³ [On the evening of September 23, a shooting at the intersection of Channing Way and Byron Street sent a teenage girl to the hospital with injuries.](#)⁴ Residents of this neighborhood are alarmed by the surge in gun violence and have urged the City to install security cameras in public spaces with [a](#) high incidence of violent crime, along with other evidence-based [public safety](#) ~~only~~-responses, to ensure safer streets.

[High-quality images of suspect vehicles would provide valuable investigative leads to assist efforts to bring accountability for violent gun crimes.](#) Shootings often involve suspects who flee the area of the crime in their vehicles. Police investigating the crime [often](#) rely on private security cameras owned by residents and/or businesses in order to obtain video evidence. Installing high-quality cameras at major arterials would ensure access to videos and allow investigators to check the [footage](#)~~videos~~ for suspects fleeing the crime area in their vehicle. ~~High-quality images of suspect vehicles would provide valuable investigative leads.~~

The City already urges private property owners with security cameras to register their cameras with the Berkeley Police Department ([BPD](#)) to assist in criminal investigations, and property owners readily avail themselves of this resource. [According to the Department, a total of 283 security cameras owned by private citizens and businesses are currently registered with BPD.](#) Valuable public safety resources should not be delegated entirely to the voluntary cooperation of private entities, particularly when violent gunfire has occurred in many public spaces including parks and major intersections.

¹ Raguso, E. (2021). The 2021 Berkeley Gunfire Map. *Berkeleyside*. Retrieved Sept. ~~13~~²⁴, 2021 from <https://www.berkeleyside.org/2021/05/22/2021-berkeley-gunfire-map>

² Raguso, E. (Sept. 4, 2021). Police investigate daytime shoot-out in Berkeley on Saturday. *Berkeleyside*. Retrieved from <https://www.berkeleyside.org/2021/09/05/police-investigate-daytime-shoot-out-west-berkeley-saturday>

³ Raguso, E. (Aug. 14, 2021). Update: Man shot in Berkeley is expected to survive; roadway is open. *Berkeleyside*. Retrieved from <https://www.berkeleyside.org/2021/08/14/man-shot-berkeley-traffic-san-pablo-avenue>

⁴ [Raguso, E. \(Sept. 23, 2021\). Berkeley shooting sends teenage girl to hospital. *Berkeleyside*. Retrieved from <https://www.berkeleyside.org/2021/09/23/southwest-berkeley-shooting-hospital-girl-16>](#)

Strategically placed cameras should be of sufficient quality to capture high resolution video. Cameras would *not* be equipped with Automated License Plate Readers (ALPR), and would not be monitored. The recordings would be an investigative resource which officers could access while investigating specific crimes and could assist in a reduction of crime. This would be an additional element of our Police Department's crime prevention strategies.

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"Stationary security cameras affixed to City property or facilities" are not regulated under the Surveillance Technology Ordinance (e.f. BMC Section 2.99.020.1.i). As a result, stationary camera installation at major thoroughfares would be exempt from the requirements of BMC Chapter 2.99.

Providing security cameras in the public right-of-way is a Strategic Plan Priority Project, advancing our goal to create a resilient, safe, connected, and prepared city.

BACKGROUND

A 2011 report⁵ from The Urban Institute's Justice Policy Center noted that cameras can be an effective tool for preventing crimes and supporting investigations. These tools appear fiscally prudent both as tools for investigations, and with the installation and maintenance of security cameras being less costly than the costs associated with crimes that may take place without them. Moreover, an experiment conducted at the University of Twente in the Netherlands finds evidence that the presence of security cameras can encourage "prosocial" and "helping behavior" among bystanders.⁶

Berkeley's Police Department has been conducting Crime Prevention Through Environmental Design (CPTED) assessments for neighborhoods throughout the City over the past several years. These assessments include recommendations such as: increased lighting, maintenance of properties, landscaping and signage that can be used to deter criminal behavior.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

CONTACT PERSON

Councilmember Terry Taplin Council District 2 510-981-7120
Councilmember Rashi Kesarwani Council District 1 510-981-7110

⁵ La Vigne, N. G., et al. (2011). Evaluating the use of public surveillance cameras for crime control and prevention. *Washington, DC: US Department of Justice, Office of Community Oriented Policing Services. Urban Institute, Justice Policy Center, 1-152.*

⁶Van Rompay, T. J., et al. (2009). The eye of the camera: Effects of security cameras on prosocial behavior. *Environment and Behavior*, 41(1), 60-74. Retrieved from <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.844.4026&rep=rep1&type=pdf>

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ATTACHMENT 3

Action Calendar – New Business

44. FY 2021 Year-End and FY 2022 First Quarter Budget Update

From: City Manager

Recommendation: Discuss and determine the funding allocations for FY 2022 based on the FY 2021 Excess Equity and Excess Property Transfer Tax for the following: 1) the General Fund Reserves 2) City Manager Budget Recommendations and 3) the Council Budget Referrals approved during FY 2022 to be considered in November 2021.

Financial Implications: See report

Contact: Rama Murty, Budget Office, (510) 981-7000

Action: M/S/C (Arreguin/Robinson) to accept supplemental material from the City Manager on Item 45.

Vote: All Ayes.

Action: M/S/C (Arreguin/Robinson) to suspend the rules and extend the meeting to 11:15 p.m. to complete Items 44 and 45; and to continue Items 46 and 47 to January 18, 2022.

Vote: All Ayes.

Action: 23 speakers. M/S/C (Arreguin/Kesarwani) to adopt the budget recommendations for excess equity as contained in the supplemental materials submitted at the meeting with the amendment that funding of the security cameras is conditioned on development and implementation of a Use Policy prior to deployment and Siting of Cameras in District 1, District 2 and District 8 locations as proposed by the Police Department and at 62nd & King (District 3). Policy will be adopted administratively and presented to the City Council as an off-agenda memo; repayment of the Workers Comp fund will be a top priority in the June budget process.

Vote: All Ayes.

FY 2021 Recommended Carryover and FY 2022 Recommended Adjustments (AAO#1)

Attachment 2

Item #	Fund #	Fund Name	Department	Recommended Carryover	Recommended Adjustment	Project Number	Description/Project name	Mandated by Law	Authorized by Council	City Manager Request	Comments/Justification
34	011	General Fund	Information Technology	\$40,000			Cyber Leadership and Strategy Solutions			X	Carryover of fund for Cyber Leadership and Strategy Solutions Contracts. Approved by Council on 04/27/2021 per Resolution No. 69.813.
35	011	General Fund	Information Technology	\$263,679			1947 Rent			X	Carryover of fund for IT rent in 1947 Center
36	011	General Fund	Mayor & Council	\$68,751			FY21 Council Carryover		X		FY21 Council Carryover Amount. Approved by Council through Resolution No. 65.540-N.S.
37	011	General Fund	Mayor & Council		\$709,695		Legislative Assistants Salary & Fringe Benefit Increase and One-Time Accretion Payment		X		Appropriate fund for the One-Time Accretion recognition payment for Legislative Assistants related to inclusion of the Legislative Assistant position to SEIU 1021 - CSU/PTRLA Unit. Approved by Council on 06/15/2021 through Resolution 69.928-N.S. Appropriate fund to augment Council Office Salaries budget to fund for one Legislative Assistant position at the top step of the salary range with benefits. Approved by Council on 10/12/2021 through Resolution xx,xxx-N.S.
38	011	General Fund	Mayor & Council		\$30,121		Mayor and Council Annual Salary per Measure JJ		X		Appropriate FY 2022 funds for Measure JJ for the Mayor and Councilmember Salaries and Benefit increases approved by voters on November 3, 2020.
39	011	General Fund	Mayor & Council		\$1,330,000		Security Cameras in the Public Right of way		X		Appropriate funding for a Council Budget Referral by Council member Taplin and Kesarwani. Security Cameras in the Public Right of Way at Intersections Experiencing Increased Violent Crime, and Environmental Safety Assessment for High Crime Areas
40	011	General Fund	Mayor & Council		\$300,000		Resolution Recognizing Housing as Human Right		X		Appropriate funding for a Council Budget Referral by Mayor Arreguin, Councilmember Taplin, Hamison, and Hahn. Resolution Recognizing Housing as Human Right, Referring to City Manager Several Measures to Begin Developing Social Housing in the City of Berkeley
41	011	General Fund	Mayor & Council		\$100,000		Homeless Outreach Coordinator		X		Appropriate funding for a Council Budget Referral by Councilmember Bartlett for a Homeless Outreach Coordinator for South Shattuck Avenue and Adeline St. Berkeley
42	011	General Fund	Mayor & Council		\$60,000		Durant Parklet and Telegraph Plaza Improvements		X		Appropriate funding for a Council Budget Referral by Mayor Arreguin and Councilmember Robinson for Durant Parklet and Telegraph Plaza Improvements
43	011	General Fund	Mayor & Council		\$200,000		Berkeley Ceasefire		X		Appropriate funding for a Council Budget Referral by Mayor Arreguin and Councilmember Wengraf, Bartlett, and Taplin for the Berkeley Ceasefire program

ATTACHMENT 4



Office of the City Manager

January 25, 2022

To: Honorable Mayor and Members of the City Council

From: *Dee* Dee Williams-Ridley, City Manager

Subject: Public Safety Cameras Affixed to City Property

On December 14, 2021, City Council adopted an agenda item for Public Safety Cameras in the public right of way affixed to City property at various intersections throughout the City of Berkeley, similar to existing cameras currently in place at San Pablo Park. This agenda item was approved by Council, with direction to the City Manager to develop and implement a Use Policy for the Berkeley Police Department.

The attached policy addresses the use of the existing San Pablo Park cameras as well as additional fixed Public Safety Cameras located on City owned or managed properties or facilities. This policy was crafted to address the use, integrated technologies, storage and retention, access, and sharing of video/images.

The following locations were approved by City Council:

- 6th Street at University Avenue
- San Pablo Avenue at University Avenue
- 7th Street at Dwight Way
- San Pablo Avenue at Dwight Way
- 7th 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
- 62d Street at King Street

Attachment: Public Safety Fixed Video Surveillance Cameras Policy

cc: Paul Buddenhagen, Deputy City Manager
LaTanya Bellow, Interim Deputy City Manager
Jennifer Louis, Interim Chief of Police
Jenny Wong, City Auditor
Mark Numainville, City Clerk
Matthai Chakko, Assistant to the City Manager

Public Safety Fixed Video Surveillance Cameras

351.1 PURPOSE AND SCOPE

This policy provides guidance for the placement and monitoring of City of Berkeley public safety video cameras, as well as the management, maintenance, storage and release of the captured images.

This policy only applies to fixed, overt, marked public safety video surveillance systems utilized by the Department. It does not apply to mobile audio/video systems, covert audio/video systems or any other image-capturing devices used by the Department.

351.2 POLICY

The Berkeley Police Department utilizes a public safety video surveillance system to enhance its anti-crime strategy, to effectively allocate and deploy personnel, and to enhance public safety and security in public areas. Cameras may be placed in strategic locations throughout the City to detect and deter crime, to help safeguard against potential threats to the public, to help manage emergency response situations during natural and man-made disasters and to assist City officials in providing services to the community.

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. Members authorized to review video surveillance should only monitor public areas and public activities where no reasonable expectation of privacy exists. The City Manager shall obtain Council approval for any proposed additional locations for the use of video surveillance technology.

351.3.1 PLACEMENT AND MONITORING

Camera placement will be guided by 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, cameras placed in Council identified and approved intersections throughout the City, and potential future camera locations as approved by City Council.

Current City Council approved locations:

- 6th Street at University Avenue
- San Pablo Avenue at University Avenue

- 7th Street at Dwight Way
- San Pablo Avenue at Dwight Way
- 7th 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
- 62nd Street at King Street

The cameras shall only record video images and not sound. Recorded images may be used for a variety of purposes, including criminal investigations. The public video surveillance system may be useful for the following purposes:

- (a) To prevent, deter and identify criminal activity.
- (b) To address identified areas of criminal activity.
- (c) To respond to critical incidents.
- (d) To assist in identifying, apprehending and prosecuting offenders.
- (e) To document officer and offender conduct during interactions to safeguard the rights of the public and officers.
- (f) To augment resources in a cost-effective manner.
- (g) To monitor pedestrian and vehicle traffic activity in order to assist with traffic related investigations.

Images from each camera should be recorded in a manner consistent with the underlying purpose of the particular camera.

Unauthorized recording, viewing, reproduction, dissemination or retention is prohibited.

351.3.2 FIXED CAMERA MARKINGS

All public areas monitored by public safety surveillance equipment shall be marked in a conspicuous manner with appropriate signs to inform the public that the area is under police surveillance. Signs should be well lit, placed appropriately and without obstruction to ensure visibility.

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

Supervisors should monitor video surveillance access and usage to ensure members are within 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. Those who are authorized and login should automatically trigger the audit trail function to ensure compliance with the guidelines and policy.

351.4.2 PROHIBITED ACTIVITY

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

Public safety 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.

Public safety 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

The Department shall retain all recordings for a minimum of 60 days. Recordings of incidents involving use of force by a police officer, detentions, arrests, or recordings relevant to a formal or informal complaint shall be retained for a minimum of two years and one month. Recordings relating to court cases and 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 administrative or civil proceedings 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.

Recordings created by equipment testing or accidental activation may be deleted after 60 days.

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

351.5.1 EVIDENTIARY INTEGRITY

All downloaded and retained 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

All recorded video images gathered by the public safety video surveillance equipment are for the official use of the Berkeley Police Department.

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

Requests for recorded images from other law enforcement agencies shall be referred to the Watch Commander for release in accordance with a specific and legitimate law enforcement 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 Audits and Inspections Sergeant or the authorized designee will conduct an annual review of the public safety video surveillance system. The review should include an analysis of the cost, benefit and effectiveness of the system, including any public safety issues that were effectively addressed or any significant prosecutions that resulted, and any systemic operational or administrative issues that were identified, including those related to training, discipline or policy.

The results of each review shall be appropriately documented and maintained by the Audits and Inspections Sergeant or the authorized designee and other applicable advisory bodies. Any recommendations for training or policy should be promptly addressed.

351.8 TRAINING

All department members authorized to operate or access public 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. Training should also address state and federal law related to the use of video surveillance equipment and privacy.

ATTACHMENT 5

Internal

Policy
351Berkeley Police Department
Law Enforcement Services Manual

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.~~

~~This policy only applies to fixed, overt, marked external video surveillance systems utilized by the Department. It does not apply to mobile audio/video systems, covert audio/video systems or any other image capturing devices used by the Department. This policy is intended to be the Use Policy, however all aspects of the Surveillance Use Policy, 1304 which corresponds with the External Fixed Video Surveillance Cameras is equally applicable.~~

Commented [MJ1]: The language used in policy section 1304.1 should be incorporated within this policy.

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. Cameras may be placed in strategic locations throughout the City to detect and deter crime, to help safeguard against potential threats to the public, 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.

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. Members authorized to review video surveillance should only monitor public areas and public activities where no reasonable expectation of privacy exists. The City Manager shall obtain Council approval for any proposed additional locations for the use of video surveillance technology.

351.3.1 PLACEMENT AND MONITORING

Camera placement will be guided by 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 intersections throughout the City, and potential future camera locations as approved by City Council.

Internal

Current City Council approved locations:

- 6th Street at University Avenue 1
- San Pablo Avenue at University Avenue
- 7th Street at Dwight Way
- San Pablo Avenue at Dwight Way
- 7th 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
- 62nd Street at King Street

The cameras shall only record video images and not sound. Recorded images may only be used for ~~criminal investigation purposes, a variety of purposes, including criminal or civil investigations.~~
 The video surveillance system may be useful for the following purposes:

Commented [MJ2]: This language should be included under 351.4.2 and combined with the language of 1304.2 "Authorized Use" and the suggestions for Section 351.3.1 of this policy.

- (a) To prevent, deter and identify criminal activity.
- (b) To address identified areas of criminal activity.
- (c) ~~To respond to critical incidents.~~
- (d) To assist in identifying, apprehending and prosecuting offenders.
- (e) ~~To document officer and offender conduct during interactions to safeguard the rights of the public and officers.~~
- (f) ~~To augment resources in a cost-effective manner.~~
- (g)(e) To monitor pedestrian and vehicle traffic activity in order to assist with traffic related criminal investigations.
- (h) ~~To document employee, employer, and/or customer conduct during interactions to safeguard the employee, employer, and customer from misconduct~~

Unauthorized recording, viewing, reproduction, dissemination or retention 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.

Internal

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, 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 surveillance technology systems as defined by BMC 2.99.020.1.~~

351.4 VIDEO SUPERVISION

Access to video surveillance cameras data shall be limited to Berkeley Police Department (BPD) personnel utilizing the camera database for uses described above, with technical assistance from Public Works personnel. Information may be shared in accordance with 351.6 ~~or 1304.9~~ below. Members seeking access to the camera system shall seek the approval from the Investigations Division Captain, or their designee.

Supervisors should monitor camera access and usage to ensure members are within 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. All system access including system login, access duration, and data access points is accessible and reportable 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 1304.4 of the Surveillance Use Policy.

Commented [MJ3]: Incorporate sections 1304.3, 1304.4, and 1304.5 into these sections.

351.4.2 ~~PROHIBITED ACTIVITY~~ Authorized Use and 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.

Commented [MJ4]: Incorporate proposed policy 1304.2 "Authorized Use" and

351.5 STORAGE AND RETENTION OF MEDIA

The cameras should record minimally for one year as guided by Government Code 34090.

Internal

Recordings of incidents involving use of force by a police officer, detentions, arrests, or recordings relevant to a formal or informal complaint shall be retained for a minimum of two years and one month. Recordings relating to court cases and 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 administrative or civil proceedings 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.

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

Commented [MJ5]: Combine with Policy 1304.7

351.5.1 EVIDENTIARY INTEGRITY

All downloaded and retained 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 from other law enforcement agencies shall be referred to the Investigations Division Captain, or their designee for release in accordance with a specific and legitimate law enforcement 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 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

Internal

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 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. 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 ~~responsibilities~~ responsibility of the Public Works Department to facilitate and coordinate any updates and required maintenance.

Commented [MJ6]: Incorporate the language used in policy 1304.8 through 1304.12.

Public



Police Accountability Board

Thursday, February 23, 2023

Via Electronic Transmittal

Interim Chief Jennifer Louis
Berkeley Police Department
2100 Martin Luther King Jr. Way
Berkeley, CA 94704

Re: Proposed Unmanned Aerial System Policies

Interim Chief Jennifer Louis:

The Police Accountability Board (PAB) is writing to express our objection to the proposed Unmanned Aerial System (UAS) policies¹ being considered by the Berkeley Police Department (BPD). As mandated by the Berkeley Municipal Code 2.99 "Acquisition and Use of Surveillance Technology," specifically section 2.99.030.2, a review was conducted by the Board. We believe that the proposed UAS policies could have significant negative consequences for civil liberties and privacy, and could harm the relationship between the police and the community. Furthermore, our concern is that the policies lack clarity regarding the BPD's intentions, whether it is seeking to procure its drones for future use or simply expediting the acquisition process through mutual aid agreements. The lack of clarity creates confusion, making it difficult to assess the extent of the UAS program and how it will be used. The BPD must clarify its intentions in one clear policy, specifying the purpose and scope of the proposed UAS program to avoid any misinterpretation or abuse of its use.

We have identified several key reasons for our objections:

1. Concerns regarding potential implications for civil liberties and constitutional rights: The use of UAS for surveillance purposes raises concerns about potential violations of civil liberties and constitutional rights. The Board does not believe the proposed policies implement sufficient safeguards to prevent such violations.

¹ Policy 611: Unmanned Aerial System (UAS) Operations & Policy 1303: Surveillance Use Policy- Unmanned Aerial System (UAS)

1947 Center Street, 5th Floor, Berkeley, CA 94704 TEL: 510-981-4950 TDD: 510-981-6903 FAX: 510-981-4955

Website: www.cityofberkeley.info/dpa/

Email: dpa@cityofberkeley.info

Public

2. The role of civilian oversight in the acquisition and use of UAS: Civilian oversight is a critical component of the acquisition and use of UAS, and we believe that the proposed policies do not provide sufficient opportunities for public input and oversight.
3. Lack of technical specifications and potential misuse: The proposed policies lack clear technical specifications as to the UAS systems being requested. The Board believes that a blanket request for acquisition and use is not appropriate.
4. Lack of definition for "Exigent Circumstances": A key concern for appropriate use of UAS in law enforcement: The lack of a clear definition for "exigent circumstances" in the proposed policies raises concerns about the appropriate use of UAS.
5. The uncertainty of UAS operations through mutual aid agreements with outside agencies: The proposed policies do not address the potential risks and legal implications of using UAS through mutual aid agreements with outside agencies.

We have attached a detailed report that outlines our concerns regarding the proposed UAS policies.

We strongly urge the BPD to reconsider the proposed policies and to engage in meaningful dialogue with the community to ensure that any use of UAS is in line with the needs and values of the Berkeley community.

Thank you for your attention to this matter.

Sincerely,



John "Chip" Moore (Feb 23, 2023 10:20 PST)

John "Chip" Moore

Chair, Police Accountability Board

Attachments: As noted above.

cc: Honorable Mayor & Members of the Berkeley City Council
City Manager



**Police Accountability Board
&
Office of the Director of
Police Accountability**

POLICY REVIEW REPORT

BPD DRAFT POLICIES 611 & 1303:

**UNMANNED AERIAL SYSTEM OPERATIONS &
SURVEILLANCE USAGE**



Police Accountability Board

Mayor

Jesse Arreguin

City Council

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Terry Taplin, District 2
Ben Bartlett District 3
Kate Harrison, District 4

Sophie Hahn, District 5
Susan Wengraf, District 6
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Mark Humber, District 8

City Manager

Dee Williams-Ridley

Berkeley Police Department

Interim Chief Jennifer Louis

Police Accountability Board

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Ismail Ramsey

Office of the Director of Police Accountability

Hansel Aguilar, Director of Police Accountability
Jose Murillo, Policy Analyst

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Police Accountability Board
&
Office of the Director of
Police Accountability

POLICY REVIEW REPORT

BPD DRAFT POLICIES 611 & 1303:

UNMANNED AERIAL SYSTEM OPERATIONS & SURVEILLANCE USAGE

Date of Report: Thursday, February 23, 2023

Introduction and Overview:

On January 11th, 2023, the Office of the Director of Police Accountability (ODPA) presented to the Board a recommendation regarding Policy Complaint #31, which concerned the alleged use of drones by the Berkeley Police Department (BPD) during the 2022 Solano Stroll event. See Attachment 1, the ODPA Recommendation to the Police Accountability Board (PAB) regarding Policy Complaint #31. The ODPA advised the Police Accountability Board (PAB) not to proceed with the policy complaint process due to the upcoming review of new BPD Unmanned Aerial System (UAS) acquisition and use policies. The PAB accepted the recommendation. On January 24th, 2023, Interim Chief Louis provided the PAB and ODPA with two policies—Policy 611 “Unmanned Aerial System (UAS) Operations” and Policy 1303 “Surveillance Use Policy – Unmanned Aerial System (UAS)”—and respective acquisition report as required by Berkeley Municipal Code §2.99.030.2. See Attachment 2, Draft Policy 611 “Unmanned Aerial System (UAS) Operations” and Policy 1303 “Surveillance Use Policy – Unmanned Aerial System (UAS).”

Although that is the immediate procedural history of how these proposed policies have made it before the Board, the conversation on UAS technologies is not new to the City of Berkeley. The conversation began over 10 years ago with the PAB's predecessor agency, the Police Review Commission (PRC). Specifically, on December 18, 2012, the Berkeley City Council reviewed a resolution submitted to it by the Berkeley Peace and Justice Commission to "Proclaim Berkeley a No Drone Zone and Enact an Ordinance to that Effect." At that time, the Council referred the issue of drones, or unmanned aerial vehicles, back to the Peace and Justice Commission, the Berkeley Police Review Commission, and the Berkeley Disaster and Fire Commission for further review and study. The Council asked that the referenced stakeholder Commissions report back to Council for further consideration of the issues and review a proposal to permit police use of drones upon approval of the City Manager, or approval of the Chief of Police in emergencies when the City Manager isn't available, in the following circumstances:

1. In the case of a disaster;
2. To assist in locating missing persons;
3. To assist in rescue efforts;
4. To assist in a police pursuit of known suspects who have committed serious or violent crimes.

See Attachment 3, the PRC's 2013 letter and recommendation on drones to the Mayor and City Council.

Ultimately, the Council decided on February 24, 2015, to impose a ban on the use of unmanned aircraft systems, commonly known as "drones," by the BPD for one year and to formulate a protocol for their deployment by law enforcement. However, the Council granted permission for the Berkeley Fire Department to use drones for emergency response in the event of a disaster, although the Fire Department did not procure any and currently has none. See Attachment 4, the Berkeley City Council's minutes for February 24, 2015, where the topic is discussed as action item number 26. Subsequently, the Council enacted Ord. 7592-NS §2 in 2018, which introduced Chapter 2.99 to the Berkeley Municipal Code.

For this report, the term Unmanned Aerial System (UAS) is defined in the same manner as provided in the BPD Surveillance Acquisition Report (hereinafter the "Report"). A UAS is defined as an unmanned aircraft that is capable of sustained flight, whether through pre-programmed instructions or remote control, and is equipped with components designed to gather information through various means, such as imaging or recording. Typically, a UAS is composed of an unmanned aircraft that includes a chassis, propellers for flight, communication equipment, flight stabilization technology, a control chip, a camera, and a digital image/video storage system. Additionally, a UAS includes a remote-control unit that communicates with the aircraft, as well as battery charging equipment for both the aircraft and the remote control. UAS is controlled from a remote-control unit with wireless connectivity, which allows pilots to view the UAS and its surroundings from a birds-eye perspective. The UAS's cameras enable pilots to view the aerial perspective, and image and video data are recorded onto secure digital (SD) memory cards that can be removed from the UAS for evidence.

The Report addresses the need for UAS technology as being necessary to "[improving] the capacity of law enforcement (LE) to provide a variety of foundational police services." See Attachment 5, a copy of BPD's draft Surveillance Acquisition Report for Unmanned Aerial System (UAS). The claim is that the acquisition of UAS drones by the Berkeley Police Department would significantly improve their capacity to provide foundational police services and that the technology has already been proven to save lives and help capture dangerous criminal suspects in other law enforcement agencies. The need for this acquisition is justified by an annual increase in violent crimes in Berkeley, including shootings, robberies, assaults, and firearms recovery. From 2018 to 2022, the yearly average number of shootings has doubled. In 2021 Berkeley had 265 robberies, 210 aggravated assaults, 57 sexual assaults, and 118 firearms recovered. See Attachment 5. The Department notes that UAS drones can provide a greater view into the immediate surroundings of crime scenes and active pursuits, which can offer officers greater time and distance to de-escalate volatile situations (see Attachment 5). Furthermore, the Department states that UAS drones are effective in locating missing persons in remote

areas and assisting in rescue missions. Overall, the claim is that UAS systems would help mitigate risk for both officers and the public.

The increasing number of police departments across the country acquiring and using drones indicates a growing trend in law enforcement agencies relying on this technology. The Atlas of Surveillance, a project of the Electronic Frontier Foundation (EFF) and the University of Nevada, has reported that at least 1,172 police departments nationwide are currently using drones (Guariglia, 2022). With the widespread use of UAS technology, it is becoming increasingly evident that drones are being viewed as an essential tool for law enforcement agencies as UAS technologies continue to develop. The PAB does not challenge the claim that UAS technology can be beneficial to both the BPD and the community, as long as the appropriate accountability measures and safeguards are in place. Additionally, the PAB also recognizes the concern for disparate impacts when implementing these technologies as noted by Samuelson Law, Technology & Public Policy Clinic, “it can also enable targeting and discrimination against vulnerable communities” (Chivukula et al., 2021).

In conducting this policy review, the PAB assessed the necessity of acquiring a drone, weighed the benefits of such an acquisition against the cost and the concerns raised by the community, and identified the oversight measures that should be considered if the technology is deemed necessary to acquire. To that end, the Board reviewed the historical record of this conversation to include the PRC’s reports and recommendations, the current literature surrounding UAS technologies, and neighboring jurisdictions’ policies and uses of UAS technologies.

Recommendation:

The Board notes that it is not clear whether Berkeley Municipal Code 2.99 "Acquisition and Use of Surveillance Technology," specifically section 2.99.030.2, requires review if the Berkeley Police Department does not intend to acquire drones. Because the preambles to both proposed policies (611.5 and 1303.2) clearly state, “UAS shall only occur as the result of a mutual assistance request”, the PAB needs to know if the Berkeley

Police Department intends to request or is requesting acquisition for or purchase of drones. If BPD does not intend to make this purchase it would appear more appropriate to propose a policy for requests for mutual aid such as in BPD Policy 418 "Obtaining Air Support". That policy should then include in its title that this is the mutual aid policy for use of other Department's Drones. Berkeley PD will not have the authority to supervise, train or limit other jurisdictions' use of their drones.

To ensure the City of Berkeley and the Berkeley Police Department adopt Unmanned Aerial System (UAS) policies that restrict the use of this technology to the most serious situations, minimize the potential for constitutional violations, and increase trust between BPD officers and community members, the PAB recommends that the City not approve the Department's proposed policies in their current form. Furthermore, the PAB recommends that when and if the City revisits the issue of adopting Unmanned Aerial System (UAS) policies for use or acquisition it addresses the following concerns:

Concerns regarding potential implications for civil liberties and constitutional rights

UAS technologies present concerns for the preservation, respect, and adherence to well-established civil liberties and constitutional rights. Specifically, the technological capabilities of drones can threaten First Amendment rights to freely and peaceably assemble (U.S. Const. amend. I) and the Fourth Amendment protection which safeguards, "...the privacy and security of individuals against arbitrary invasions by governmental officials" (*Camara v. Municipal Court of City and County of San Francisco*, 1967). Considering the Board's purpose of promoting public trust through the review of the Police Department's policies, practices, and procedures, the PAB believes the current policies as drafted will impede that purpose.

In the PRC's 2013 Town Hall discussion, Linda Lye, staff attorney with the American Civil Liberties Union, indicated that deploying drones not only raises serious Fourth Amendment concerns, but would also likely violate the California Constitution's Article I, Section I, which grants privacy protection for personal information. Among some of the reasons to oppose the technology, she stated:

- Their low cost encourages widespread surveillance.
- Their small size and advanced abilities prevent people from knowing they are being spied on.

The role of civilian oversight in the acquisition and use of UAS

The role of a civilian oversight body, such as the PAB, in these instances, is to ensure that the use of technology by law enforcement is appropriate, transparent, and in line with the community values and protects civil liberties. The current reporting on UAS deployments is limited to the Annual Surveillance Technology Report compiled by the City Manager. This limited reporting is done in compliance with Ordinance 7592-NS § 2. While an annual report can provide some insight, currently the City of Berkeley falls short of meeting the transparency standards set by other California cities when reporting out on UAS deployments (See San Jose UAS Deployments¹, Chula Vista Drone-Related Activity Dashboard²; Hayward Police Department Flight Logs³).

In 2022, the BPD requested UAS support from the Alameda County Sheriff's Office (ASCO) on three occasions. See Attachment 6, a copy of the UAS Deployment entries of the City Manager's 2022 surveillance technology usage report. Given the possibility of an increase in UAS deployments in Berkeley, it is crucial to establish an updated log that provides information on what, when, and why the UAS was deployed, as well as the duration of each deployment. This information is essential in ensuring transparency and accountability for law enforcement agencies, particularly in light of the concerns surrounding deployments of UAS. A publicly accessible log of UAS deployments would provide the community with much-needed transparency and accountability, and it would help build trust between law enforcement and residents. The PAB strongly recommends the implementation of such a measure if the BPD decides to implement the proposed policies.

¹ <https://www.sjpd.org/records/uas-deployments>

² <https://www.chulavistaca.gov/departments/police-department/programs/uas-drone-program>

³ <https://www.hayward-ca.gov/police-department/transparency/uas-drone>

Lack of technical specifications and potential misuse

The BPD's current proposals are not transparent enough and do not clearly outline which specific UAS technologies they are seeking to use through mutual aid agreements. The wide range of capabilities and features of different UAS systems is a cause for concern among members of the Berkeley Community. The 2013 PRC Recommendation to City Council Regarding Drones identifies concerns regarding the advanced capabilities of drone technologies, including thermal imaging. See Attachment 3. In addition, the PRC letter also raised the issue of "mission creep", where certain technologies are initially requested for specific purposes but are later used for unintended or broader purposes.

The BPD cited the study, "Mission-based citizen views on UAV usage and privacy: an effective perspective," within their Acquisition Report. In the study, the authors indicate that community members are "much more concerned over their privacy when the UAV was airborne 24 hours a day than when it was used for a specific mission and returned to base" (Winter et al., 2016). The study suggests that citizens may be more accepting of UAS technology when they "see the advantages of the UAS usage outweighing their privacy concerns." For instance, UAS technology used for search and rescue during natural disasters may lead citizens to perceive the gain in benefits that offset their privacy concerns. However, when the purpose and capability of such technology are not clear, members of the community may become concerned about the uses of the UAS. This research, as cited by the Berkeley Police Department, highlights the need for clear guidelines on the appropriate usage of UAS to balance the potential benefits of UAS operations with citizens' right to privacy.

The lack of clarity and transparency regarding the technical specifications for UAV acquisition and usage has been a major source of concern for the PAB and the Berkeley community. As noted, the PAB will not endorse any policy related to UAS acquisition and usage that does not incorporate measures to promote transparency and limit the acquisition and usage of certain surveillance technologies. The current policy is vague in terms of technical specifications and does not provide any additional information other than the basic features of a majority of modern-day UAVs. This lack of clarity raises

concerns about privacy violations, civil rights abuses, and the potential for mission creep. Without clear guidelines on what technologies are being acquired and how they will be used, the community is left to speculate on the potential harms and risks associated with UAVs, which can erode public trust and acceptance. Providing clear guidelines and disclosures of the technical specifications would be a critical step toward promoting greater public acceptance of UAVs while also upholding individual rights and maintaining public trust.

Lack of definition for “Exigent Circumstances”: A key concern for appropriate use of UAS in law enforcement

Clearly defining what qualifies as an exigent circumstance helps prevent officers from claiming exigent circumstances as a blanket justification for using UAS surveillance technology. Inappropriate use of UAS systems can create a culture of constant surveillance, which can erode public trust and exacerbate tensions between BPD and the community. By using UAS only when necessary, BPD can demonstrate that they respect the privacy and civil liberties of the public and are not engaging in constant monitoring.

Additionally, restricting the use of drones to exigent circumstances can help prevent mission creep, which occurs when a technology or policy designed for a specific purpose is gradually expanded to other areas or uses. By setting clear limitations on when and how drones can be used, law enforcement can help ensure that they are not overstepping their bounds or engaging in practices that are not consistent with their intended purpose.

The PAB recognizes that UAS technology has the potential to be used for legitimate law enforcement purposes. However, to ensure the technology is used responsibly and transparently, policies must be put in place to guide their use. The PAB believes that the policy being considered by the BPD should clearly define what an exigent circumstance is, to provide better guidance to BPD staff as to when it is appropriate for drones to be used. The PAB is not comfortable endorsing a policy that does not clearly define what constitutes an exigent circumstance, as this generates too much ambiguity.

The uncertainty of UAS operations through mutual aid agreements with outside agencies

The use of unmanned aerial systems (UAS) by law enforcement is a complex issue, and the uncertainty created by the proposed policy surrounding UAS operations through mutual aid agreements with outside police agencies adds another layer of complexity. The PAB is concerned that the policies being considered by the BPD do not provide clear guidelines on how the Department will ensure that the UAS used under mutual aid agreements comply with the authorized uses, limitations, and reporting requirements of the City of Berkeley. The lack of clarity on how the Department will oversee UAS operations under mutual aid agreements raises concerns about the potential misuse of the technology, which can result in the erosion of public trust. Therefore, the PAB urges the BPD to provide more clarity on how it plans to manage UAS operations under mutual aid agreements and ensure that they comply with the authorized uses and limitations outlined in the City of Berkeley's policies.

References

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Attachments

Public

ATTACHMENT 1



Office of the Director
Of Police Accountability

Memorandum

Date: Thursday, January 05, 2023

To: Honorable Members of the Police Accountability Board (PAB)

From: Hansel Aguilar, Director of Police Accountability

Jose Murillo, Policy Analyst

Re: Policy Complaint #31 – Berkeley Police Department (BPD) Drone Usage Policy

Recommendation:

The PAB should not proceed with Policy Complaint #31 at this time, but rather consider focusing its resources on the upcoming review of a new BPD drone use policy and acquisition report.

Fiscal Impacts of Recommendation:

Acceptance of this recommendation will reduce the amount of time necessary to research, draft, review, and recommend a drone usage policy on behalf of the Board and ODPa staff. Given that BPD has already conducted the necessary research to draft a drone usage policy, the PAB and ODPa would only have to dedicate time to the review and recommendation process. Proceeding with the complaint may duplicate work already conducted by BPD and place an unnecessary strain on the already scarce PAB resources¹.

Current Situation and its Effects:

Presently, BPD's Law Enforcement Services Manual does not include language specific to the use of drones under the umbrella of its surveillance technology policies. The use and acquisition of drones are only regulated by Berkeley Municipal Code 2.99, Acquisition

¹ As of 1/5/2023, the PAB is operating under a reduced capacity pending the appointment of two new board members.

and Use of Surveillance Technology which provides a general procedure for the use and acquisition of surveillance technology as defined by BMC 2.99.020(1)².

For BPD to acquire and use any new surveillance technologies, a surveillance use policy for each surveillance technology with a corresponding surveillance technology report must be presented to the PAB for review and to the City Council for final approval³. However, BMC 2.99.040 allows for the temporary acquisition and use of surveillance equipment by the City Manager when exigent circumstances exist as defined by 2.99.020(5)⁴.

Background:

Policy Complaint #31 was received by the ODPa on October 13, 2022, and was presented to the Board at its regular meeting on October 25, 2022. The complaint alleged that BPD had acquired drones from the Alameda County Sheriff's Office (ASCO) for use at the Solano Stroll event which is hosted in partnership with the City of Albany⁵. The complaint included a link to an article written by Tracy Rosenberg of Oakland Privacy. The article included a report of drones being flown over the event⁶ and a temporary acquisition notice written by Interim Chief Louis to the Berkeley City Council⁷. The PAB was concerned about the alleged actions and sought answers from Interim Chief Louis (hereinafter "Interim Chief") who was present at the October 25th regular meeting.

Through the PAB member's line of questioning at the public meeting, Interim Chief Louis clarified that the drones mentioned in Rosenberg's article were not requested by BPD and that it was the Albany PD who independently submitted the request to the ACSO. The Interim Chief also clarified that the temporary acquisition notice was a precautionary

² "**Surveillance Technology**" means an electronic device, system utilizing an electronic device, or similar technological tool used, designed, or primarily intended to collect audio, electronic, visual, location, thermal, olfactory, biometric, or similar information specifically associated with, or capable of being associated with, any individual or group. Examples of covered Surveillance Technology include, but are not limited to: cell site simulators (Stingrays); automatic license plate readers; body worn cameras; gunshot detectors (ShotSpotter); facial recognition software; thermal imaging systems, except as allowed under Section 1(d); social media analytics software; gait analysis software; and video cameras that record audio or video and can remotely transmit or can be remotely accessed.

³ See attachment 1, a copy of the relevant Berkeley Municipal Code including BMC 2.99.030 which outlines the acquisition and use policy.

⁴ "**Exigent Circumstances**" means the City Manager's good faith belief that an emergency involving imminent danger of death or serious physical injury to any person, or imminent danger of significant property damage, requires use of the Surveillance Technology or the information it provides.

⁵ See attachment 2, a redacted copy of complaint #31.

⁶ See attachment 3, a copy of the relevant Oakland Privacy Article.

⁷ See attachment 4, a copy of the temporary acquisition notification made by Interim Chief Louis.

measure to ensure compliance with BMC 2.99.040. At the time, it was believed that ACSO drones were flown over Berkeley's airspace. Within the acquisition report, the Interim Chief noted that there were exigent circumstances behind the increased security, including the use of drones, citing "unfortunate recent attacks on similar events."⁸ The complainant was also present at the regular meeting and allotted a moment to speak. The complainant stated the following in the relevant part:

*"The PAB needs to take the appropriate steps to recommend to the Council a clear definition set in policy or ordinance that does not allow surveillance via drones or otherwise of strolls, gatherings, rallies or marches simply because gun violence is a pandemic in this country at large—that is simply the reality. It is the PAB's and Council's responsibility to address that reality and not for city staff to break the English language and change the definition of exigent circumstances [...] But again, the [interim] chief has completely backtracked from the letter she sent, and caused this whole complaint process to start. I wouldn't have started this process had that letter not been sent. I was informed of [the presence of drones at the Solano Stroll] by my Councilmember who was incredibly upset because she thought as well that [the event] was not an exigent circumstance [that would justify BPD's request for drones]"*⁹.

The information presented at the regular meeting indicated that this complaint originated from a misunderstanding between BPD staff and the Interim Chief. As noted above, the Complainant made this policy review request based on the information available at that time, which we now know to be inaccurate and incomplete. The complainant further acknowledged that he would not have filed had the incorrect information not been presented. However, like the complainant, the PAB had additional concerns regarding the timeline of the events, BPD's interpretation of the surveillance technology acquisition procedures, and the precedent that could be established as a result of this event.

Having heard from the Interim Chief, the complainant, and members of the public, the PAB motioned to initiate a fact-finding inquiry as to the acquisition and use of the drones at the Solano Stroll event. The motion passed after receiving six (6) "yes" votes and two (2) "no" votes and ODPa staff was asked to look into the incident before a final decision to accept or deny the complaint was made¹⁰. The purpose of the investigation was to answer the following questions:

⁸ See attachment 4.

⁹ PAB Regular Meeting, 1:27:00 to 1:32:00 (hh:mm:ss): <https://youtu.be/TLRfVA6PUL8>

¹⁰ See attachment 5, a copy of the PAB regular meeting minutes for October 25, 2022.

1. To what extent, if at all, were members of the BPD involved in the acquisition of ASCO drones as part of the security measures for the Solano Stroll event?
2. How were ASCO drones used during the event and were they deployed within Berkeley's jurisdiction?
3. What constitutes an "exigent circumstance"?

Soon after the motion for a fact-finding investigation, Interim Chief Louis provided notice to the PAB that a new drone usage policy was in the works for the BPD. Subsequently, on November 9th, 2022, the PAB established a subcommittee to review these policies.

Rationale for Recommendation

On November 3, 2022, Interim Chief Louis submitted an update to her original notification to the City Council which provided additional context and information obtained from Albany PD¹¹. That same day, Interim Chief Louis informed the ODPA that BPD was in the process of drafting a drone usage policy and acquisition report per the requirements of BMC 2.99¹². At the time of writing, the policy and respective report were under review by the City Attorney's Office (CAO) and will be forwarded to the PAB as soon as the CAO's review has concluded. The additional information provided by Interim Chief Louis answered several of the questions posed by the PAB's request for a fact-finding inquiry.

To answer the relevant questions, ODPA staff reviewed the original complaint, the Oakland Privacy article, and the available correspondence from Interim Chief Louis regarding this matter. The information collected from these sources was used to provide the following answers:

- 1. To what extent, if at all, were members of the BPD involved in the acquisition of ASCO drones as part of the security measures for the Solano Stroll event?**

BPD staff was not involved in the acquisition of the ASCO drones. According to the update by Chief Louis,¹³ BPD staff learned that Albany PD had requested ASCO drones at a planning meeting before the event. The Albany PD had requested the drones to scan the rooftops along Solano Avenue for any potential

¹¹ See attachment 6, a copy of an updated temporary acquisition report submitted by Interim Chief Louis to the City Council.

¹² See attachment 7, a copy of the notice provided by Chief Louis to the ODPA regarding the pending policy drafts.

¹³ See attachment 6.

threats to the public; however, the drones were not used for the initial purpose. Officers present at the Solano Stroll believed that the requested use of the drones was carried out due to the presence of the ACSO drone team. Interim Chief Louis made a notification to the City Manager based on that assumption and followed the procedure under BMC 2.99 out of precaution and recorded the use in the Surveillance Technology Report¹⁴. That entry has since been removed as the acquisition and use did not involve BPD nor was the technology used within the city¹⁵.

2. How were ASCO drones used during the event and were they deployed within Berkeley's jurisdiction?

ASCO drones were not deployed within Berkeley's air space nor were they used to scan the rooftops as originally reported. According to an inquiry made by Interim Chief Louis to the Albany PD¹⁶, the ASCO drones were used for two calls for service within Albany's jurisdiction. The first instance was a response to a burglary in progress and the second instance was in response to a report of a missing child. In both of these cases, Albany PD ground units were able to resolve the issue and the drones were grounded. The drones were not flown within Berkeley's jurisdiction and the overall use of the drones was limited.

3. What constitutes an "exigent circumstance"?

The definition of an "exigent circumstance" is defined under BMC 2.99.020(5). An "exigent circumstance" is defined as an *emergency* involving *imminent* danger of death or serious physical injury to any person, or imminent danger of significant property damage¹⁷. Although "emergency" and "imminent" are not defined in the BMC, the Berkeley Police Department Law Enforcement Service Manual does define those terms throughout its various policies. An "emergency" is defined as "situations involving an imminent threat to the safety or welfare of any person"¹⁸

¹⁴ See Attachment 6.

¹⁵ See Attachment 6.

¹⁶ See attachment 6.

¹⁷ "Exigent Circumstances" means the City Manager's good faith belief that an emergency involving imminent danger of death or serious physical injury to any person, or imminent danger of significant property damage, requires use of the Surveillance Technology or the information it provides.

¹⁸ BPD Policy 326.13

and events “such as a large fire, earthquake, riot or other such natural or civil emergencies¹⁹.” An “imminent” threat or danger is considered to exist when “based on the totality of the circumstances, it is objectively reasonable to believe that a person [or situation] has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury²⁰.” Based on these definitions, for a situation to be “exigent,” there must be a condition or situation that presents an immediate danger to human life and/or property.

Given the aforementioned information which clarifies and provides additional context to the Interim Chief’s September 30, 2022 *Notification regarding use of Unmanned Aerial Vehicle (Drone)*, the ODPa recommends that the PAB not proceed with Policy Complaint #31 at this time. The ODPa instead, encourages the Board to consider focusing its resources on the upcoming review of a new BPD drone use policy and acquisition report. Formally accepting Policy Complaint #31 at this time, would be redundant and moot considering that:

- (1) the BPD is actively developing a policy that directly addresses this policy issue;
- (2) the draft policy will be reviewed by the PAB and;
- (3) the complainant in this policy review request has indicated that the additional information provided on the October 25, 2022 meeting alleviates his concern of the BPD’s involvement in drone usage at the event in question.

¹⁹ BPD Policy 332.5

²⁰ BPD Policy 300.4

ATTACHMENT 1

2.99.030 City Council Approval Requirement.

1. The City Manager must obtain City Council approval, except in Exigent Circumstances, by placing an item on the Action Calendar at a duly noticed meeting of the City Council prior to any of the following:
 - a. Seeking, soliciting, or accepting grant funds for the purchase of, or in-kind or other donations of, Surveillance Technology;
 - b. Acquiring new Surveillance Technology, including but not limited to procuring such technology without the exchange of monies or consideration;
 - c. Using new Surveillance Technology, or using Surveillance Technology previously approved by the City Council for a purpose, or in a manner not previously approved by the City Council; or
 - d. Entering into an agreement with a non-City entity to acquire, share or otherwise use Surveillance Technology or the information it provides, or expanding a vendor's permission to share or otherwise use Surveillance Technology or the information it provides.
2. The City Manager must present a Surveillance Use Policy for each Surveillance Technology to the Police Review Commission, prior to adoption by the City Council. The Police Review Commission shall also be provided with the corresponding Surveillance Acquisition Report that had been presented to council for that Surveillance Technology. No later than 30 days after receiving a Surveillance Use Policy for review, the Police Review Commission must vote to recommend approval of the policy, object to the proposal, recommend modifications, or take no action. Neither opposition to approval of such a policy, nor failure by the Police Review Commission to act, shall prohibit the City Manager from proceeding with its own review and potential adoption.
3. The City Manager must submit for review a Surveillance Acquisition Report and obtain City Council approval of a Surveillance Use Policy prior to engaging in any of the activities described in subsections (1) (a)-(d).
4. Evidence received relating to the investigation of a specific crime that may have been generated from Face Recognition Technology but was not intentionally solicited shall not be a violation of this ordinance.
5. Notwithstanding any other provision of this Chapter, it shall be a violation of this ordinance for the City Manager or any person acting on the City Manager's behalf to obtain, retain, request, access, or use: i) any Face Recognition Technology; or ii) any information obtained from Face Recognition Technology, except for personal communication devices as defined by Section 2.99.020 or section 2.99.030(4). The inadvertent or unintentional receipt, access to, or use of any information obtained from Face Recognition Technology shall not be a violation of this subsection provided that the City Manager or any person acting on the City Manager's behalf does not request or solicit the receipt, access to, or use of such information, and all copies of the information are promptly destroyed upon discovery of the information, and the information is not used for any purpose.

The City Manager shall log the receipt, access to, or use of any such information in its Annual Surveillance Technology Report. The Surveillance Technology Report shall identify measures taken by the City to prevent the further transmission or use of any information inadvertently or unintentionally obtained through the use of Face

Recognition Technology; provided, however, that nothing in this Chapter shall limit the ability to use such information in connection with a criminal investigation. (Ord. 7676-NS § 2, 2019; Ord. 7592-NS § 2 (part), 2018)

The Berkeley Municipal Code is current through Ordinance 7838-NS, passed November 3, 2022.

Disclaimer: The City Clerk's Office has the official version of the Berkeley Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

City Website: www.berkeleyca.gov

Code Publishing Company

ATTACHMENT 2

Received by DPA
OCT 13 2022
Date Received:



POLICY COMPLAINT FORM

Office of the Director of Police Accountability (DPA)
1947 Center Street, 5th Floor, Berkeley, CA 94704
Web: www.cityofberkeley.info/dpa
E-mail: dpa@cityofberkeley.info
Phone: (510) 981-4950 TDD: (510) 981-6903 Fax: (510) 981-4955

DPA Case # 31

1 Name of Complainant: _____
Last First Middle

Mailing Address: _____
Street City State Zip

Primary Phone: _____ Alt Phone: () _____

E-mail address: _____

Occupation: _____ Gender: M Age: 66

Ethnicity: Asian Black/African-American Caucasian
 Latino/Hispanic Multiethnic: _____ Other: _____

2 Identify the Berkeley Police Department (BPD) policy or practice you would like the Police Accountability Board to review.

REQUESTING SHERIFF DRONES TO SURVEILLANCE
SOLANO STROLL IN VIOLATION OF SURVEILLANCE
ORDINANCE. SEE DETAILED EXPLANATION AT:
OAKLANDPRIVACY.ORG/DRONES-FLEW-OVER-SOLANO-STROLL OR
TINYURL.COM/BDZKTEE9 OR
JUST GO TO OAKLANDPRIVACY.ORG AND SCROLL DOWN OR ATTACHED ^{SEE}

3 Location of Incident (if applicable) SOLANO AVE

Date & Time of Incident (if applicable) SEPT 10, 10-3 PM (2022)

Provide a factual description of the incident that forms the basis of your complaint. Be specific and include what transpired, and how the incident ended.

BPD REQUESTED SHERIFF DRONES, THEY CLAIM 'EXIGENT CIRCUMSTANCES'
WHICH IS NONSENCE. THEY REPORTED THIS USE TO CITY COUNCIL
AS REQUIRED, THAT REPORT IS LINKED TO IN THE CITED
ARTICLE ABOVE.

4

What changes to BPD policy, practice, or procedure do you propose?

CLARIFY THAT 'ERIGENT CIRCUMSTANCES' MEANS AN EMERGENCY AND THAT DRONES MAY NOT BE USED TO SURVEILL CROWDS, STREET FAIRS, PROTESTS, GATHERINGS, ETC EXCEPT IN AN EMERGENCY

5

Use this space for any additional information you wish to provide about your complaint. (Or, attach relevant documentation you believe will be useful to the Police Accountability Board in evaluating your complaint.)

SEE ATTACHED

SEE BERKELEY MUNICIPAL CODES / BMG / 2.99

6

CERTIFICATION

I hereby certify that, to the best of my knowledge, the statements made on this complaint are true.

James P. Masdon
Signature of Complainant

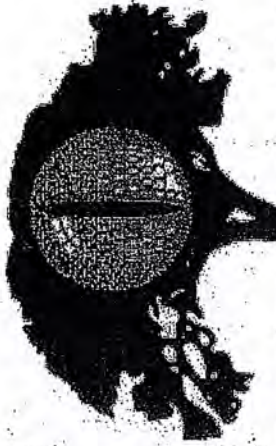
10/7/22
Date

7

How did you hear about the Director of Police Accountability or Police Accountability Board?

- Internet
- Berkeley Police Dept.
- Newspaper: _____
- Referred by: _____
- Other: ALWAYS KNOWN

ATTACHMENT 3



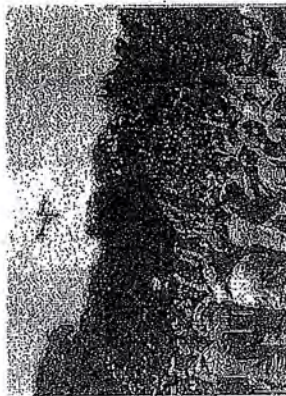
OAKLAND PRIVACY

..... I'VE BEEN WATCHING YOU WATCHING ME

DRONES

Drones Flew Over The Solano Stroll

by [Tracy Rosenberg](#) • October 5, 2022



In September, the next door cities of Berkeley and Albany hold a street fair called the Solano Stroll, along the avenue that crosses both cities. The event attracts thousands of people. A report filed with the Berkeley City Council due to the requirements of Berkeley's surveillance ordinance framework revealed the **Alameda County Sheriff's Office flew drones "unobtrusively" over the event**, focusing on the perimeter of the rooftops. The use of the sheriff's department drones **would not have been known** to the public without the 2018 surveillance ordinance, which requires reports to the City Council after the temporary use of unpermitted technologies for exigent circumstances.

The city of Berkeley passed a sweeping moratorium on police use of drones in 2015, which has since expired. The Council has allowed the use of drones for fire rescue purposes, but no other use has been allowed. The Berkeley Police Department declared the temporary use of the sheriff's department drones at the street fair to be an "exigent circumstance", meaning there was an imminent threat to life and property. However, the report **submitted on Friday September 30 via email described the exigent circumstance as "recent attacks on similar events" with no further details.** This is possibly a reference to a mass shooting in Highland Park, IL at a 4th of July parade.

The notification of use suggests that future street fairs, festivals, parades and community gatherings in the City of Berkeley may be subjected to "unobtrusive" drone use in the future by the Alameda Sheriff's Department at the invitation of the Berkeley Police Department despite the lack of a specific imminent threat directed at that event, unless clear instructions are provided by the City Council regarding any future use.

The video footage taken by the drones, per the Alameda Drone policy, should have been destroyed after the mission since it did not contain evidence of criminal activity. However, no verification has been received that this has occurred. The list of authorized missions for departmental drone use does not include monitoring street fairs.

According to Police 1: the Alameda County Sheriff's Department has more than 50 drones in their arsenal, some outfitted with zoom cameras and thermal imaging. Long time sheriff Greg Ahern was not re-elected in June of 2022 and will soon be replaced by incoming sheriff Yesenia Sanchez.

In 2013, then Berkeley council member, now Berkeley Mayor Jessie Arreguin told Oakland North: "We advise the sheriff not to buy a drone," Arreguin said. "Although we do not have control over our airspace, we have made it clear that we do not want drones flying over Berkeley."

(edit)

← Oakland Privacy Rights Fellowship 2022-2023 – Applications
Open

ATTACHMENT 4

From: Louis, Jennifer A.
Sent: Friday, September 30, 2022 10:53 AM

Subject: Notification regarding use of Unmanned Aerial Vehicle (Drone)
Importance: High

Internal

Good morning,

I am providing the below information so that you may complete the required notification to City Council of Exigent Circumstances use of surveillance technology.

UAV used to inspect rooftops along Solano Stroll.

On September 10, 2022, Berkeley and Albany hosted the Solano Stroll street event. Solano Stroll is a family event has drawn thousands to the Solano Avenue Street fair.

Additional officers were deployed to ensure safety of those in attendance. Traffic control barriers were put in place to exclude vehicles and turn the Avenue in to a pedestrian mall. Due to unfortunate recent attacks on similar events, additional security measures were undertaken to ensure the safety of attendees.

The Alameda County Sheriff's Office Drone Team responded to conduct routine checks of the rooftops for potential threats. They were asked to fly the perimeter of the roofline and limit their travel over the Avenue itself. Fortunately, there were no issues or threats to the crowds and the event was a huge success from a security perspective. With the assistance of the Sheriff's Office, we were able to ensure safety with a strategic and unobtrusive use of their drone technology. They were also prepared to deploy to assist emergency operations if there was an attack or major emergency.

Below I have included the applicable ordinance language for background.

ORDINANCE NO. 7,592–N.S. ADDING CHAPTER 2.99 TO THE BERKELEY MUNICIPAL CODE, ACQUISITION AND USE OF SURVEILLANCE TECHNOLOGY

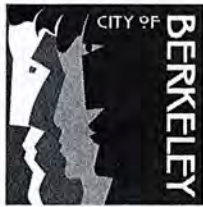
2.99.040 Temporary Acquisition and Use of Surveillance Equipment

Notwithstanding the provisions of this Chapter, the City Manager may borrow, acquire and/or temporarily use Surveillance Technology in Exigent Circumstances without following the requirements in Sections 2.99.030 and 2.99.040. However, if the City Manager borrows, acquires or temporarily uses Surveillance Technology in Exigent Circumstances he or she must take all of the following actions:

1. Provide written notice of that acquisition or use to the City Council within 30 days following the commencement of such Exigent Circumstance, unless such information is confidential or privileged;
2. If it is anticipated that the use will continue beyond the Exigent Circumstance, submit a proposed Surveillance Acquisition Report and Surveillance Use Policy, as applicable, to the City Council within 90 days following the borrowing, acquisition or temporary use, and receive approval, as applicable, from the City Council pursuant to Sections 2.99.030 and 2.99.040; and
3. Include the Surveillance Technology in the City Manager's next annual Surveillance Technology Report.

Jen Louis
Interim Chief of Police
Berkeley Police Department

ATTACHMENT 5



OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

POLICE ACCOUNTABILITY BOARD
REGULAR MEETING
MINUTES
(approved)

Tuesday, October 25, 2022, 7:00 P.M.

No physical location; meeting held exclusively through videoconference and teleconference.

1. CALL TO ORDER & ROLL CALL BY CHAIR MOORE AT 7:00 P.M.

Present: Board Member John Moore (Chair)
Board Member Nathan Mizell (Vice-Chair)
Board Member Kitty Calavita
Board Member Regina Harris
Board Member Juliet Leftwich
Board Member Deborah Levine
Board Member Cheryl Owens
Board Member Ismail Ramsey

Absent: None.

ODPA Staff: Hansel Aguilar, Director of Police Accountability
Beneba Thomas, DPA Investigator
Jose Murillo, Associate Management Analyst

BPD Staff: Interim Police Chief Jennifer Louis
Lt. K. Reece

2. APPROVAL OF AGENDA

Motion to approve the agenda as amended.

Amendments: Remove items 8.a; Table Item 9.a to November 9th Meeting.

Moved/Second (Calavita/Leftwich) **Motion Carried by General Consent**

Ayes: Calavita, Harris, Leftwich, Levine, Mizell, Moore, Owens, and Ramsey.

Noes: None

Abstain: None

Absent: None

3. PUBLIC COMMENT

8 speakers.

4. APPROVAL OF MINUTES

Motion to approve Regular Meeting Minutes of October 12, 2022

Moved/Second (Leftwich/Levine) **Motion Carried.**

Ayes: Calavita, Harris, Leftwich, Levine, Mizell, Moore, Owens, and Ramsey.

Noes: None

Abstain: None

Absent: None

5. ODPa STAFF REPORT

Director Aguilar reports that he has inquired about the PAB receiving city of Berkeley emails to ensure that sensitive documents are secure.

Management Analyst Murillo provides updates as to the action items discussed last week. He reported that ODPa staff is working on uploading past PRC annual reports and has been organizing data for the production of 2021 & 2022 annual reports. Lastly, he provided a status update as to various policy topics that have been presented to the Board and ODPa (See Page 11-14 of the Agenda Packet).

6. CHAIR AND BOARD MEMBERS' REPORTS

Chair Moore reported that he appreciates the efforts of ODPa and the Board. Emphasizes the importance of making sure that all Board positions are filled so the Board is at full strength.

Board member Leftwich clarified her proposed idea of an ODPa/PAB gathering.

Board member Ramsey stated that he appreciates Berkeley Law student involvement with the PAB. Notes that the PAB and Berkeley Law's Police Review Project may not always agree.

Vice-Chair Mizell notes that relationship building is important in the work of the PAB and supports proposal for a ODPa/PAB social gathering to encourage relationship building. On a separate topic, he provided notice that the City Council would convene for a closed session the following Friday (October 28, 2022) for the consideration of the appointment of the City's next Police Chief.

7. CHIEF OF POLICE'S REPORT

Interim Chief Louis provided BPD staffing updates and reported on an arrest made by BPD of a man who had allegedly followed a 12-year-old girl as she was leaving school. Chief Louis also reported on the rise of catalytic converter thefts and the most recent information on the matter. In response to a public comment, Chief Louis elaborated on the usage of Alameda County Sheriff drones at the Solano Avenue Stroll in September. She clarified that BPD had not requested the drones and that the request originated Albany PD. She proceeded to answer Board member questions on the topic which would be considered in the discussion of Item 11.a.

8. SUBCOMMITTEE REPORTS (discussion and action)

Report of activities and meeting scheduling for all Subcommittees, possible appointment of new members to all Subcommittees, and additional discussion and action as noted for specific Subcommittees:

- a. Regulations Subcommittee – see Item #9. a. below. (Look at 9-14-22 PAB packet, pp 13-35.).
 - 1. Discussion regarding the possibility of adding another PAB member to the Regulations subcommittee and referring the regulations back the subcommittee.

Item 8.a. removed from the agenda by general consent.

- b. Controlled Equipment Subcommittee. (Welcome more Board members to join.)
Chair Moore encouraged more PAB members to join. Board member Owens states that she would be interested after finalization of permanent regulations.
- c. Police Chief Process (ad hoc) Subcommittee
There will be a city council closed session on Friday, 10/28 to discuss the new Police Chief.

9. OLD BUSINESS (discussion and action)

- a. Finalize review of draft proposed permanent Regulations for Handling Investigations and Complaints.

Item 9.a. tabled to the next regular meeting by general consent.

10. PUBLIC COMMENT REGARDING AGENDA ITEM 11.A.

- a. Public Comment for item 11.a.
2 speakers (Complainant and a member of the public)

11. NEW BUSINESS (discussion and action)

- a. Discussion on Policy Complaint #31 regarding BMC 2.99 and BPD Policy 1106 – Special Order 2020-0006

Motion to initiate a fact-finding inquiry as to the usage of drones during the September 10th “Solano Stroll Event” on Salona Avenue.

Note: This motion is not to accept the policy complaint nor does it reject. The Board would like to first determine the correct sequence of actions leading up to the events of the complaint before formally initiating a policy review

Moved/Second (Calavita/Leftwich) **Motion Carried**

Ayes: Calavita, Harris, Leftwich, Levine, Mizell, Moore

Noes: Owens, Ramsey. Abstain: None Absent: None

b. Discussion regarding PAB member stipends (Cheryl Owens)

Board member Owens inquired about the tracking of stipends and training hours. She would appreciate if staff could notify the PAB before stipends are due to provide the opportunity for members to update any training hours. The intention is to help board members stay up to date on stipend amounts and training hours.

c. Discussion regarding the policy priorities of the Board

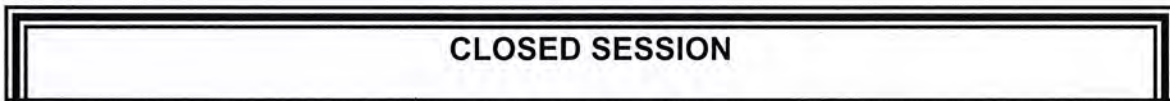
The Board wishes for policy reviews that involve a death to be prioritized. Would like to see more completed policy reviews. Management Analyst asks the PAB what they envision the final work product would be. The Board suggest a report that includes a description of the incident that inspired the policy review, an analysis of the policy, if there have been similar events elsewhere, and any recommendations as to the policy.

d. Discussion on a proposed closed session discussion regarding the City Attorney's analysis of PAB Authority

Board members expressed their concerns about not being able to discuss attorney-client privileged memos as a group. Board member Ramsey stated that board members are allowed to discuss publicly their individual understandings of the law, but may not disclose privileged communications with the City Attorney's office. DCA Chang agreed with the statement.

12. PUBLIC COMMENT

3 speakers.



Pursuant to the Court's order in *Berkeley Police Association v. City of Berkeley, et al.*, Alameda County Superior Court Case No. 2002 057569, the Board will recess into closed session to discuss and take action on the following matter(s):

13. PRESENTATION OF ADMINISTRATIVE CLOSURE OF COMPLAINT #23

Motion to administratively close complaint #23.

Moved/Second (Mizell/Leftwich) **Motion Carried.**

Ayes: Calavita, Harris, Leftwich, Levine, Mizell, Moore, Owens, and Ramsey.

Noes: None

Abstain: None

Absent: None

14. PRESENTATION OF ADMINISTRATIVE CLOSURE OF COMPLAINT #24

Motion to administrative close Complaint #24

Moved/Second (Owens/Leftwich) **Motion Carried.**

Ayes: Calavita, Harris, Leftwich, Levine, Mizell, Moore, Owens, and Ramsey.

Noes: None

Abstain: None

Absent: None

15. DISCUSSION REGARDING COMPLAINT #19

Motion to close complaint #19 and continue the existing policy review initiated at the July 27, 2022 regular meeting.

Moved/Second (Owens/Leftwich) **Motion Carried.**

Ayes: Calavita, Harris, Leftwich, Levine, Mizell, Moore, Owens, and Ramsey.

Noes: None

Abstain: None

Absent: None

END OF CLOSED SESSION

16. ANNOUNCEMENT OF CLOSED SESSION ACTION

The decision to administratively close complaints #23 and #24 was announced. The decision to close complaint #19 and continue the existing policy review was announced.

17. ADJOURNMENT

Motion to adjourn the meeting.

Moved/Second (Owens, Calavita) **By general consent, the meeting was adjourned at 10:38 p.m.**

ATTACHMENT 6

From: Louis, Jennifer A.
Sent: Thursday, November 3, 2022 5:20 PM
To: Williams-Ridley, Dee <DWilliams-Ridley@cityofberkeley.info>
Cc: Buddenhagen, Paul <PBuddenhagen@cityofberkeley.info>; Bellow, LaTanya <LBellow@cityofberkeley.info>
Subject: UPDATE: Notification regarding use of Unmanned Aerial Vehicle (Drone)

Internal

I want to provide an update on the notification I made to you on September 30, 2022 and identify a correction to the Surveillance Tech Report that is on tonight's agenda regarding the reported use of a drone on September 10, 2022 at the Solano Stroll. As a result of this new information, the technology report should indicate only two uses for this reporting period.

In regards to the Solano Stroll event I wanted to provide the additional information:

In a planning meeting shortly before the Solano Stroll, BPD learned that Albany PD had made a request to Alameda County Sheriff's Office for a drone to scan the rooftops along the entire event for potential threats during the event. The BPD officers present at the Solano Stroll believed that the request made by Albany had been carried out by the ACSO drone team. Therefore, knowing the sensitivities involved with the use of this technology and with a mindset of absolute transparency, I made notification to the City Manager and the use of the drone was added to the Surveillance Technology Report.

Knowing that the use of the drone at Solano Stroll created significant interest and concern, we went back to Albany PD to clarify the specific facts associated with the drone use that day. Albany PD informed us that the preplanning discussion to scan the rooftops was never carried out the day of the event.

What remains the same as first reported is that BPD neither directly requested a drone nor asked Albany PD to request a drone on our behalf. That request was made by Albany PD to ACSO. Also accurate (and helps explain why our officers involved with the event believed the drone was used as originally planned) is that ACSO's Drone Team was present at the Solano stroll with Albany PD. However, we learned today that ASCO only responded on a standby basis in case of an emergency. Albany PD personnel who were in direct contact with the drone team have reported to us that an ACSO drone was never flown over Berkeley airspace and they sent a drone up for two calls during the Solano Stroll:

- 1) An auto burglary in progress call, in Albany jurisdiction, wherein Albany PD arrived on scene prior to the drone being overhead, contacted the involved parties and the drone was landed.

- 2) A report of a missing child in Albany PD jurisdiction, once child was located the drone landed..

I apologize for the misinformation but am glad that I have been given an opportunity to correct it.

Jen

Jen Louis
Interim Chief of Police
Berkeley Police Department

ATTACHMENT 7

From: Louis, Jennifer A.

Sent: Thursday, November 3, 2022 6:27 PM

To: Aguilar, Hansel <HAguilar@cityofberkeley.info>

Subject: FW: UPDATE: Notification regarding use of Unmanned Aerial Vehicle (Drone)

Internal

Good evening,

I wanted to provide you with the below information which I just provided the City Manager and will be speaking about at Council tonight as it relates to our annual technology use reports submitted pursuant to the Surveillance Technology Ordinance. It directly relates to a topic that came up at the last PAB meeting. It is also relevant as it relates to the drone Use Policy and Acquisition report that you will be receiving from us soon.

Captain Mike Durbin will be present at the November 9th PAB meeting to provide information during the Chief's Report and will be able to speak on this as well.

Jen

Jen Louis
Interim Chief of Police
Berkeley Police Department

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Public

ATTACHMENT 2

Unmanned Aerial System (UAS) Operations

611.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for the use of an unmanned aerial system (UAS) and for the storage, retrieval and dissemination of images and data captured by the UAS.

611.1.1 DEFINITIONS

Definitions related to this policy include:

Unmanned Aerial System (UAS) - An unmanned aircraft of any type that is capable of sustaining directed flight, whether preprogrammed or remotely controlled (commonly referred to as an unmanned aerial vehicle (UAV)), and all of the supporting or attached systems designed for gathering information through imaging, recording or any other means.

611.2 POLICY

Unmanned aerial systems may be utilized for the purpose of enhancing the department's mission of protecting lives and property by enabling remote surveillance and monitoring in the situations specified in 611.5 below when other means and resources are not available or are less effective. Any use of a UAS will be in strict accordance with constitutional and privacy rights and Federal Aviation Administration (FAA) regulations. All uses of the UAS shall be reported in compliance with the Surveillance Technology Ordinance, BMC 2.99.

611.3 PRIVACY

The use of the UAS potentially involves privacy considerations. Absent a warrant or exigent circumstances, operators and observers shall adhere to FAA altitude regulations and shall not intentionally record or transmit images of any location where a person would have a reasonable expectation of privacy (e.g., residence, yard, enclosure). Operators and observers shall take reasonable precautions to avoid inadvertently recording or transmitting images of areas where there is a reasonable expectation of privacy. Reasonable precautions can include, for example, deactivating or turning imaging devices away from such areas or persons during UAS operations.

611.4 PROHIBITED USE

The UAS video surveillance equipment shall not be used:

- To conduct random surveillance activities.
- To target a person based solely on actual or perceived characteristics, such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, economic status, age, cultural group, or disability.
- To harass, intimidate, or discriminate against any individual or group.
- To conduct personal business of any type.

The UAS shall not be weaponized.

Unmanned Aerial System (UAS) Operations

611.5 AUTHORIZED USE

The use of a UAS shall only occur as the result of a mutual assistance request, and no BPD personnel will be allowed to operate a UAS. UAS may only be requested for the purpose of remote surveillance and monitoring in the following specified situations:

- (a) Mass casualty incidents (e.g. large structure fires with numerous casualties, mass shootings involving multiple deaths or injuries);
- (b) Disaster management;
- (c) Missing or lost persons;
- (d) Hazardous material releases;
- (e) Sideshow events where many vehicles and reckless driving is present;
- (f) Rescue operations;
- (g) Training;
- (h) Hazardous situations which present a high risk to officer and/or public safety, to include:
 - i. Armed suicidal persons;
 - ii. Hostage situations;
 - iii. Barricaded suspects;
- (i) Arrest of armed and/or dangerous persons
- (j) Service of high-risk search and arrest warrants involving armed and/or dangerous persons
- (k) Other unforeseen exigent circumstances.

Unmanned Aerial Systems shall only be utilized for law enforcement purposes.

611.6 REQUEST PROCESS

Pursuant to BMC 2.99, the Surveillance Technology Ordinance governing the use of drones, the following steps must occur to seek permission to temporarily use a drone. The requests shall be made to the City Manager via the Chain of Command, as follows:

- (a) All requests shall be routed to the Watch Commander, if they are not available, the Duty Command Officer (DCO)
- (b) The Watch Commander or DCO should contact the Chief of Police, or the Acting Chief of Police in his/her absence.
- (c) The Chief of Police, Acting Chief of Police, or in exigent circumstances the DCO shall obtain approval from the City Manager authorizing the use of a Drone. The City Manager is responsible for logging the use and ensuring the notifications and reporting requirements are met pursuant to BMC 2.99.040.

611.7 RETENTION OF UAS DATA

If available, any data collected by the use of a UAS should be purged by BPD within 60 days if it doesn't contain any data of evidentiary value. If the data has evidentiary value, it should be

Unmanned Aerial System (UAS) Operations

uploaded into BPD's evidence database and kept pursuant to the established retention guidelines set forth in policy 804-Records Maintenance and Release.

Surveillance Use Policy-Unmanned Aerial System (UAS)

1303.1 PURPOSE

The purpose of this policy is to establish guidelines for the use of an unmanned aerial system (UAS) and for the storage, retrieval and dissemination of images and data captured by the UAS.

1303.2 AUTHORIZED USE

The use of a UAS shall only occur as the result of a mutual assistance request, and no BPD personnel will be allowed to operate a UAS. UAS may only be requested for the purpose of remote surveillance and monitoring in the following specified situations:

- (a) Mass casualty incidents (e.g. large structure fires with numerous casualties, mass shootings involving multiple deaths or injuries);
- (b) Disaster management;
- (c) Missing or lost persons;
- (d) Hazardous material releases;
- (e) Sideshow events where many vehicles and reckless driving is present
- (f) Rescue operations;
- (g) Training;
- (h) Hazardous situations which present a high risk to officer and/or public safety, to include:
 - i. Armed suicidal persons;
 - ii. Hostage situations;
 - iii. Barricaded suspects;
- (i) Arrest of armed and/or dangerous persons
- (j) Service of high-risk search and arrest warrants involving armed and/or dangerous persons
- (k) Other unforeseen exigent circumstances

Unmanned Aerial Systems shall only be utilized for law enforcement purpose.

1303.3 DATA COLLECTION

If equipped, it shall be the request on all BPD deployments that the "video recording only" function of the UAS be activated whenever the UAS is deployed, and deactivated whenever the UAS deployment is completed. The UAS operator will rely on SD Cards for video recordings.

Surveillance Use Policy-Unmanned Aerial System (UAS)

1303.4 DATA ACCESS

Access to UAS data shall be limited to Berkeley Police Department (BPD) personnel and the mutual assistance agency, in connection with an active investigation. Information may be shared in accordance with 1303.9 below. It shall be at the discretion of the Commander or senior supervisor to discern which members have a need to know, and limit access to those members. BPD is prohibited from selling any data obtained from the UAS.

1303.5 DATA PROTECTION

Whenever feasible, the data from the UAS should be encrypted by the vendor or operator. The data should only be accessible to BPD personnel who have been granted security access.

1303.6 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 Unmanned Aerial Systems (UAS). 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.

1303.7 DATA RETENTION

If available, any data collected by the use of a UAS should be purged by BPD within 60 days if it doesn't contain any data of evidentiary value. If the data has evidentiary value, it should be uploaded into BPD's evidence database and kept pursuant to the established retention guidelines set forth in policy 804-Records Maintenance and Release.

1303.8 PUBLIC ACCESS

UAS data which is collected and retained under this policy is considered a "law enforcement investigatory file" pursuant to Government Code § 6254, and shall be exempt from public disclosure. UAS data which is retained pursuant to this policy shall be available via public records request pursuant to applicable law regarding Public Records Requests as soon as the criminal or administrative investigation has concluded and/or adjudicated.

1303.9 THIRD-PARTY DATA-SHARING

Data collected from the UAS 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) Other third parties, pursuant to a Court Order or Search Warrant.

Surveillance Use Policy-Unmanned Aerial System (UAS)

1303.10 TRAINING

The use of a UAS shall only occur as the result of a mutual assistance request, and no BPD personnel will be allowed to operate a UAS. All BPD personnel shall be provided with this Surveillance Use Policy. BPD recognizes that the assisting agency will need to satisfy their respective training requirements to operate the UAS, however BPD personnel shall follow this policy and all relevant policies, including Records Management, Policy 804 while access or retaining any of the captured data from the UAS.

1303.11 AUDITING AND OVERSIGHT

Division Captains or their designee shall ensure compliance with this Surveillance Use Policy.

The security and integrity of the Surveillance Technology and collected information will be completed in the form of a random biennial audit of the uses from the Audit and Inspection's Sergeant. This audit will be routed to the Captain of Professional Standards Bureau and the Chief of Police for review.

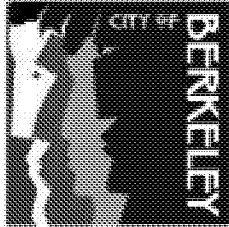
Intentional violation of this policy may serve as grounds for disciplinary action pursuant to Policy 1010, Personnel Complaints.

1303.12 MAINTENANCE

UAS's will only be used in a mutual assistance request, and thereby must be obtained from the City Manager via the Chain of Command. All UAS maintenance shall be conducted by the owner/operator of the device consistent with all other mutual assistance response agreements.

Public

ATTACHMENT 3



Office of the City Manager

REVISED AGENDA MATERIAL

Meeting Date: April 29, 2014

Item Number: 1.c.

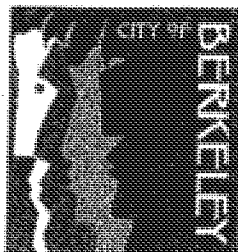
Item Description: Response to City Council Referral on Drones

Submitted by: Michael Sherman, Chair, Police Review Commission

The prior submission from the Police Review Commission inadvertently omitted every other page of Attachment 2 (PRC Recommendation). The following documents are attached in their entirety:

Attachments:

- 1: October 24, 2013 letter from the PRC to the Mayor and City Council
- 2: PRC Recommendation to City Council Regarding Drones approved September 25, 2013



Police Review Commission (PRC)

October 24, 2013

Berkeley City Council
Civic Center Building
2180 Milvia Street
Berkeley, CA 94704

Re: PRC's response to City Council referral on Drones

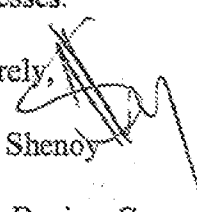
Dear Honorable Mayor and Members of City Council,

In January of 2013 the Police Review Commission formed a subcommittee to address City Council's referral to review a proposed Resolution on Drones. The subcommittee held numerous meetings and the full Commission held a joint Town Hall meeting on Drones with the Peace and Justice Commission in May.

After much work and collaboration, the subcommittee presented a written recommendation regarding Drones to the full Commission for consideration on September 25, 2013. The Commission voted unanimously to accept the written recommendation and agreed to forward it to City Council in response to the referral.

The written recommendation from PRC is attached to this letter. The PRC will look forward to providing any further input or review as may be need or requested by Council as this matter progresses.

Sincerely,


Kiran Shenoy
Chair
Police Review Commission

Enclosure: PRC Recommendation on Drones

cc: Christine Daniel, City Manager
Michael Meehan, Chief of Police
PRC Commissioners

1947 Center Street, Third Floor, Berkeley, CA 94704
TEL: 510.981.4950 TDD: 510.981.6903 FAX: 510.981.4955
e-mail: prc@cityofberkeley.info <http://www.cityofberkeley.info>

**Berkeley Police Review Commission
Recommendation to City Council Regarding Drones
Approved by Full Commission, September 25, 2013**

PART I

**Joint Statement of Background and Purpose by the Police Review Commission and the
Peace and Justice Commission**

I. Introduction.

On December 18, 2012, the Berkeley City Council reviewed a resolution submitted to it by the Berkeley Peace and Justice Commission to "Proclaim Berkeley a No Drone Zone and Enact an Ordinance to that Effect."¹ The Council referred the issue of drones, or unmanned aerial vehicles, in Berkeley back to the Peace and Justice Commission, the Berkeley Police Review Commission, and the Berkeley Disaster and Fire Commission for further review and study, and asked them to report back to Council for further consideration of the issues and a Council Workshop.

Council asked those commissions to review a proposal to permit police use of drones upon approval of City Manager, or upon approval of the Chief of Police in emergency situations when the City Manager isn't available, in the following circumstances:

- 1) In the case of a disaster;
- 2) To assist in locating missing persons;
- 3) To assist in rescue efforts;
- 4) To assist in police pursuit of known suspects who have committed serious or violent crimes.

Since that time, four cities, Charlottesville, Virginia, St. Bonifacius, Minnesota, Evanston Illinois, and Iowa City, Iowa have banned drones. Other cities and at least thirty-one states are considering similar legislation. In Seattle, Washington, the mayor ordered the police department to ground the drones it had purchased after outcry from residents and privacy advocates.²

On May 1, 2013, the Peace and Justice Commission and the Police Review Commission jointly held a "Town Hall on Drones: Informing Policy in Berkeley." The Town Hall meeting provided opportunities for individuals and organizations to address the Commissions and the public on various aspects of drone usage.

¹ "Proclaim Berkeley a No Drone Zone and Enact an Ordinance to That Effect." City of Berkeley. N.p., n.d. Web. <http://www.ci.berkeley.ca.us/Clerk/City_Council/2012/12Dec/Documents/2012-12-18_Item_05_Proclaim_Berkeley_a_No_Drone.aspx>.

² http://seattletimes.com/html/localnews/2020312864_spddronesxml.html

The Town Hall focused on:

- 1) Technical Aspects of and Limitations of Drones;
- 2) Public Safety (what might drones be good for?);
- 3) Civil Liberties Concerns; and
- 4) Moral and Political Consequences of Drones.

Representatives of the following organizations made presentations to the Commissions: American Civil Liberties Union (ACLU), the Electronic Frontier Foundation (EFF), the Association for Unmanned Vehicle Systems International (AUVSI), Alameda County Against Drones (ACAD), the Bill of Rights Defense Committee (BORDC), Berkeley CopWatch, and Clinical Professor Jennifer Urban from the University of California School of Law's Technology & Public Policy Clinic. Unfortunately, neither the Berkeley Police Department (BPD) nor the Berkeley Fire Department (BFD) accepted invitations to send their representatives to participate in any way in the Town Hall on Drones. An invitation for co-sponsorship was also extended to the Berkeley Disaster and Fire Safety Commission but was declined.

Each presenter answered questions from Commissioners, and ample time was devoted to public comment. Of all of the presenters, only the presenter from AUVSI, a drone industry advocacy and trade group, favored the use of drones in Berkeley. Of the approximately twenty comments from the public, eighteen speakers expressed strong opposition to the use of drones in Berkeley, while two expressed willingness to see drones used in emergency situations with appropriate safeguards. One person expressed a desire for Berkeley to use a drone to search for his granddaughter in an emergency situation, another person expressed his desire for "some use of drones,". Many speakers urged commissioners to pursue a "No Drone Zone" policy in Berkeley.

The evidence and opinions presented by the various expert presenters addressed the issues raised by Council and lead us to find that Berkeley should effectively be a Drone Free Zone .

In this report, the Commission responds to the four circumstances that the Council proposed for allowed use of drones by the Berkeley Police Department. Discussion of the first three circumstances will be grouped together as the "humanitarian uses of drones."

II. "Humanitarian" Uses of Drones.

Circumstance 1: in the case of a disaster.

Circumstance 2: to assist in locating missing persons.

Circumstance 3: to assist in rescue efforts.

Concerns raised at the Town Hall as well as in the Commission's independent research included four broad categories: safety, usability, mission creep, and privacy implications.

A. Safety issues.

Drones are largely unproven in American civilian airspace, and have only seen widespread use in combat theaters, where large drones are the least safe class of aircraft currently in operation.³ They are known to go off course, disappear, and crash into other objects. They can be easily hacked and manipulated off course and used in ways not intended by their operators. An FAA official testified to Congress that U.S. Customs and Border Protection has reported 52.7 drone accidents per 100,000 hours of flight time, seven times the civil aviation rate of 7.11 accidents per 100,000 hours.⁴ According to a 2005 Department of Defense report, every 100,000 flight hours saw 191 AAI Shadow UAVs destroyed or in need of drastic repairs, compared to just four manned F-16s⁵.

65% of all drone crashes are caused by mechanical failure. In one example in the fall of 2012, a drone crashed into a police SWAT Team Bearcat vehicle. "A police drone made to look like a mini-helicopter crashed into an armored SWAT vehicle after its test flight in Montgomery County, Texas, near Houston... the prototype drone was flying about 18-feet off the ground when it lost contact with the controller's console on the ground." Many similar examples of drone failures have been well documented.

Given the serious safety limitations of drones, we consider the potential benefits of drones in a disaster response setting to be outweighed by the hazard to public safety represented by unmanned aerial vehicles flying in Berkeley.

B. Limitations on usability.

Current FAA regulations permit small drones limited to 25 pounds or under and below 400 feet only, for the use of first responders. They must be flown in daylight and their "vision" is much more limited than that of human pilots. They do not have the same ability as piloted aircraft to avoid collisions. Internationally, drones often crash and have near misses with other aircraft in airspace much less crowded than that of the United States.

³ <http://www.businessweek.com/news/2012-06-18/drones-most-accident-prone-u-dot-s-dot-air-force-craft-bgov-barometer>.

⁴ *Evaluation of Traffic Alert and Collision Avoidance System*, FEDERAL AVIATION ADMINISTRATION (Mar. 21, 2011), http://www.faa.gov/about/initiatives/uas/media/TCASonUAS_FinalReport.pdf.

⁵ "Unmanned Aircraft Systems Roadmap 2005-2030." Federation of American Scientists. N.p., n.d. Web. <https://www.fas.org/irp/program/collect/uav_roadmap2005.pdf>.

Drones have short flight time allowances and capabilities, and issues with wind resistance. They cannot be flown on windy days⁶ and cannot withstand the heat of fires. They must be flown in the line of sight of their operator.⁷ The drones being considered by municipalities have 25 minute flight times and need to be controlled by two operators.

For these technical and legal reasons, drones are not suitable for the uses suggested by Council. In addition, they would pose a physical danger to people on the ground.

C. Mission Creep.

We agree with the Council that Berkeley should not have any weaponized drones. But Berkeley should not go down the slippery slope of *any* drone use. The surveillance capabilities of drones are far too invasive and defeat the protections of privacy and Fourth Amendment rights⁸ in the field.

Members of the public raised concerns at the Town Hall meeting about failures in the BPD's compliance with Public Records Act requests and Council oversight of the Department, including an officer's tampering with drug evidence. Several speakers expressed low confidence in the Department's ability to manage the constitutional risks of unmanned flying machines with high-tech spying abilities, including audio, visual, and thermal imaging technologies. A representative of Berkeley CopWatch, which has been observing Berkeley Police conduct for 23 years, said: "We can't get police accountability on the ground. If it[surveillance by drones] goes into the air, we're going to lose tracking effectiveness. If we can't control the police, the best guidelines will not have an impact."

"Mission Creep" refers to the gradual broadening of the original objectives of a program, as seen in the expansion of the paramilitary policing tactics known as SWAT. Originally intended and marketed as a quick-response tactic for hostage situations, SWAT teams nationally now deploy thousands of times each year for routine police work⁹. If used by government agencies to surveil

⁶ *Homeland Security: Unmanned Aerial Vehicles and Border Surveillance*, CONGRESSIONAL RESEARCH SERVICE (July 8, 2010), <https://www.fas.org/sgp/crs/homesecc/RS21698.pdf>; Eric Beidel, *Army Pilots: Flying Drones Tougher than It Looks*, NATIONAL DEFENSE MAGAZINE (Feb. 2011), <http://www.nationaldefensemagazine.org/archive/2011/February/Pages/ArmyPilotsFlyingDronesTougherThanItLooks.aspx>; Sara Peck, *Civilian Drones Have Yet to Pass Weather Test*, NATIONAL DEFENSE MAGAZINE (Aug. 2008), <http://www.nationaldefensemagazine.org/archive/2008/August/Pages/CivilianDronesHaveYettoPassWeatherTest.aspx>. *But see*, Edwin Kee, *Pilotless Robot Plane Smart Enough to Navigate Through Bad Weather*, UBERGIZMO (July 9, 2012), <http://www.ubergizmo.com/2012/07/pilotless-robot-plane-smart-enough-navigate-bad-weather/>.

⁷ *The FAA Is Set to Issue Rules for Operating Civilian Drones*, STAR TRIBUNE (Feb. 17, 2013), <http://m.startribune.com/business/?id=191499731>.

⁸ http://www.law.cornell.edu/constitution/fourth_amendment

⁹ Balko, Radley. "Overkill: The Rise of Paramilitary Police Raids in America." Cato Institute. N.p., n.d. Web. 02 Sept. 2013. <<http://www.cato.org/publications/white-paper/overkill-rise-paramilitary-police-raids-america>>.

residents, drones could pose a significant hazard to civil liberties in Berkeley. While local agencies may purchase drones with the best of intentions, the Peace and Justice Commission and the Police Review Commission are convinced that the only way to prevent the violation of civil liberties in the use of drones is to prevent their acquisition by government agencies including the BPD.

D. Right to Privacy.

According to Town Hall testimony from Linda Lye, staff attorney with the American Civil Liberties Union, deploying drones not only raises serious Fourth Amendment concerns, it would likely violate the California Constitution's Article I, Section 1, which grants privacy protection for personal information. She listed four reasons to oppose drones:

- 1) Their low cost encourages widespread surveillance.
- 2) Their small size and advanced abilities prevent people from knowing they are being spied on.
- 3) Their night-vision and infrared capabilities can "see through walls" to spy on people inside.
- 4) Use of drones in the San Francisco Bay Area, a major flashpoint of U.S. social protests that have long been spied on, infiltrated, beaten, and arrested by law enforcement, is a bad idea.

The example of a nude sunbather in his/her back yard was given. He/she can cover up upon observing a helicopter in the sky, but could have no knowledge of a hovering hummingbird-size drone.

Current law guarantees us a "reasonable expectation of privacy," but no court has defined "reasonable" as it would relate to drone surveillance. The technology has evolved much faster than the law.

Lye stated that, "If drones were to be involved, they should be used upon issuance of a warrant based on probable cause and there should be no sharing of gathered information between departments." Recent revelations about the DEA, NSA and other agencies' sweeping electronic surveillance programs¹⁰ underscore the lack of privacy controls within law enforcement, and the inadequacy of warrant requirements in the context of 21st century surveillance.

E. Conclusion on "humanitarian" uses of drones.

The humanitarian uses suggested for drone technology are themselves fraught with danger to safety. Drones have a bad safety record and often crash. Their usability is limited by both technical and legal factors, making it unlikely that they will offer effective aid for missing

¹⁰ Stanley, Jay. "How NSA Overreach May Backfire Even On Agency's Own Terms." American Civil Liberties Union. N.p., 23 Aug. 2013. Web. 02 Sept. 2013. <<https://www.aclu.org/blog/national-security-technology-and-liberty/how-nsa-overreach-may-backfire-even-agencys-own-terms>>.

persons, fighting fires, etc. History shows that high-tech equipment in the hands of a military-like force without effective civilian oversight is prone to abuse and mission creep. In particular, drone technology lends itself to a massive breach of California's constitutional right to privacy.

III. Circumstance 4: "to assist in police pursuit of known suspects who have committed serious or violent crimes."

A. Overview.

This part of Council's referral suggests that drone deployment be allowed in pursuit of a fleeing suspect in a serious or violent crime. It should be noted that the BPD has not proposed acquisition of drones; nor have they made an argument that drones will assist them in this scenario.

At first blush, the idea may sound unobjectionable, on a par with giving Segways to mall officers. However, we must understand the capabilities offered by drone manufacturers. The military has worked for at least five years to integrate "sense through the walls," or STTW, technology into UAVs.¹¹ This capability has the clear potential to violate the Fourth Amendment on a massive scale. Taking STTW together with the capacity for facial recognition,¹² for hovering undetected outside residential windows, for large-scale closed-circuit TV recording, license plate readers, and Internet packet sniffers, we may find that we have lost our right to be secure in our homes and persons.

There are two strong arguments against procuring and using drones for the pursuit of criminal suspects. They are the same as the arguments for the Fourth Amendment, which has itself been maligned as a provision that "only benefits criminals."

- 1) Government use of these technologies violates the constitutionally guaranteed *right of suspects to the presumption of innocence*, and the prohibition against searches conducted without a *warrant based upon probable cause*.

¹¹ Jay Stanley, *We Already Have Police Helicopters, So What's the Big Deal over Drones?*, AMER. CIVIL LIBERTIES UNION (Mar. 8, 2013), <http://www.aclu.org/blog/technology-and-liberty-criminal-law-reform/we-already-have-police-helicopters-so-whats-big-deal>; Michael Rundle, *Camera 'Can See Through Walls' By Turning Plain Surfaces into Mirrors*, HUFFINGTON POST (July 26, 2012), http://www.huffingtonpost.co.uk/2012/07/16/camera-can-see-through-walls_n_1675356.html; Michael Zennie, *Death from a Swarm of Tiny Drones*, DAILY MAIL (Feb. 19, 2013), <http://www.dailymail.co.uk/news/article-2281403/U-S-Air-Force-developing-terrifying-swarms-tiny-unmanned-drones-hover-crawl-kill-targets.html>; Noah Shachtman, *Army Tracking Plan: Drones that Never Forget a Face*, WIRED (Sept. 28, 2011), <http://www.wired.com/dangerroom/2011/09/drones-never-forget-a-face/>.

¹² Business Insider, May 27, 2013, <http://www.businessinsider.com/facial-recognition-technology-and-drones-2013-5>

- 2) The harm goes far beyond criminal suspects, *to the general public*. Surveillance technology is very difficult to control and can easily be used on a massive level. Due to the advanced nature of the technology, case law has not been written to determine whether judicial warrants are necessary for drone use as in the case of wiretaps, or not necessary as in the case of casual observation in public areas. "Fishing expeditions" against dissenters, along with large-scale violations of privacy, are likely.

In the fall of 2012, the Berkeley City Council enacted new policing policies to confine intelligence gathering and sharing to cases of actual criminal conduct. Information the BPD shares with the FBI or the regional intelligence fusion center may be retained indefinitely without regard to constitutional safeguards. The new Berkeley policies put restrictions on sharing Suspicious Activity Reports (SARs), mutual aid, collaboration with immigration authorities, and surveillance on non-violent civil disobedience.¹³

Sharing drone-gathered intelligence would violate Berkeley's newly passed protections. Even gathering such information would create a risk that it would find its way into the federal government's vast trove of data gathered on citizens and others (see below, "New Technology Poses a Risk to Civil Liberties").

B. Drones and the Fourth Amendment

Let us review the law on "unreasonable search and seizure," which is prohibited by the Fourth Amendment. The Supreme Court has established strict rules about electronic surveillance against "U.S. persons" in the case of wiretapping.¹⁴ The government must obtain a search warrant showing *probable cause*—the same level of evidence needed to make an arrest—to believe that a specific person is, has, or is about to commit a specific crime, and where the wiretap will be located.

Drone technology is new and quickly evolving, and the proper standards for their use might not be the same as for wiretapping. But neither should they be the same as for helicopter surveillance. The Peace and Justice Commission and Police Review Commission contend that drones are closer to wiretapping than they are to helicopters. Drones are far from a passive "eye in the sky;" they come with extremely sophisticated monitoring devices with incredibly invasive power. Our judgment is that use of a device that can secretly monitor anyone's voice, movements, expressions, sample their DNA, and photograph them behind walls fits the

¹³ http://www.ci.berkeley.ca.us/Clerk/City_Council/2012/09Sep/City_Council_09-18-2012_-_Regular_Meeting_Annotated_Agenda.aspx; specific information at http://www.ci.berkeley.ca.us/Clerk/City_Council/2012/09Sep/Documents/2012-09-18_Item_10a_Consideration_of_Revisions.aspx

¹⁴ "Getting a Court Order Authorizing a Wiretap", Electronic Frontier Foundation, <https://ssd EFF.org/wire/govt/wiretapping-authorization>

definition of a search, subject to the probable cause protection, as intended by the authors of the Bill of Rights.

C. New Technology Poses a Risk to Civil Liberties

Since the Peace and Justice Commission initially brought the drone issue to Council in late 2012, the issue of government surveillance has exploded nationally and beyond. Beginning in June 2013, Edward Snowden revealed secret programs including "Prism" and "XKeyscore" that allow the National Security Agency to mine data from all telephone and email communications and website visits, without a warrant.¹⁵ Millions of such records have been monitored over the last seven years. The Drug Enforcement Agency's Hemisphere program dwarfs the NSA program, gaining access to call information dating back to 1987.¹⁶

Less well-known technology is contributing to the surveillance state as well. Homeland Security is moving forward with facial recognition software called the Biometric Optical Surveillance System (BOSS), capable of scanning large crowds and automatically identifying people by their faces.¹⁷ The ultimate in invasive databases, full DNA profiles, are being built by local police departments across the country. The DNA is taken not only from convicted felons but from those merely suspected of a crime, and even of crime victims; the Orange County District Attorney has compiled 90,000 such profiles.¹⁸

Relatively low-technology practices such as "stop-and-frisk" also raise civil liberties concerns. New York City has been a flashpoint on this subject. Hundreds of thousands of law-abiding, overwhelmingly Black and Latino New Yorkers are subjected to this practice annually, leading to charges of officially sanctioned racial profiling.¹⁹ Mayor Bloomberg explicitly profiled the entire Black and Latino communities saying most crimes are committed by people of color, and that therefore indiscriminate stopping of members of these communities, without reasonable suspicion, is appropriate.

A common thread in the argument for these practices pits security against liberty. Bloomberg credits "stop and frisk" for reducing crime (though violent crime has dropped nationally over the same period). President Obama, in his speech on NSA surveillance, spoke of "tradeoffs"

¹⁵ "XKeyscore: NSA tool collects 'nearly everything a user does on the internet,'" The Guardian, July 31, 2013, <http://www.theguardian.com/world/2013/jul/31/nsa-top-secret-program-online-data>

¹⁶ http://www.nytimes.com/2013/09/02/us/drug-agents-use-vast-phone-trove-eclipsing-nsas.html?pagewanted=all&_r=0

¹⁷ http://www.nytimes.com/2013/08/21/us/facial-scanning-is-making-gains-in-surveillance.html?pagewanted=all&_r=1&

¹⁸ The New York Times, June 12, 2013, <http://www.nytimes.com/2013/06/13/us/police-agencies-are-assembling-records-of-dna.html?pagewanted=all>

¹⁹ New York Civil Liberties Union, <http://www.nyclu.org/issues/racial-justice/stop-and-frisk-practices>

between national security and "modest encroachments on privacy." But security and constitutional rights cannot be seen as a balancing act. Without freedom of speech, assembly, association, due process, equal protection, privacy, and other fundamental rights, security has no meaning. When society treats Black and Brown people as inherently criminal, and entire mosques as "terrorist organizations" (as the NYPD has reportedly done for years²⁰), we must see how unsafe we have made ourselves in the name of public safety.

Government's disdain for constitutional protections causes renewed concern that data gathered in seemingly benign drone surveillance may be secretly, and in violation of the California Constitution's explicit right to privacy, utilized for sweeping investigations against people of color and other marginalized groups, activists, and journalists.

At the Town Hall Forum, Professor Jennifer Urban noted that the 1982 Truth in Evidence Initiative did away with the federal exclusionary rule in California, allowing suppressed evidence to be used in criminal cases. Information gathered in violation of the constitutional ban on unreasonable search carries a frightening potential for abuse in court proceedings as well as investigations and in the chilling of dissent. The use of drones would exacerbate this problem by increasing the amount of evidence gathered that ought to be suppressed.

D. CONCLUSION on "police pursuit of suspects."

Use of the enhanced surveillance capabilities of drones both violates the prohibition against warrantless surveillance and is a potentially limitless and invasive fishing expedition against the entire community, on a par with the NSA's massive Prism program. In the name of public safety, we put the public's security at risk.

Public safety and security is a desire we all share. We reject the contention of New York City Mayor Michael Bloomberg that those who defend civil liberties "play no constructive role in keeping our city safe,"²¹ and George W. Bush's argument that "Either you are with us, or you are with the terrorists."²² People across the political spectrum agree that without freedom, we have no safety or security. Civil liberties are not an abandonment of society to unrestrained crime and violence, but the core of our social compact. Neither are they abstractions or luxuries that must be balanced with security.

²⁰ The Washington Post, August 28, 2013, http://www.washingtonpost.com/national/documents-nypd-labels-mosques-terrorism-enterprises-to-record-sermons-and-spy-on-imams/2013/08/28/dd6a7732-0fb0-11e3-a2b3-5e107edf9897_story.html

²¹ About.com, April 30, 2013: <http://civilliberty.about.com/b/2013/04/30/bloomberg-civil-libertarians-are-extremists-who-play-no-constructive-role-in-keeping-new-york-city-safe.htm>

²² "Address to a Joint Session of Congress," George W Bush, <http://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010920-8.html>

IV. Alameda County Sheriff Drone Acquisition

Beyond the question of drone policy for Berkeley, public comment at the Town Hall also touched on County law enforcement policy, which impacts the City as well.

We urge the Berkeley City Council to write the Alameda County Board of Supervisors to reiterate Council's opposition to the acquisition of a drone by Sheriff Ahern.

V. Conclusion

As the public has learned this year, the amount of personal information collected by and available to the federal government is much greater than we could have imagined. Berkeley has taken a step away from this rerun of George W. Bush's "Total Intelligence Awareness,"²³ by refusing to share non-criminal intelligence with the national security network. By agreeing not to acquire the massively powerful data collectors called drones, the City can take another step for constitutionality, privacy, and true security.

The Peace and Justice Commission and the Police Review Commission urge the Berkeley City Council to pass a No Drone Zone ordinance based on the model drone legislation produced by the Bill of Rights Defense Committee. **The two commissions have passed slightly modified draft ordinances.** The Police Review Commission's draft ordinance is attached as PART II, below. The Peace and Justice Commission's draft ordinance will be included in that commission's communication to the City Council.

²³ <http://www.npr.org/2013/06/19/192770397/the-watchers-have-had-their-eyes-on-us-for-years>

PART II

**City of Berkeley Draft Drone legislation: No Drone Zone
Approved by Berkeley Police Review Commission²⁴
September 25, 2013**

Town Hall

WHEREAS, the Berkeley Police Review Commission reviews and makes recommendations concerning all written and unwritten policies, practices, and procedures of whatever kind and without limitations, in relation to the Berkeley Police Department, other law enforcement agencies and intelligence and military agencies operating within the City of Berkeley, and law enforcement generally. Berkeley City Ordinance No. 4644-N.S. Section 10; and

WHEREAS the Berkeley Peace and Justice Commission and the Berkeley Police Review Commission jointly held a Town Hall entitled "Town Hall on Drones: Informing Policy in Berkeley" on May 1, 2013 from 6:00pm to 10:00pm at the North Berkeley Senior Center located at 1901 Hearst Avenue in Berkeley;

WHEREAS at the Town Hall meeting, community members, advocacy groups, religious groups, professional organizations, legal experts, as well as drone advocates, spoke publicly on the question of whether the City of Berkeley should allow drones in its airspace;

WHEREAS the overwhelming message from the community was to declare Berkeley a No Drone Zone, disallowing the use of government drones in the city's airspace.

Public policy discourse vital to democracy & preservation of constitutional rights

WHEREAS, the premature deployment of unmanned aerial vehicles ("drones") has outpaced public policy discourse throughout the United States, and poses a serious threat to the privacy and constitutional rights of the residents of Berkeley;

WHEREAS the Federal Aviation Administration's guidance on the use of drones as of 2013 provides that drone flights may not be conducted over urban or populated areas, heavily trafficked roads, or open-air assemblies of people, absent a convincing showing that such operations can be conducted safely.²⁵

²⁴ Based on model legislation written by the Bill of Rights Defense Committee available at <http://www.constitutioncampaign.org/campaigns/droneregulation/>. Contact Nadia Kayyali at nadia@bordc.org.

²⁵ Fact Sheet -- Unmanned Aircraft Systems, FEDERAL AVIATION ADMINISTRATION (Feb. 19, 2013), http://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=14153.

WHEREAS, the Federal Aviation Administration Modernization and Reform Act of 2012 directs the FAA to create regulations that will enable drones to fly throughout U.S. airspace by September, 2015;²⁶

Drones are military technology driven by corporate interests

WHEREAS, military drones have been used overseas for unlawful and extrajudicial targeted killings of foreign nationals and US Citizens,²⁷ have killed hundreds of civilians,²⁸ including children, and have jeopardized US national security by furthering anti-American sentiment and destabilizing communities that are bombed;²⁹

WHEREAS the proliferation of drone technology is being driven not by necessity, but by corporate interests poised to profit from drone proliferation;³⁰

WHEREAS the lobby group the Association for Unmanned Vehicle Systems International, along with several drone manufacturers, spent at least \$21,960,500 on lobbying in 2011 alone;³¹

WHEREAS drone proliferation threatens the risk of unmanned aerial vehicles becoming increasingly available to journalists, bloggers, news organizations, and others who gather and disseminate public and nonpublic information on the Internet for profit or for political or other reasons;

WHEREAS drone proliferation threatens the risk of unmanned aerial vehicles becoming increasingly available to violent criminal organizations such as “the Cartel” and gangs;

WHEREAS some local police forces around the country have attempted to purchase military drone hardware for civilian use, reflecting a broader trend towards the militarization of local police agencies;³²

²⁶ *Id.*

²⁷ Michael Boyle, *Obama's Drone Wars and the Normalization of Extrajudicial Murder*, THE GUARDIAN (June 11, 2012), <http://www.guardian.co.uk/commentisfree/2012/jun/11/obama-drone-wars-normalisation-extrajudicial-killing>; Stanford International Human Rights & Conflict Resolution Clinic, LIVING UNDER DRONES, <http://www.livingunderdrones.org/numbers/> (last visited Apr. 2, 2013).

²⁸ *Supra*, LIVING UNDER DRONES.

²⁹ Steve Coll, *Kill or Capture*, THE NEW YORKER (Aug. 2, 2012), <http://www.newyorker.com/online/blogs/comment/2012/08/kill-or-capture.html>; Jefferson Morley, *What Drones Sow*, SALON.COM (June 12, 2012), http://www.salon.com/2012/06/12/hatred_what_drones_sow/; David Kilcullen & Andrew McDonald Exum, *Death from Above, Outrage Down Below* (May 16, 2009), <https://www.nytimes.com/2009/05/17/opinion/17exum.html?pagewanted=all>.

³⁰ Glenn Greenwald, *Domestic Drones and Their Unique Dangers*, THE GUARDIAN (Mar. 29, 2013), <http://www.guardian.co.uk/commentisfree/2013/mar/29/domestic-drones-unique-dangers>.

³¹ See, First Street Research Group, *Drones in U.S. Air Space: The Next Lobby Frontier* (May 1, 2012), <http://firststreetresearch.cqpress.com/2012/05/01/drones-in-u-s-air-space-the-next-lobby-frontier/>; Galius Publius, *Drone Industry Wrote the Legislation Governing Domestic Drone Use*, AMERICABLOG (Feb. 17, 2012), <http://americablog.com/2012/02/drone-industry-wrote-the-legislation-governing-domestic-drone-use.html>.

WHEREAS the blurring line between civilian police and the military, exemplified by the police deploying drone technology developed to fight the War on Terror, erodes ties and trust between police and community members and thereby damages public safety;³³

WHEREAS the argument that law enforcement requires drones, but will use them only for emergency response, is unpersuasive;

Human/ Civil Rights Implications

WHEREAS, the City of Berkeley adopted Ordinance No. 5,985-N.S., the "City of Berkeley Human Rights Ordinance, 1990 ADOPTING A HUMAN RIGHTS POLICY BASED ON ARTICLES 55 AND 56 OF THE UNITED NATIONS CHARTER"³⁴;

WHEREAS persistent or ambient surveillance of the sort enabled by drones entails serious constitutional abuses of police authority by effectively circumventing the longstanding requirements concerning warrants and due process contained within the United Nations Charter Article 55, the Fourth Amendment to the United States Constitution, Article I, Section 1 of the California Constitution, and the Berkeley Human Rights Ordinance;

WHEREAS drones can be outfitted with super-sensory technologies such as thermal imaging software³⁵ and the capability to "see through" walls;³⁶

WHEREAS drones are capable of hovering outside the windows of private dwellings to peer inside;³⁷

WHEREAS drones can be outfitted with technologies such as license plate readers³⁸ and Internet packet sniffing technology³⁹ that enable pervasive surveillance without particularity,

³² Declan McCullagh, *DHS Built Domestic Surveillance Tech into Predator Drones*, CNET.COM (Mar. 2, 2013), http://news.cnet.com/8301-13578_3-57572207-38/dhs-built-domestic-surveillance-tech-into-predator-drones/.

³³ Lenese C. Herbert, *Can't You See What I'm Saying? Making Expressive Conduct a Crime in High-Crime Areas*, 9 Geo. J. on Poverty L. & Pol'y 135 (2002); David Harris, *War on Terror, Local Police, and Immigration Enforcement: A Curious Tale of Police Power in Post-9/11 America*, 38 Rutgers L.J. 1, 3 (2006); Matthew C. Waxman, *Police and National Security: American Local Law Enforcement and Counterterrorism After 9/11*, 3 J. Nat'l Security L. & Pol'y 377 (2009); David Thacher, *The Local Role in Homeland Security*, 39 Law & Soc'y Rev. 635 (2005); Adam Wolf, *The Adversity of Race and Place: Fourth Amendment Jurisprudence in Illinois v. Wardlow*, 5 Mich. J. Race & L. 711 (2000).

³⁴ Full text of Berkeley Human Rights Ordinance, passed in 1990: <http://mcli.org/wp-content/uploads/2012/05/Berkeley-Human-Rights-Ordinance-1990.pdf>

³⁵ *Draganfly Thermal Infrared Camera*, DRAGANFLY INNOVATIONS, INC., <http://www.draganfly.com/uav-helicopter/draganflyer-x6/features/flir-camera.php>.

³⁶ Elec. Privacy Info. Ctr., *Domestic Unmanned Aerial Vehicles (UAVs) and Drones*, EPIC.ORG, <https://epic.org/privacy/drones/> (last visited Apr. 2, 2013); William Saletan, *Nowhere to Hide*, SLATE.COM (Sept 17, 2008), http://www.slate.com/articles/health_and_science/human_nature/2008/09/nowhere_to_hide.html.

³⁷ Scott Bomboy, *Why a Drone Can Hover Over Your Home, and You Can't Stop It*, NATIONAL CONSTITUTION CENTER (Mar 8, 2013), <http://news.yahoo.com/why-drone-hover-over-home-t-stop-173607447.html>.

³⁸ Elec. Privacy Info. Ctr., *Domestic Unmanned Aerial Vehicles (UAVs) and Drones*, EPIC.ORG, <https://epic.org/privacy/drones/>.

circumventing the requirements of the United Nations Charter Article 55, the Fourth Amendment to the United States Constitution, Article I, Section 1 of the California Constitution, and the Berkeley Human Rights Ordinance (Ord 5985);

WHEREAS drone technology has the potential to extend closed-circuit television surveillance to every square foot of public land;⁴⁰

WHEREAS most drones send the data they obtain in open and unencrypted broadcasts that can be, and have been, intercepted by unintended recipients using common and inexpensive technology;⁴¹

WHEREAS drone control uplinks are vulnerable to both malicious and unintentional interference;⁴²

WHEREAS, drone technology is developing so rapidly that the potential impacts on privacy and Fourth Amendment rights is difficult to predict;⁴³

Additional Legal Concerns

WHEREAS local law enforcement agencies report over-inclusive 'suspicious behavior' to national intelligence agencies and fusion centers;⁴⁴

WHEREAS the extreme focus of local law enforcement resources and attention on people of color,⁴⁵ immigrants,⁴⁶ low-income people,⁴⁷ and activists⁴⁸ is significantly disproportionate to the actual criminal threat they pose;

³⁹ *Id.*; Jesse Emspak, *Home-made Drone to Help Phone and Wi-fi Hackers*, NEWSIDENTIST (Aug. 5, 2011), <http://www.newscientist.com/article/dn20771-homemade-drone-to-help-phone-and-wifi-hackers.html>; Elec. Privacy Info. Ctr., *US Drones Intercept Electronic Communications*, EPIC.ORG (Feb. 28, 2013), <http://epic.org/2013/02/epic-foia---us-drones-intercept.html>.

⁴⁰ *Supra*, *Domestic Drones and Their Unique Dangers*.

⁴¹ Noah Shachtman & David Axe, *Most U.S. Drones Openly Broadcast Secret Feeds*, WIRED (Oct. 29, 2012), <http://www.wired.com/dangerroom/2012/10/hack-proof-drone/>.

⁴² Geoffrey Ingersoll, *The US Deliberately Crashed a Predator Drone into an Afghan Mountain*, BUSINESS INSIDER (Sep. 8, 2012), <http://www.businessinsider.com/drone-piloted-by-ohioans-deliberately-crashed-in-afghanistan-2012-9>; Noah Shachtman, *Air Force Insists: Drone Cockpit Virus Just a 'Nuisance'*, WIRED (Oct. 12, 2011), <http://www.wired.com/dangerroom/2011/10/drone-virus-nuisance/>.

⁴³ Jay Stanley, *We Already Have Police Helicopters, So What's the Big Deal over Drones?*, AMER. CIVIL LIBERTIES UNION (Mar. 8, 2013), <http://www.aclu.org/blog/technology-and-liberty-criminal-law-reform/we-already-have-police-helicopters-so-whats-big-deal>; Michael Rundle, *Camera 'Can See Through Walls' By Turning Plain Surfaces into Mirrors*, HUFFINGTON POST (July 26, 2012), http://www.huffingtonpost.co.uk/2012/07/16/camera-can-see-through-walls_n_1675356.html; Michael Zennie, *Death from a Swarm of Tiny Drones*, DAILY MAIL (Feb. 19, 2013), <http://www.dailymail.co.uk/news/article-2281403/U-S-Air-Force-developing-terrifying-swarms-tiny-unmanned-drones-hover-crawl-kill-targets.html>; Noah Shachtman, *Army Tracking Plan: Drones that Never Forget a Face*, WIRED (Sept. 28, 2011), <http://www.wired.com/dangerroom/2011/09/drones-never-forget-a-face/>.

⁴⁴ Raquel Ronzone, *Howard Zinn: (A) Anti-War Activist and Historian or (B) extremist*, DAILY KOS (Oct. 19, 2012), <http://www.dailykos.com/story/2012/10/19/1147007/-Howard-Zinn-A-anti-war-activist-and-historian-or-B-extremist>; *More About Fusion Centers*, AMER. CIVIL LIBERTIES UNION, <http://www.aclu.org/spy-files/more-about-fusion-centers>.

WHEREAS, expanded law enforcement capabilities often invite “mission creep” and grow pervasive and entrenched;⁴⁹

First Amendment implications

WHEREAS statistics show that local law enforcement agencies have frequently violated constitutional limits by scrutinizing groups engaging in protected First Amendment activity,⁵⁰ including anti-war groups,⁵¹ Second Amendment rallies, third-party voters and Muslim lobbyists, as potential national security threats;

WHEREAS persistent or ambient surveillance, coupled with currently expanding programs to monitor and criminalize nonviolent activism, threatens to chill First Amendment-protected association;⁵²

WHEREAS a potential chilling effect on First Amendment activity from the use of drones is compounded by the capability of some drone models to be armed with tear gas, rubber bullets, and other weapons;⁵³

⁴⁵ *Floyd, et al. v. City of New York, et al.*, CTR. FOR CONSTITUTIONAL RIGHTS, <http://ccrjustice.org/floyd> (Apr. 2, 2013); *More About Suspicious Activity Reporting*, AMER. CIVIL LIBERTIES UNION (Jan. 18, 2013), <http://www.aclu.org/spy-files/more-about-suspicious-activity-reporting> (last visited Apr. 2, 2013).

⁴⁶ *Stories from the History of U.S. Government Surveillance*, TRACKED IN AMERICA, <http://www.trackedinamerica.org/>.

⁴⁷ *Poverty & Privacy*, ELEC. PRIVACY INFO. CTR., <https://epic.org/privacy/poverty/> (last visited Apr. 2, 2013).

⁴⁸ *More About State and Local Police Spying*, AMER. CIVIL LIBERTIES UNIONS, <http://www.aclu.org/spy-files/more-about-state-and-local-police-spying> (last visited Apr. 2, 2013).

⁴⁹ Merriam Webster’s Dictionary defines “mission creep” as “the gradual broadening of the original objectives of a mission or organization.” For example, fusion centers focus on drug crimes rather than the national security purpose they were established for. See, *Investigative Report Criticizes Counterterrorism Reporting*, U.S. SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS (Oct. 3, 2012), <http://www.hsgac.senate.gov/subcommittees/investigations/media/investigative-report-criticizes-counterterrorism-reporting-waste-at-state-and-local-intelligence-fusion-centers>; Nadia Kayyali, *Fusion Centers: Budgetary Salt on Constitutional Wound*, PEOPLE’S BLOG FOR THE CONSTITUTION (Oct. 4, 2012), <http://www.constitutioncampaign.org/blog/?p=10141>; Jamie Doward, *‘Mission Creep’ Fears Grow as Met Calls for More Tasers*, THE GUARDIAN (Mar. 16, 2013), <http://www.guardian.co.uk/world/2013/mar/17/tasers-met-police-increase>; Jennifer Abel, *The TSA’s Mission Creep is Making the US a Police State*, THE GUARDIAN (APR. 18, 2012), <http://www.guardian.co.uk/commentisfree/cifamerica/2012/apr/18/tsa-mission-creep-us-police-state>; *Surveillance of Political Activity*, AMER. CIVIL LIBERTIES UNION, <http://www.nyclu.org/content/testimony-police-surveillance-of-political-activity-history-and-current-state-of-handschu-de> (Apr. 2, 2013).

⁵⁰ Shahid Buttar, *COINTELPRO 2.0*, HUFFINGTON POST (Aug. 2, 2010), http://www.huffingtonpost.com/shahid-buttar/cointelpro-20_b_664943.html.

⁵¹ *Documents Shed New Light on Surveillance of Peace Activists*, AMER. CIVIL LIBERTIES UNION (Oct. 12, 2006), <http://www.aclu.org/national-security/documents-shed-new-light-pentagon-surveillance-peace-activists>; Raquel Ronzone, *Howard Zinn: (A) Anti-War Activist and Historian or (B) extremist*, DAILY KOS (Oct. 19, 2012), <http://www.dailykos.com/story/2012/10/19/1147007/-Howard-Zinn-A-anti-war-activist-and-historian-or-B-extremist>.

⁵² National Lawyers Guild, *Developments in the Policing of National Special Security Events* (2013), available at <http://www.nlg.org/sites/default/files/NLG%20Report%20Developments%20in%20the%20Policing%20of%20NSS%20at%202012%20RNC%20and%20DNC.pdf>.

No need for drones/Drones not safe

WHEREAS many of the drone models currently available to law enforcement have limited flying time,⁵⁴ cannot be flown in inclement weather,⁵⁵ must be flown in sight of an operator,⁵⁶ and can only be flown during the day, thus making them ill-suited to search and rescue missions and best suited for pervasive surveillance;

WHEREAS currently existing technology, including helicopters, has proven adequate to capable address emergency situations;

WHEREAS drones are largely unproven in American civilian airspace, and have only seen widespread use in combat theaters, where they are the least safe class of aircraft currently in operation,⁵⁷

WHEREAS an FAA official testified to Congress that Customs and Border Protection has reported 52.7 drone accidents per 100,000 hours of flight time, seven times the civil aviation rate of 7.11 accidents per 100,000 hours;⁵⁸ AND

WHEREAS drones currently in production do not have the see-and-avoid capability of manned aircraft, and drone collision avoidance systems seeking to mitigate this problem have thus far proven ineffective.⁵⁹

⁵³ *Groups Concerned Over Arming of Domestic Drones*, CBS.COM (May 23, 2012),

<http://washington.cbslocal.com/2012/05/23/groups-concerned-over-arming-of-domestic-drones>; Buck Sexton,

Aerial 'Shadowhawk' Police Drones Can Now Deploy Tasers and Tear Gas, THE BLAZE (Mar. 12, 2012),

<http://www.theblaze.com/stories/2012/03/12/want-to-see-the-aerial-drone-police-could-soon-deploy-in-your-town/>.

⁵⁴ *Aerial Vehicle Systems*, AERYON LABS, INC., <http://www.aeryon.com/products/avs.html> (last visited Apr. 2, 2013).

⁵⁵ *Homeland Security: Unmanned Aerial Vehicles and Border Surveillance*, CONGRESSIONAL RESEARCH SERVICE (July 8, 2010), <https://www.fas.org/sgp/crs/homesecc/RS21698.pdf>; Eric Beidel, *Army Pilots: Flying Drones Tougher than It Looks*, NATIONAL DEFENSE MAGAZINE (Feb. 2011),

<http://www.nationaldefensemagazine.org/archive/2011/February/Pages/ArmyPilotsFlyingDronesTougherThanItLooks.aspx>; Sara Peck, *Civilian Drones Have Yet to Pass Weather Test*, NATIONAL DEFENSE MAGAZINE (Aug. 2008),

<http://www.nationaldefensemagazine.org/archive/2008/August/Pages/CivilianDronesHaveYettoPassWeatherTest.aspx>. But see, Edwin Kee, *Pilotless Robot Plane Smart Enough to Navigate Through Bad Weather*, UBERGIZMO (July

9, 2012), <http://www.ubergizmo.com/2012/07/pilotless-robot-plane-smart-enough-navigate-bad-weather/>.

⁵⁶ *The FAA Is Set to Issue Rules for Operating Civilian Drones*, STAR TRIBUNE (Feb. 17, 2013),

<http://m.startribune.com/business/?id=191499731>.

⁵⁷ The Global Hawk, Predator, and Reaper drones have a combined rate of 9.31 accidents for every 100,000 hours of flight time, more than triple the fleetwide average of 3.03. See Brendan McGarry, *Drones Most Accident-Prone U.S. Air Force Craft*, BGOV BAROMETER (June 18, 2012), <http://www.businessweek.com/news/2012-06-18/drones-most-accident-prone-u-dot-s-dot-air-force-craft-bgov-barometer>.

⁵⁸ FAA Vice President for Systems Operations Nancy Kalinowski, Statement to Subcommittee on the Role of Unmanned Aerial Systems (July 15, 2010), http://www.faa.gov/news/testimony/news_story.cfm?newsId=11599.

⁵⁹ *Evaluation of Traffic Alert and Collision Avoidance System*, FEDERAL AVIATION ADMINISTRATION (Mar. 21, 2011), http://www.faa.gov/about/initiatives/uas/media/TCASonUAS_FinalReport.pdf.

NOW THEREFORE BE IT RESOLVED that Berkeley with this resolution and by proclamation, declares Berkeley to be free from government use of drones, from reliance on drone technology, from reliance on drone-derived information, and enacts this ordinance to secure those aims.

I. DEFINITIONS

A. "Drones" refers to any powered aerial vehicle controlled autonomously or remotely that does not carry a human operator. Drones include, but are not limited to, powered aerial vehicles that store and/or transmit sensor data, such as photos, video, thermal images, and intercepted wireless communications; and unmanned aerial vehicles capable of firing lethal, less-lethal projectiles, crowd control measures, or any other anti-personnel weapon.

B. "Berkeley airspace" includes all airspace above the territorial boundaries of Berkeley, to the extent to which such airspace can legally be regulated by [name of city or county]. This legislation does not seek to interfere with the authority of the Federal Aviation Administration.

C. "Law enforcement agency" means a lawfully established state or local public agency that is responsible for the prevention and detection of crime, local government code enforcement, and the enforcement of penal, traffic, regulatory, game, or controlled substance laws.

D. "Aggrieved party" means a person whose personal information has been captured by unlawful drone use.

E. "Personal information" means information about an individual including but not limited to their effects, papers, affiliation with religious or political ideologies or groups, biometric information, movements, address, or administrative information such as social security number or agency-issued identification.

F. "Surveillance" means the monitoring or close observation of an individual or group for the purpose of gathering information related to possible or suspected criminal activity by that person or by someone else.

G. "Anti-personnel weapon" means any projectile, chemical, electrical, directed-energy (visible or invisible), or other device designed to harm, incapacitate, or otherwise negatively impact a human being.

II. NO DRONE ZONE

A. The City of Berkeley shall be known as a "No Drone Zone" and;

B. No agency or department of Berkeley or private parties under contract to the city shall do any of the following:

1. Purchase, lease, borrow, or otherwise acquire or utilize a drone for use in the furtherance of city business;
2. Make any use of drones or data collected by drones, in the discharge of their duties;
3. Request or accept, handle, analyze, or transmit any kind of data gathered by third parties using drones, including private parties, security contractors, or other government agencies;
4. Use drones to monitor or observe any person or public gathering;
5. Use personally identifying information captured by drones, whether by agencies of Berkeley or otherwise, including images of identifiable individuals, be retained or shared with any agency or fusion center.

C. Failure of a Berkeley officer or employee to comply with the provisions of this chapter shall constitute malfeasance in office.

D. No information gained through drone surveillance shall be used by the Berkeley Police Department to support a declaration of probable cause or otherwise justify or further a criminal investigation.

E. No officer or employee of Berkeley shall present such evidence in any court of law, including state or federal courts, for use during trial, at sentencing, before a grand jury, as rebuttal evidence, or during administrative hearings.

F. All information or records of information collected through the use of drones in violation of this Ordinance shall be destroyed as soon as practicable, and within no case later than twenty-four (24) hours after capture or receipt.

III. IMPLEMENTATION

A. This Ordinance shall be rigorously and consistently enforced.

B. All violations of this Chapter, all investigations into violations of this Chapter, and all reports or complaints regarding Unlawful Drone Use made to any Berkeley office or department, shall be reported to the Berkeley Police Review Commission. The Berkeley Police Review Commission shall electronically compile all such reports, keep them in perpetuity, and make them available to any person who inquires.

C. Berkeley agencies, including, but not limited to the City Attorney, City Manager, Police Department, shall work together with the Police Review Commission to establish the scope of this law and ensure that members of the public can understand its particulars. This effort shall include, but not be limited to, a description of all Berkeley airspace not under exclusive Federal jurisdiction.

D. An aggrieved party may initiate a civil action against a law enforcement agency or agent to obtain all appropriate relief in order to prevent or remedy a violation of this Ordinance.

1. Such aggrieved party shall be entitled to reasonable attorneys' fees and costs of suit plus the greater of actual damages or an amount equal to \$1,000 per violation.
2. Such relief shall include the ability to request expungement of all information or records of information where the direct or indirect source of such information is unlawful drone use.

E. Individuals who have reason to believe they have been subject to drone surveillance shall be entitled to request a record of such surveillance, including but not limited to any personally identifying information obtained by such surveillance.

IV. SEVERABILITY

A. The provisions of this Ordinance shall be severable. If any phrase, clause, sentence or provision of this Ordinance is declared by a court of competent jurisdiction to violate the Constitution of the United States or the Constitution of the State of California, or if its applicability to any agency, person or circumstance is held invalid, the validity of the remainder of the Ordinance and its applicability to any other agency, person or circumstances shall not be affected.

V. DISTRIBUTION AND POLICY STATEMENT

A. Berkeley calls on the United States Congress and Berkeley's representatives to Congress, to adopt legislation prohibiting the use of drones domestically, and prohibiting information obtained from any domestic use of drones from being introduced into a Federal or State court, and precluding the domestic use of drones equipped with anti-personnel devices, meaning any projectile, chemical, electrical, directed-energy (visible or invisible), or other device designed to harm, incapacitate, or otherwise negatively impact a human being.

B. The City Manager shall send copies of this ordinance to our US Congressional and Senate representatives, the US Senate Committee on the Judiciary, the US Senate Select Committee on Intelligence, the US House of Representatives Committee on the Judiciary, the US House of Representatives Permanent Select Committee on Intelligence, the US Attorney General, and the President of the United States.

Public

ATTACHMENT 4

**MINUTES
BERKELEY CITY COUNCIL MEETING
TUESDAY, FEBRUARY 24, 2015
7:00 P.M.**

Council Chambers – 2134 Martin Luther King Jr. Way

TOM BATES, MAYOR

Councilmembers:

DISTRICT 1 – LINDA MAIO
DISTRICT 2 – DARRYL MOORE
DISTRICT 3 – MAX ANDERSON
DISTRICT 4 – JESSE ARREGUIN

DISTRICT 5 – LAURIE CAPITELLI
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – KRISS WORTHINGTON
DISTRICT 8 – LORI DROSTE

Preliminary Matters

Roll Call: 7:03 p.m.

Present: Councilmembers Anderson, Arreguin, Capitelli, Droste, Maio, Moore, Wengraf Worthington and Mayor Bates.

Absent: None.

Ceremonial Matters:

1. Recognition of Ralph Benson, Sonoma Land Trust
2. Recognition of Ellie Shapiro, Jewish Music Festival

City Manager Comments: None.

Public Comment on Non-Agenda Matters: 7 speakers.

Public Comment on Consent Calendar and Information Items Only: 13 speakers.

Consent Calendar

Action: M/S/C (Moore/Capitelli) to adopt the Consent Calendar in one motion except as indicated.

Vote: All Ayes.

1. Minutes for Approval

From: City Manager

Recommendation: Approve the minutes for the Council meetings of January 13, 2015 (special), January 17, 2015 (special), January 20, 2015 (special and regular) and January 27, 2015 (special and regular).

Financial Implications: None

Contact: Mark Numainville, City Clerk, 981-6900

Action: Approved minutes as submitted.

Consent Calendar

- 2. Formal Bid Solicitation and Request for Proposal Scheduled for Possible Issuance After Council Approval on February 24, 2015**
From: City Manager
Recommendation: Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.
Financial Implications: Various Funds - \$1,378,450
Contact: Christine Daniel, Finance, 981-7300
Action: Approved recommendation.
- 3. Contract: David Paul Rosen & Associates for Consultant Services for the Housing Trust Fund Program**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to enter into a contract and any amendments with David Paul Rosen and Associates (DRA) for consultant services to the Housing Trust Fund (HTF) for a period of three years, with an option to renew for two additional years, for \$24,000 per year or not to exceed \$120,000 for five years.
Financial Implications: Various Funds - \$120,000
Contact: Jane Micallef, Health, Housing and Community Services, 981-5400
Action: Adopted Resolution No. 66,928–N.S.
- 4. Revenue Contract: Community Services Block Grant for Calendar Year 2015**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to accept the Community Services Block Grant (CSBG) Contract Number 15F-2001 for the initial amount of \$67,010, and execute any resultant agreements and amendments that may increase the contract amount up to an estimated \$250,000 to provide low-income services for the period January 1, 2015 to December 31, 2015.
Financial Implications: See report
Contact: Jane Micallef, Health, Housing and Community Services, 981-5400
Action: Adopted Resolution No. 66,929–N.S.

Consent Calendar

- 5. Contract: McNabb Construction, Inc. for Terrace View Park-Phase One Renovation**
From: City Manager
Recommendation: Adopt a Resolution: 1. Approving the plans and specifications for the Terrace View Park—Phase One Renovation Project (Bid Specification No. 14-10856-C); 2. Awarding the construction contract to the apparent lowest responsive, responsible bidder, McNabb Construction, Inc. dba DK Environmental Construction for the amount of their Base Bid plus Additive Bid Item No. 1, totaling \$315,595; 3. Authorizing the City Manager or her designee to execute a construction contract with McNabb Construction, Inc. dba DK Environmental Construction, Inc. in the amount of their Base Bid plus Additive Bid Item No. 1 and to execute any change orders, amendments and/or time extensions; 4. Authorizing a 10% construction contingency for an amount not to exceed \$31,560 for a total spending authority not-to-exceed \$347,155.
Financial Implications: Various Funds - \$347,155
Contact: Scott Ferris, Parks, Recreation and Waterfront, 981-6700
Action: Adopted Resolution No. 66,930—N.S.
- 6. Contract: TranSystems, Inc. for Consultant Support Services for the South Cove Public Access Staging Area Project**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute a contract and any amendments with TranSystems, Inc. in an amount not to exceed \$75,955 for consultant support services for the construction phase of the South Cove Public Access Staging Area Project.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, 981-6700
Action: Adopted Resolution No. 66,931—N.S.
- 7. Grant: California Parks and Recreation Department, Division of Boating and Waterways – South Cove West Parking Lot Project**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to submit a grant application for \$500,000 to the California Parks and Recreation Department, Division of Boating and Waterways for the South Cove West Parking Lot Project pursuant to the terms and provisions of the Harbors and Watercraft Revolving Fund program, and authorizing the implementation of the projects and appropriation of funding for related expenses, subject to securing the grant.
Financial Implications: \$500,000 (Revenue)
Contact: Scott Ferris, Parks, Recreation and Waterfront, 981-6700
Action: Adopted Resolution No. 66,932—N.S.

Consent Calendar

- 8. License Agreement No 2: Berkeley Partners for Parks – Santa Fe Right-of-Way - South Berkeley Bioremediation Garden Project**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a second license agreement with Berkeley Partners for Parks for a new two year period to conduct the South Berkeley Bioremediation Garden Project on the Santa Fe Right-of-Way.
Financial Implications: None
 Contact: Scott Ferris, Parks, Recreation and Waterfront, 981-6700
Action: Adopted Resolution No. 66,933–N.S.
- 9. Contract: Mosto Construction for Sanitary Sewer Manhole Rehabilitation FY 2015 Project**
From: City Manager
Recommendation: Adopt a Resolution: 1. Approving the plans and specifications for the Sanitary Sewer Manhole Rehabilitation FY 2015 Project, 15-10903-C, located at various locations within the City; 2. Accepting the bid of Mosto Construction, the lowest responsive and responsible bidder; and 3. Authorizing the execution of a contract and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications, in an amount not to exceed \$225,600.
Financial Implications: Sanitary Sewer Operation Fund - \$225,600
 Contact: Andrew Clough, Public Works, 981-6300
Action: Adopted Resolution No. 66,934–N.S.
- 10. Contract: Grade Tech, Inc. for FY 2015 Storm Drainage Improvements Project**
From: City Manager
Recommendation: Adopt a Resolution: 1. Approving plans and specifications for the FY 2015 Storm Drainage Improvement Project, Specification No. 15-10908-C; 2. Accepting the bid of Grade Tech, Inc. as the lowest responsive and responsible bidder; and 3. Authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications in an amount not to exceed \$563,466.
Financial Implications: Various Funds - \$563,466
 Contact: Andrew Clough, Public Works, 981-6300
Action: Adopted Resolution No. 66,935–N.S.
- 11. Contract: Skeo Solutions for Measure M Outreach Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Skeo Solutions for a term of 4 years for an amount not to exceed \$125,000 for Measure M outreach services.
Financial Implications: Measure M Fund - \$125,000
 Contact: Andrew Clough, Public Works, 981-6300
Action: Adopted Resolution No. 66,936–N.S.

Council Consent Items

- 12. Authorize the City Attorney to participate in the "Mayors for the Freedom to Marry" amicus brief to the U.S. Supreme Court**
From: Mayor Bates
Recommendation: Adopt a Resolution authorizing the City Attorney to participate in the 'Mayors for the Freedom to Marry' amicus brief to the U.S. Supreme Court.
Financial Implications: Minimal
Contact: Tom Bates, Mayor, 981-7100
Action: Adopted Resolution No. 66,937–N.S.
- 13. Strengthening Proposed Crude By Rail Safety Regulations**
From: Councilmember Maio
Recommendation: Send a letter to U.S. Transportation Secretary Foxx urging the strengthening of proposed crude by rail safety regulations.
Financial Implications: Minimal
Contact: Linda Maio, Councilmember, District 1, 981-7110
Action: Approved recommendation.
- 14. Referral to CEAC Regarding Cigarette Butt Litter**
From: Councilmember Maio
Recommendation: Request that the Community Environmental Advisory Commission explore ways to invest in public outreach to stem the tide of cigarette butts flowing to the Bay via our storm drains.
Financial Implications: Staff time
Contact: Linda Maio, Councilmember, District 1, 981-7110
Action: Approved recommendation.
- 15. Declaring Mondays to be "Meatless Mondays" in the City of Berkeley**
From: Councilmember Anderson
Recommendation: Adopt a Resolution declaring Mondays to be "Meatless Mondays" in the City of Berkeley since the city is committed to the well-being and good health of its citizens and dedicated to the preservation of the environment and natural resources.
Financial Implications: None
Contact: Max Anderson, Councilmember, District 3, 981-7130
Action: Adopted Resolution No. 66,938–N.S.

Council Consent Items

- 16. Phase II: Implementation of City of Berkeley: Review of Personnel Policies and Procedures Top-Line Report**
From: Councilmembers Anderson and Moore
Recommendation: Consider implementing the recommendations in the City of Berkeley: Review of Personnel Policies and Procedures Top-Line Report: a) Department Audits; b) Inventory of EEO Complaints; c) Whistle Blowing Policy; d) Applicant and Employee Reporting; e) Nepotism Policy; f) Additional Staffing Needs of the Human Resources and EEO Departments; g) Improvements of Communication Methods; and h) Revisions of the Personnel Rules.
Financial Implications: To be determined
Contact: Max Anderson, Councilmember, District 3, 981-7130
Action: Approved recommendation.
- 17. City Co-Sponsorship of the Persian New Year Festival**
From: Councilmember Arreguin
Recommendation: Adopt a Resolution approving city co-sponsorship of the Persian New Year Festival that will take place on Tuesday, March 17, 2015.
Financial Implications: Unknown
Contact: Jesse Arreguin, Councilmember, District 4, 981-7140
Action: Adopted Resolution No. 66,939–N.S.
- 18. Persian Center For The Persian New Year Festival: Relinquishment Of Council Office Budget Funds To General Fund And Grant Of Such Funds**
From: Councilmember Arreguin
Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember, including up to \$500 from Councilmember Arreguin, to the Persian Center for the Persian New Year Festival with funds relinquished to the City's General Fund for this purpose from the discretionary Council Office Budgets of Councilmember Jesse Arreguín and any other Councilmembers who would like to contribute.
Financial Implications: Councilmember's Discretionary Funds - \$500
Contact: Jesse Arreguin, Councilmember, District 4, 981-7140
Action: Adopted Resolution No. 66,940–N.S. revised to include contributions from the following Councilmembers up to the amounts listed: Councilmember Arreguin - \$200; Councilmember Anderson - \$200.

Council Consent Items

- 19. Community Emergency Response Training for Multi-unit Residential Buildings and Emergency Cache Program Tailored to the Needs of Large Multi-unit Residential Buildings**
From: Councilmembers Capitelli, Arreguin, and Droste
Recommendation: Refer to the Disaster and Fire Safety Commission, the Housing Advisory Commission, and the Berkeley Fire Department Office of Emergency Services to design a pilot Community Emergency Response Training curriculum specifically for multi-unit residential buildings and to design an emergency cache program tailored to the needs of large multi-unit residential buildings as outlined in the background material below. Both proposed pilots should be evaluated after 2 years.
Financial Implications: See report
 Contact: Laurie Capitelli, Councilmember, District 5, 981-7150
Action: Amended to add that the item also be referred to the Resilience and Sustainability Committee of the Rent Stabilization Board. Approved recommendation.
- 20. Urging California Elected Officials to Reform Proposition 13 and Close the Commercial Property Loophole**
From: Councilmember Wengraf
Recommendation: Adopt a Resolution urging California elected officials to reform Proposition 13 and close the commercial property loophole and send copies of the signed resolution to the appropriate government representatives, including Assemblymember Thurmond, Senator Loni Hancock, Congressmember Barbara Lee, US Senator Dianne Feinstein, US Senator Barbara Boxer.
Financial Implications: None
 Contact: Susan Wengraf, Councilmember, District 6, 981-7160
Action: Councilmembers Capitelli, Arreguin, and Anderson as co-sponsors. Adopted Resolution No. 66,941–N.S.
- 21. Holocaust Remembrance Day Event: Relinquishment of Council Office Budget Funds To General Fund And Grant Of Such Funds**
From: Councilmember Worthington
Recommendation:
 1. Adopt a Resolution approving the expenditure of an amount not to exceed \$1,500 per Councilmember, including up to \$1,500 from Councilmember Worthington, to support the Holocaust Remembrance Day Event and Holocaust Awareness Lecture with funds relinquished to the City's general fund for this purpose that the City of Berkeley is able to invite and support the community on this event from Councilmember Kriss Worthington's discretionary Council Office Budget and any other Councilmembers who would like to contribute; and
 2. Co-Sponsor the Holocaust Remembrance Day Event and Holocaust Awareness Lecture.
Financial Implications: Councilmember's Discretionary Funds - \$1,500
 Contact: Kriss Worthington, Councilmember, District 7, 981-7170
Action: Councilmembers Anderson and Wengraf added as co-sponsors; references to the Holocaust Awareness Lecture are stricken from the item; Councilmember

Council Consent Items

Worthington is authorized to submit a new item for the Holocaust Awareness Lecture to the City Clerk for inclusion on the March 17, 2015 agenda.

1. Adopted Resolution No. 66,942–N.S. to support the Holocaust Remembrance Day Event revised to include contributions from the following Councilmembers up to the amounts listed: Councilmember Wengraf - \$250; Councilmember Anderson - \$200.

2. Approved Co-Sponsor the Holocaust Remembrance Day Event.

22. Business License Tax Renewal Procedure

From: Councilmember Droste

Recommendation: Refer to the City Manager to draft an amendment to the Berkeley Municipal Code Title 9 Chapter 9.04.065 to grant a grace period for enforcement of business license requirements for contractors seeking building permits through March 31 of each year, as long as the contractor had an active business license the previous year.

Financial Implications: Staff time

Contact: Lori Droste, Councilmember, District 8, 981-7180

Action: Approved recommendation.

Action Calendar – Old Business

23. Police and Community Relations: Action Items *(Continued from February 10, 2015)*

From: City Manager

Recommendation: Discuss and prioritize action items identified by the City Council at the January 20, 2015 worksession.

Financial Implications: None

Contact: Christine Daniel, City Manager, 981-7000

Action: M/S/C (Anderson/Arreguin) to accept supplemental material from Councilmember Anderson for Item 23.

Vote: All Ayes.

Action: 19 speakers. M/S/C (Worthington/Anderson) to refer all the items, and their financial impacts, in the supplemental item from Councilmember Anderson, amended to replace the word “Ban” in items 3 and 4 with “Examine the practices and impacts of,” and all the items from the item submitted by Councilmember Maio in the agenda packet to the City Manager.

Vote: All Ayes.

24. Confidential Closed Session Documents *(Continued from February 10, 2015)*

From: City Manager

Recommendation: Review and consider the information provided in response to the Council referral and determine whether to direct staff to develop a policy for closed session documents.

Financial Implications: None

Contact: Zach Cowan, City Attorney, 981-6950

Action Calendar – New Business

Action: 0 speakers. M/S/C (Bates/Maio) to establish a policy for the use of binders for confidential closed session materials on Labor Negotiations, Litigation, and Real Estate matters that includes provisions for numbered binders assigned to each Councilmember and the Mayor that will be retained by staff, distributed and collected at closed session meetings, made available to Councilmembers at any time during business hours for review, and the binder will include materials from previous closed session meetings. This policy should not prohibit the distribution of materials in advance of the meeting as needed.

Vote: Ayes – Maio, Moore, Anderson, Arreguin, Capitelli, Wengraf, Droste, Bates; Noes – Worthington.

25. **Replace the Residential and Commercial Energy Conservation Ordinances (RECO and CECO) with the Building Energy Saving Ordinance**

From: City Manager

Recommendation:

1. Adopt first reading of an Ordinance repealing the Residential and Commercial Energy Conservation Ordinances (RECO and CECO), BMC Chapters 19.16 and 19.72, and adding the revised Building Energy Saving Ordinance, BMC Chapter 19.81.

2. Direct the City Manager to identify funding sources that could provide incentives to encourage energy efficiency improvements in residential buildings

Financial Implications: See report

Contact: Eric Angstadt, Planning and Development, 981-7400

Action: 2 speakers. M/S/C (Capitelli/Moore) to:

1. Adopt first reading of Ordinance No. 7,397–N.S. Second reading scheduled for March 10, 2015.

2. Refer to the City Manager to have staff work with the Landmarks Preservation Commission on producing and distributing informational materials to the public on window and door replacements in energy retrofit projects.

Vote: Ayes – Maio, Moore, Anderson, Arreguin, Capitelli, Worthington, Droste, Bates; Noes – None; Abstain – Wengraf.

26. **Establishing a Two Year Moratorium on Drones in Berkeley**

From: Peace and Justice Commission

Recommendation: Adopt a Resolution adopting a two year moratorium on drones in Berkeley.

Financial Implications: Unknown

Contact: Eric Brenman, Commission Secretary, 981-5400

Action: 11 speakers. M/S/C (Bates/Maio) to: 1) adopt a one-year moratorium on the use of unmanned aircraft systems, or “drones,” by the Berkeley Police Department, 2) ask the Council to develop a policy for police use of drones, and 3) to authorize the use of drones by the Berkeley Fire Department for disaster response purposes.

Vote: Ayes – Maio, Moore, Anderson, Arreguin, Capitelli, Wengraf, Bates; Noes – Droste; Abstain – Worthington.

Information Reports

27. **Update: Citywide Expansion of Residential Preferential Parking**
From: City Manager
Contact: Andrew Clough, Public Works, 981-6300
Action: Received and filed.

Public Comment – Items Not Listed on the Agenda – 3 speakers.

Adjournment

Adjourned in Memory of:


1. Mildred Parish Massey, Mother of Congresswoman Barbara Lee
2. Earl Crabbe, former CENA Board Member

Action: M/S/C (Capitelli/Bates) to adjourn the meeting.

Vote: All Ayes.

Adjourned at 10:34 p.m.

This is to certify that the foregoing is a true and correct copy of the minutes of the regular meeting of February 24, 2015 as approved by the Berkeley City Council.



Mark Numainville, City Clerk

Communications

Item 16: Phase II: Implementation of City of Berkeley: Review of Personnel Policies and Procedures Top-Line Report

1. Commission on Labor

Item 25: Replace the Residential and Commercial Energy Conservation Ordinances (RECO and CECO) with the Building Energy Saving Ordinance

2. Dona Bretherick

Bicycles in Berkeley

3. Barbara Kochan

2211 Harold Way

4. Dan & Andree Julian

Youth Musical Theater Company

5. Jennifer Boesing (2)

Living Wage Ordinance Violations

6. Carl Walter – Referred to City Manager by Councilmember Anderson

Communications

BHS Harassment Article

7. Heidi Goldstein

North Berkeley Farmers' Market

8. Mary Ann Brewin – Referred to City Manager by Councilmember Arreguin

9. Charlene Woodcock – Referred to City Manager by Councilmember Arreguin

Performance Space in Berkeley

10. Ilona McHugh

Supplemental Communications and Reports 1

Item 23: Police and Community Relations: Action Items

11. Save the Berkeley Post Office Committee

Item 24: Confidential Closed Session Documents

12. Supplemental materials, submitted by City Attorney's Office

Supplemental Communications and Reports 2

Item 16: Phase II: Implementation of City of Berkeley: Review of Personnel Policies and Procedures Top-Line Report

13. Dean Metzger, on behalf of Berkeley Neighborhoods Council

Item 23: Police and Community Relations: Action Items

14. Gene Hendrix

Item 26: Establishing a Two Year Moratorium on Drones in Berkeley

15. Eugene Ruyle

16. Peter Straus

17. Shang-Mei Lee

Supplemental Communications and Reports 3

Item 23: Police and Community Relations: Action Items

18. Max Anderson, District 3

Item 25: Replace the Residential and Commercial Energy Conservation Ordinances (RECO and CECO) with the Building Energy Saving Ordinance

19. Landmarks Preservation Commission

1701 62nd Street

20. Calvin Justice

Jewish Music Festival

21. Unknown

Public

ATTACHMENT 5

UNMANNED AERIAL SYSTEM (UAS)

A. DESCRIPTION

An Unmanned Aerial System (UAS) is an unmanned aircraft of any type that is capable of sustaining directed flight, whether pre-programmed or remotely controlled and all of the supporting or attached components designed for gathering information through imaging, recording, or any other means. Generally, a UAS consists of:

- An unmanned aircraft which consists of the chassis with several propellers for flight, radio frequency and antenna equipment to communicate with a remote-control unit, control propellers and other flight stabilization technology (e.g. accelerometer, a gyroscope), a computer chip for technology control, a camera for recording, and a digital image/video storage system for recording onto a secure digital card (SD card);
- A remote-control unit that communicates with the unmanned aircraft via radio frequency; and
- A battery charging equipment for the aircraft and remote control.

UAS are controlled from a remote-control unit (similar to a tablet computer). Wireless connectivity lets pilots view the UAS and its surroundings from a bird's-eye perspective. UAS have cameras so the UAS pilot can view the aerial perspective. UAS record image and video data onto a secure digital (SD) memory cards. SD cards can be removed from UAS after flights to input into a computer for evidence.

B. PURPOSE

UAS offer to significantly improve the capacity of law enforcement (LE) to provide a variety of foundational police services. This technology has already been used with many law enforcement agencies to save lives and help capture dangerous criminal suspects. UAS can support first responders in hazardous incidents that would benefit from an aerial perspective.

Responding to violent crime in Berkeley often requires officers to face risks to their safety – in addition to the clear risks faced by members of the public when violent crime is present. From 2018 to 2022, the yearly average number of shootings has doubled. In 2021 Berkeley had 265 robberies, 210 aggravated assaults, 57 sexual assaults, and 118 firearms recovered.

Technology such as UAS can play a vital role in mitigating these omnipresent dangers, by providing a greater view into the immediate surroundings of crime scenes and active pursuits. The use of a UAS is also in line with the Department's philosophy around de-escalation, as this tool can provide greater time and distance, which are the critical components in offering officers the greatest likelihood of a peaceful, or less violent resolution.

Searches for armed and dangerous suspects are more effective and controlled with UAS support; an armed suspect can be hiding in a tree or on a roof. LE can respond accordingly and more safely when provided with this critical information (see Section #10 below “Alternatives Considered” for more information on how UAS compares to alternatives for situational awareness). More informed responses also lead to less injury and less uses of force.

LE agencies have successfully used UAS to locate missing persons, especially in more remote areas – as well as for rescue missions. UAS is also being used during disasters and during any hazardous material releases. The situational awareness UAS provides has also become an important tool for large events (e.g. sport events, parades, and festivals); the aerial view provides information that would otherwise require a much larger deployment of LE personnel to maintain the same level of public safety support. Furthermore, smaller UAS can be equipped with a loud speaker to communicate (e.g. hostage situations/providing verbal commands and directions to the subject).

BPD must seek approval from the City Manager prior to any use. BPD may then make a mutual assistance request to ACSO for their UAS. This approval process could be rapid or take several hours depending if their resources are deployed elsewhere, and there is no guarantee that the equipment will be available.

C. LOCATION

BPD proposes to use UAS as outlined in policy 611- Unmanned Aerial System (UAS), and further guided by policy 1303-Surveillance Use Policy Unmanned Aerial System (UAS). BPD proposes to only use UAS as the result of a mutual assistance request, and no BPD personnel will be allowed to operate a UAS.

UAS may only be requested for the following specified situations:

- a. Mass casualty incidents (e.g. large structure fires with numerous casualties, mass shootings involving multiple deaths or injuries);
- b. Disaster management;
- c. Missing or lost persons;
- d. Hazardous material releases;
- e. Sideshow events where many vehicles and reckless driving is present;
- f. Rescue operations;
- g. Training;
- h. Hazardous situations which present a high risk to officer and/or public safety, to include:
 - i. Barricaded suspects;
 - ii. Hostage situations;
 - iii. Armed suicidal persons;

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BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT – UNMANNED AERIAL SYSTEM (UAS)

- i. Arrest of armed and/or dangerous persons
- j. Service of high-risk search and arrest warrants involving armed and/or dangerous persons
- k. Other unforeseen exigent circumstances

Unmanned Aerial Systems shall only be used for law enforcement purposes.

Potentially, UAS could be deployed in any location in the City of Berkeley where one or more of the above situations occur and where the proper authorizations are provided. Fortunately, several of these situations rarely occur – but some do occur regularly, such as arresting armed/dangerous person. BPD occasionally arrests individuals for violent homicides, shootings, robberies, violent sexual assaults, and other crimes– UAS can provide situational awareness in all of these critical incidents to provide a greater level of safety for officers, as well as for nearby civilians

D. IMPACT

BPD recognizes that the use of UAS raises privacy concerns. UAS are becoming ubiquitous in the United States, and there is a growing concern that people can be surveilled without notice or reason. There is concern that UAS can be utilized to observe people in places, public or private, where there is an expectation of privacy. The level of potential privacy impact depends upon factors such as flight elevation and camera zoom magnitude, as well as where the UAS is flown.

The results of the research study titled, “Mission-based citizen views on UAV usage and privacy: an affective perspective¹,” published in February 2016 found that people’s perceptions of how UAS impacts privacy relate to use type. The researchers from College of Aeronautics, Florida Institute of Technology, and the Aeronautical Science at Embry-Riddle Aeronautical University (ERAU), College of Aviation UAS Lab found that people tend to be less concerned about police UAS use when the technology is only used for specific uses - “concerns for privacy were less in the condition where the UAV was only used for a specific mission than when it was operated continuously.” Policy 611 and 1303 provide strict acceptable guidelines, and Authorized Uses which explains when BPD personnel can request the use of a UAS for specific missions.

E. MITIGATION

BPD’s policy 611 restricts BPD’s use of UAS in several ways to promote greater privacy protections.

BPD will only request use UAS for specific missions rather than operating continuously, mitigating concerns raised in the February 2016 study cited above.

¹ <https://www.nrcresearchpress.com/doi/abs/10.1139/juvs-2015-0031#.XkHEAWWhKiUI>

Policy 611 and 1303. Authorized Use lists the only allowable uses of UAS (e.g. mass casualty incidents, disaster management, missing or lost persons, hazardous material releases, sideshow events where many vehicles and reckless driving is present, rescue operations, training, hazardous situations which present a high risk to officer and/or public safety to armed suicidal persons, hostage situations, barricaded suspects, arrest of armed and/or dangerous persons, service of high risk search and arrest warrants involving armed and/or dangerous persons, and other unforeseen exigent circumstances). Policy 611 also articulates the Request Process which indicates the approval must come from the City Manager via the Chain of Command for all use approvals.

The Federal Aviation Administration (FAA) sets strict flight regulations for all UAS users, including for law enforcement. The FAA provides two law enforcement options for creating acceptable UAS under 14 Code of Federal Regulation (CFR) part 107, subpart E, Special Rule for Model Aircraft; the agency can designate individual members to earn FAA drone pilot certificates and fly under the rules for small UAS, or receive a FAA certificate to function as a “public aircraft operator” to self-certify agency drone pilots and drones. Either way, these options allow for BPD to use systems under 55 pounds, for flying at or below 400 feet above ground level. Absent an emergency situation warranting a FAA COA/Part 107 waiver- permitted law enforcement response, law enforcement is also restricted from using UAS to fly over or near the following locations:

- Stadiums and Sporting Events;
- Near Airports; and
- Emergency and Rescue Operations (wildfires and hurricanes).

Policy 611 “Privacy Considerations,” outlines several other protocols for mitigating against privacy abuse:

BPD UAS mutual assistance personnel must adhere to FAA altitude guidelines – flying below 400 feet helps to ensure that UAS is not used for surveilling overly large geographic areas; BPD will use UAS to focus on specific areas.

BPD UAS operators shall not intentionally record or transmit images of any location where a person would have a reasonable expectation of privacy (e.g. residence, yard, enclosure, place of worship, medical provider’s office).

Mutual assistance operators and observers shall take reasonable precautions, such as turning imaging devices away, to avoid inadvertently recording or transmitting images of areas where there is a reasonable expectation of privacy.

Policy 611 “Prohibited Use” explains that:

UAS shall not be used for the following activities:

- To conduct random surveillance activities.

- To target a person based solely on individual characteristics, such as, but not limited to race, ethnicity, national origin, religion, disability, gender or sexual orientation when not connected to actual information about specific individuals related to criminal investigations;
- For the purpose of harassing, intimidating, or discriminating against any individual or group; or
- To conduct personal business of any type.

BPD is prohibited from weaponizing any UAS.

F. DATA TYPES AND SOURCES

UAS will record using industry standard file types such as (e.g. jpeg, mov, mp4, wav or RAW). Such files may contain standard color photograph, standard color video, or other imaging technology such as thermal. Although UAS can transmit one-way audio from the operator, the UAS technology available today does not currently record sound.

G. DATA SECURITY

BPD takes data security seriously and safeguards UAS data by both procedural and technological means. The video recording function of the UAS shall be activated whenever the UAS is deployed. Video data will be recorded onto Secure Digital (SD) Cards. Any data collected by the use of a UAS should be kept by BPD minimally for 60 days. The data should be uploaded into BPD's evidence database and kept pursuant to the established retention guidelines set forth in policy 804-Records Maintenance and Release.

H. FISCAL COST

The only costs will be staff time, since at this time BPD is only proposing this acquisition for the purposes of leveraging our neighboring agencies UAS during the proposed policy guidelines. Use of UAS by neighboring agencies in a mutual assistance scenario will not result in additional costs to the City.

I. THIRD-PARTY DEPENDENCE AND ACCESS

BPD is primarily reliant upon the Alameda County Sheriff's Office (ACSO) and Oakland Police Department when exigent circumstances occur that warrant UAS requests. BPD requested and received UAS support from ACSO two times in 2021/2022.

BPD proposes that any data collected from the UAS may be shared with the following:

The District Attorney's Office for use as evidence to aid in prosecution, in accordance with laws governing evidence;

Other law enforcement personnel as part of an active criminal investigation;

Other third parties, pursuant to a Court Order or Search Warrant.

J. ALTERNATIVES

In some instances, BPD could rely on requesting the assistance of an outside agency's helicopter, which cause significant carbon emissions, especially when considering the footprint of a UAS.

Another alternative is the deployment of additional police resources. The inherent problem with this alternative is that this may be counterproductive to the Department's philosophy on de-escalation as it reduces the Department's ability to leverage time and distance to reduce the likeliness of a physical or violent confrontation.

K. EXPERIENCE OF OTHER ENTITIES

Currently, in Alameda County, the following cities have UAS programs, The Alameda County Sheriff's Office, the Oakland Police Department, Fremont Police Department, Hayward Police Department, and Newark Police Department. At the time of publication, the author had not received a response from Oakland and Fremont Police Departments.

Alameda County Sheriff's Office

A Alameda County Sheriff's Office representative indicated the only financial burden is the changing technology every 12-18 months, including improved batteries and cameras that require possible updates.

In 2015 when the Sheriff's Office proposed the use of UAS' to the Board of Supervisors, several community groups expressed opposition due to the fear of an invasion of privacy and spying on the public. Since the approval by the Board of Supervisors, ACSO created a website for the public to voice their complaints. As of January 2023, they have received one complaint from a community member in Alameda County. That specific complaint was deemed not relate to ACSO UAS.

No community costs. No unintended video was captured, and if it was, it would be deleted per their policy.

Successes in their program were described as follows:

- 1) Community and Officers are Safer
- 2) UAVs contributed to the arrest of fleeing suspects
- 3) Reported Missing Person suffering from a Health Condition (Alzheimer's) have been located
- 4) Documenting crime scenes are conducted more efficiently and conducted in a shorter time

No noted failures to date from the program that were reported to Berkeley Police Department.

Hayward Police Department

Hayward Police Department did not have any unintended financial burdens. Their initial drone purchase (4 drones) was budgeted, and they also have a CIP (Capitol Improvement Budget) item where every three years they get \$50,000 to purchase new drones as new equipment becomes available or just as a replacement plan.

Hayward Police Department did not report any unintended community costs or backlash. Hayward Police Department reported that since the program began, it's paid dividends past what they thought it would. For instance, a lieutenant with Hayward Police Department stated that several drone deployments have resulted in a significant risk reduction when trying to stabilize potentially critical incidents.

Hayward Police Department held two community meetings (separate from the council sessions) and had an outside agency bring a done, and they included an educational training for all persons who attended. This is believed to have mitigated many issues (and educated the city council members as well), which addressed many of the initial concerns. Hayward Police Department also worked closely with ACSO to craft their policy and create their program. Hayward Police Department has deployed their UAS approximately 75 times since March of 2022 with 0 citizen complaints.

Newark Police Department

Newark Police Department reported no unintended financial burdens associated with the UAS. Newark Police Department spent \$1,200 to purchase a drone from BestBuy, which came from their organization's operating funds. Newark Police Department obtained a grant which funded the purchase of three additional drones at a cost of \$30,000.

Newark Police Department has not had any unintended community costs or backlash. Newark Police Department has a community academy in which the Department provides training on the program and the uses associated with the UAS.

Newark Police Department reported that the program had the unintended benefit of working more closely with ACSO and Fremont, garnering a better working relationship which was unanticipated.

Newark Police Department used many of the processes that ACSO used in creating their UAS program. Newark Police Department relied heavily on the policies and practices developed by Alameda County Sheriff's Office due to their very robust input from various stakeholders. This helped create a solid foundation they could build upon. From this, they have succeeded in the creation and implementation of their UAS program.

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BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT – UNMANNED AERIAL SYSTEM (UAS)

DRAFT

Public

ATTACHMENT 6



Office of the City Manager

ACTION CALENDAR
November 3, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jennifer Louis, Interim Chief of Police
Liam Garland, Director of Public Works
LaTanya Bellow, Deputy City Manager

Subject: Resolution Accepting the Annual Surveillance Technology Reports for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, Unmanned Aerial Vehicles (UAV's) and the Street Level Imagery Project Pursuant to Chapter 2.99 of the Berkeley Municipal Code

RECOMMENDATION

Adopt a Resolution Accepting the Surveillance Technology Report for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, Unmanned Aerial Vehicles (UAV's) and the Street Level Imagery Project Pursuant to Chapter 2.99 of the Berkeley Municipal Code.

FISCAL IMPACTS OF RECOMMENDATION

There are no fiscal impacts associated with adopting the attached resolution.

CURRENT SITUATION AND ITS EFFECTS

On March 27, 2018, the City Council adopted Ordinance 7,592-N.S., adding Chapter 2.99 to the Berkeley Municipal Code, which is also known as the Surveillance Technology Use and Community Safety Ordinance ("Ordinance"). The purpose of the Ordinance is to provide transparency surrounding the use of surveillance technology, as defined by Section 2.99.020 in the Ordinance, and to ensure that decisions surrounding the acquisition and use of surveillance technology consider the impacts that such technology may have on civil rights and civil liberties. Further, the Ordinance requires that the City evaluate all costs associated with the acquisition of surveillance technology and regularly report on their use.

The Ordinance imposes various reporting requirements on the City Manager and staff. The purpose of this staff report and attached resolution is to satisfy the annual reporting requirement as outlined in Section 2.99.070.

One of the reporting categories of the surveillance technology use is whether complaints have been received by the community about the various technologies. To

date Berkeley Police Department Internal Affairs Bureau (IAB) has not received any external personnel complaints surrounding these technologies. External complaints from community members can be made in writing, via email, in person or via telephone. Complaints can be received with direct communication to Internal Affairs from the complainant and/or be received by any member of the Department and then forwarded through the chain of command. If a community member initiates a complaint against a subject employee and during the investigation it is determined the subject employee violated policy regarding the misuse of technology, an additional complaint is initiated by the Chief of Police.

Community members also have the right to initiate complaints against employees of BPD by reporting directly to the Police Accountability Board (PAB). The Director of Police Accountability notifies the Chief of Police when an investigation into a complaint is initiated by the PAB, which would prompt a parallel IAB investigation.

Attached to this staff report are Surveillance Technology Reports for Automatic License Plater Readers, GPS Trackers, Body Worn Cameras, and the Street Level Imagery Project. Additionally, this year the Berkeley Police Department had three exigent uses pursuant to BMC 2.99.040 in which the City Manager authorized the Police Department to temporarily use an Unmanned Aerial Vehicle, commonly referred to as a drone, for critical incidents. These incidents were reported by the City Manager to Council pursuant to 2.99.040(2) and are included in this annual report pursuant to BMC 2.99.040(3). At this time the Berkeley Police Department does not intend to acquire this technology but is actively consulting with the City Attorney's Office regarding developing a Use Policy.

BACKGROUND

On March 27, 2018, the City Council adopted Ordinance 7,592-N.S., adding Chapter 2.99 to the Berkeley Municipal Code, which is also known as the Surveillance Technology Use and Community Safety Ordinance. Section 2.99.070 of the Ordinance requires that the City Manager must submit to the City Council a Surveillance Technology Report as defined by Section 2.99.020(2) of the Ordinance at the first regular City Council meeting in November.

For each of the four technologies, the Surveillance Technology Reports were prepared to satisfy the specific, section-by-section requirements of the Ordinance, and are attached to this report. Also attached is the Surveillance Technology Report for the temporary uses of an Unmanned Aerial Vehicle commonly referred to as a drone pursuant to BMC 2.99.040.

The Surveillance Technology Use Policy for ALPR technology was unanimously adopted at Council on September 13th, 2022 under Resolution 70,524_N.S..

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects or opportunities associated with the content of this report.

RATIONALE FOR RECOMMENDATION

City Council is being requested to adopt the attached resolution for the City to be in compliance with the Ordinance.

ALTERNATIVE ACTIONS CONSIDERED

City Council could decide not to adopt the resolution.

CONTACT PERSON

Jennifer Louis, Interim Chief of Police, (510) 981-5700
LaTanya Bellow, Deputy City Manager, (510) 981-7012

ATTACHMENTS

1. Resolution
2. Body Worn Cameras
 - a) Surveillance Technology Report: Body Worn Cameras
 - b) Retention Schedule
3. Global Positioning System (GPS) Tracking Devices
Surveillance Technology Report
4. Automated License Plate Readers
Surveillance Technology Report
5. Street Level Imagery Project
Surveillance Technology Report
6. Unmanned Aerial Vehicle (UAV's)
Surveillance Technology Report

RESOLUTION NO. XX,XXX-N.S.

ACCEPTING THE SURVEILLANCE TECHNOLOGY REPORT FOR AUTOMATIC LICENSE PLATE READERS, GPS TRACKERS, BODY WORN CAMERAS, UNMANNED AERIAL VEHICLES (UAV'S) AND THE STREET LEVEL IMAGERY PROJECT

WHEREAS, on March 27, 2018, the City Council adopted Ordinance 7,592-N.S., which is known as the Surveillance Technology Use and Community Safety Ordinance ("Ordinance"); and

WHEREAS, Section 2.99.070 of the Ordinance requires that the City Manager must submit to the City Council a Surveillance Technology Report as defined by Section 2.99.020(2) of the Ordinance at the first regular City Council meeting in November; and

WHEREAS, the Surveillance Technology Reports satisfy the requirements of the Ordinance.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council hereby accepts the Surveillance Technology Reports for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, Unmanned Aerial Vehicles (UAV's) and the Street Level Imagery Project.

ORDINANCE NO. 7,592–N.S.

ADDING CHAPTER 2.99 TO THE BERKELEY MUNICIPAL CODE, ACQUISITION AND USE OF SURVEILLANCE TECHNOLOGY

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. Title

This ordinance shall be known as the Surveillance Technology Use and Community Safety Ordinance.

Section 2. That Chapter 2.99 is hereby added to the Berkeley Municipal Code to read as follows:

Chapter 2.99

Acquisition and Use of Surveillance Technology

- 2.99.010 Purposes**
- 2.99.020 Definitions**
- 2.99.030 City Council Approval Requirement**
- 2.99.040 Temporary Acquisition and Use of Surveillance Equipment**
- 2.99.050 Compliance for Existing Surveillance Technology**
- 2.99.060 Determination by City Council that Benefits Outweigh Costs and Concerns**
- 2.99.070 Oversight Following City Council Approval**
- 2.99.080 Public Access to Surveillance Technology Contracts**
- 2.99.090 Enforcement**
- 2.99.100 Whistleblower Protections**
- 2.99.110 Severability**

2.99.010 Purposes

- A. Through the enactment of this Chapter, the City seeks to establish a thoughtful process regarding the procurement and use of Surveillance Technology that carefully balances the City’s interest in protecting public safety with its interest in protecting the privacy and civil rights of its community members.
- B. Transparency is essential when the City is considering procurement and use of Surveillance Technology.
- C. Although such technology may be beneficial to public order and safety, it has the potential to put both privacy and civil liberties at risk.
- D. Decisions relating to Surveillance Technology should occur with strong consideration of the impact such technologies may have on civil rights and civil liberties, as with all rights guaranteed by the California and United States Constitutions.
- E. Surveillance Technology may involve immediate, as well as ongoing, financial costs. Before the City acquires any Surveillance Technology, it must evaluate all costs associated with the procurement, installation, use and maintenance of the technology.

F. Decisions regarding whether and how Surveillance Technologies should be funded, acquired, or used should be governed by the City Council as the elected representatives of the City.

G. In addition to applicable local, state, and federal law, legally enforceable safeguards, including robust transparency, oversight, and accountability measures, are important in the protection of civil rights and civil liberties.

H. Data reporting measures will enable the City Council and public to confirm that mandated civil rights and civil liberties safeguards have been strictly observed.

2.99.020 Definitions

The following definitions apply to this Chapter:

1. "Surveillance Technology" means an electronic device, system utilizing an electronic device, or similar technological tool used, designed, or primarily intended to collect audio, electronic, visual, location, thermal, olfactory, biometric, or similar information specifically associated with, or capable of being associated with, any individual or group. Examples of covered Surveillance Technology include, but are not limited to: cell site simulators (Stingrays); automatic license plate readers; body worn cameras; gunshot detectors (ShotSpotter); facial recognition software; thermal imaging systems, except as allowed under Section 2(d); social media analytics software; gait analysis software; and video cameras that record audio or video and can remotely transmit or can be remotely accessed.

"Surveillance Technology" does not include the following devices or hardware, unless they have been equipped with, or are modified to become or include, a Surveillance Technology as defined in Section 2 (above):

- a. Routine office hardware, such as televisions, computers, and printers, that is in widespread public use and will not be used for any surveillance functions;
- b. Handheld Parking Citation Devices, that do not automatically read license plates;
- c. Manually-operated, portable digital cameras, audio recorders, and video recorders that are not to be used remotely and whose functionality is limited to manually capturing, viewing, editing and downloading video and/or audio recordings, but not including body worn cameras;
- d. Devices that cannot record or transmit audio or video or be remotely accessed, such as image stabilizing binoculars or night vision goggles or thermal imaging cameras used for fire operations, search and rescue operations and missing person searches, and equipment used in active searches for wanted suspects;
- e. annually-operated technological devices that are not designed and will not be used to surreptitiously collect surveillance data, such as two-way radios, email systems and city-issued cell phones;
- f. Municipal agency databases;
- g. Medical equipment used to diagnose, treat, or prevent disease or injury, including electrocardiogram machines;
- h. Cybersecurity capabilities, technologies and systems used by the City of Berkeley Department of Information Technology to predict, monitor for, prevent, and protect

technology infrastructure and systems owned and operated by the City of Berkeley from potential cybersecurity events and cyber-forensic based investigations and prosecutions of illegal computer based activity;

i. Stationary security cameras affixed to City property or facilities.

2. "Surveillance Technology Report" means an annual written report by the City Manager covering all of the City of Berkeley's Surveillance Technologies that includes all of the following information with regard to each type of Surveillance Technology:

a. Description: A description of all non-privileged and non-confidential information about use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report shall include general, non-privileged and non- confidential information about recipient entities, including the names of the entities and purposes for such sharing;

b. Geographic Deployment: Where applicable, non-privileged and non- confidential information about where the surveillance technology was deployed geographically;

c. Complaints: A summary of each complaint, if any, received by the City about the Surveillance Technology;

d. Audits and Violations: The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response;

e. Data Breaches: Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response;

f. Effectiveness: Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes;

g. Costs: Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.

3. "Surveillance Acquisition Report" means a publicly-released written report produced prior to acquisition or to proposed permanent use after use in Exigent Circumstances pursuant to Section 2.99.040 (2), of a type of Surveillance Technology that includes the following:

a. Description: Information describing the Surveillance Technology and how it works, including product descriptions from manufacturers;

b. Purpose: Information on the proposed purposes(s) for the Surveillance Technology;

c. Location: The general location(s) it may be deployed and reasons for deployment;

d. Impact: An assessment identifying potential impacts on civil liberties and civil rights including but not limited to potential disparate or adverse impacts on any communities or groups;

e. Mitigation: Information regarding technical and procedural measures that can be implemented to appropriately safeguard the public from any impacts identified in

subsection (d);

f. Data Types and Sources: A list of the sources of data proposed to be collected, analyzed, or processed by the Surveillance Technology, including "open source" data;

g. Data Security: Information about the steps that can be taken to ensure adequate security measures to safeguard the data collected or generated from unauthorized access or disclosure;

h. Fiscal Cost: The fiscal costs for the Surveillance Technology, including initial purchase, personnel and other ongoing costs, including to the extent practicable costs associated with compliance with this and other reporting and oversight requirements, as well as any current or potential sources of funding;

i. Third Party Dependence and Access: Whether use or maintenance of the technology will require data gathered by the technology to be handled or stored by a third-party vendor on an ongoing basis, and whether a third-party may have access to such data or may have the right to sell or otherwise share the data in aggregated, disaggregated, raw or any other formats;

j. Alternatives: A summary and general assessment of potentially viable alternative methods (whether involving the use of a new technology or not), if any, considered before deciding to propose acquiring the Surveillance Technology. ; and,

k. Experience of Other Entities: To the extent such information is available, a summary of the experience of comparable government entities with the proposed technology, including any unanticipated financial or community costs and benefits, experienced by such other entities.

4. "Surveillance Use Policy" means a publicly-released and legally-enforceable policy for use of each type of the Surveillance Technology that shall reflect the Surveillance Acquisition Report produced for that Surveillance Technology and that at a minimum specifies the following:

a. Purpose: The specific purpose(s) that the Surveillance Technology is intended to advance;

b. Authorized Use: The uses that are authorized, the rules and processes required prior to such use, and the uses that are prohibited;

c. Data Collection: Information collection that is allowed and prohibited. Where applicable, list any data sources the technology will rely upon, including "open source" data;

d. Data Access: A general description of the title and position of the employees and entities authorized to access or use the collected information, and the rules and processes required prior to access or use of the information, and a description of any and all of the vendor's rights to access and use, sell or otherwise share information for any purpose;

e. Data Protection: A general description of the safeguards that protect information from unauthorized access, including encryption and access control mechanisms, and safeguards that exist to protect data at the vendor level;

f. Civil Liberties and Rights Protection: A general description of the safeguards that protect against the use of the Surveillance Technology and any data resulting from

its use in a way that violates or infringes on civil rights and liberties, including but not limited to potential disparate or adverse impacts on any communities or groups;

g. Data Retention: The time period, if any, for which information collected by the surveillance technology will be routinely retained, the reason such retention period is appropriate to further the purpose(s), the process by which the information is regularly deleted after that period lapses, and the specific conditions that must be met to retain information beyond such period;

h. Public Access: How collected information may be accessed or used by members of the public;

i. Third Party Data Sharing: If and how other City or non-City Entities can access or use the information, including any required justification or legal standard necessary to do so and any obligations imposed on the recipient of the information;

j. Training: Training required for any employee authorized to use the Surveillance Technology or to access information collected;

k. Auditing and Oversight: Mechanisms to ensure that the Surveillance Use Policy is followed, technical measures to monitor for misuse, and the legally enforceable sanctions for intentional violations of the policy; and

l. Maintenance: The mechanisms and procedures to ensure maintenance of the security and integrity of the Surveillance Technology and collected information.

5. "Exigent Circumstances" means the City Manager's good faith belief that an emergency involving imminent danger of death or serious physical injury to any person, or imminent danger of significant property damage, requires use of the Surveillance Technology or the information it provides.

2.99.030 City Council Approval Requirement

1. The City Manager must obtain City Council approval, except in Exigent Circumstances, by placing an item on the Action Calendar at a duly noticed meeting of the City Council prior to any of the following:

a. Seeking, soliciting, or accepting grant funds for the purchase of, or in-kind or other donations of, Surveillance Technology;

b. Acquiring new Surveillance Technology, including but not limited to procuring such technology without the exchange of monies or consideration;

c. Using new Surveillance Technology, or using Surveillance Technology previously approved by the City Council for a purpose, or in a manner not previously approved by the City Council; or

d. Entering into an agreement with a non-City entity to acquire, share or otherwise use Surveillance Technology or the information it provides, or expanding a vendor's permission to share or otherwise use Surveillance Technology or the information it provides.

2. The City Manager must present a Surveillance Use Policy for each Surveillance Technology to the Police Review Commission, prior to adoption by the City Council. The Police Review Commission shall also be provided with the corresponding Surveillance Acquisition Report that had been presented to council for that Surveillance Technology.

No later than 30 days after receiving a Surveillance Use Policy for review, the Police Review Commission must vote to recommend approval of the policy, object to the proposal, recommend modifications, or take no action. Neither opposition to approval of such a policy, nor failure by the Police Review Commission to act shall prohibit the City Manager from proceeding with its own review and potential adoption.

3. The City Manager must submit for review a Surveillance Acquisition Report and obtain City Council approval of a Surveillance Use Policy prior to engaging in any of the activities described in subsection (1) (a)-(d).

2.99.040 Temporary Acquisition and Use of Surveillance Equipment

Notwithstanding the provisions of this Chapter, the City Manager may borrow, acquire and/or temporarily use Surveillance Technology in Exigent Circumstances without following the requirements in Sections 2.99.030 and 2.99.040. However, if the City Manager borrows, acquires or temporarily uses Surveillance Technology in Exigent Circumstances he or she must take all of the following actions:

1. Provide written notice of that acquisition or use to the City Council within 30 days following the commencement of such Exigent Circumstance, unless such information is confidential or privileged;
2. If it is anticipated that the use will continue beyond the Exigent Circumstance, submit a proposed Surveillance Acquisition Report and Surveillance Use Policy, as applicable, to the City Council within 90 days following the borrowing, acquisition or temporary use, and receive approval, as applicable, from the City Council pursuant to Sections 2.99.030 and 2.99.040; and
3. Include the Surveillance Technology in the City Manager’s next annual Surveillance Technology Report.

2.99.050 Compliance for Existing Surveillance Technology

The City Manager shall submit to the Action Calendar for the first City Council meeting in November of 2018, a Surveillance Acquisition Report and a proposed Surveillance Use Policy for each Surveillance Technology possessed or used prior to the effective date of this ordinance.

2.99.060 Determination by City Council that Benefits Outweigh Costs and Concerns

The City Council shall only approve any action described in Section 2.99.030, 2.99.040, or Section 2.99.050 of this Chapter after making a determination that the benefits to the community of the Surveillance Technology, used according to its Surveillance Use Policy, outweigh the costs; that the proposal will appropriately safeguard civil liberties and civil rights to the maximum extent possible while serving its intended purposes; and that, in the City Council’s judgment, no feasible alternative with similar utility and a lesser impact on civil rights or civil liberties could be implemented.

2.99.070 Oversight Following City Council Approval

The City Manager must submit to the Council Action Calendar a written Surveillance

Technology Report, covering all of the City’s Surveillance Technologies, annually at the first regular Council meeting in November. After review of the Surveillance Technology Report, Council may make modifications to Surveillance Use Policies.

2.99.080 Public Access to Surveillance Technology Contracts

To the extent permitted by law, the City shall continue to make available to the public all of its surveillance-related contracts, including related non-disclosure agreements, if any.

2.99.090 Enforcement

This Chapter does not confer any rights upon any person or entity other than the City Council to cancel or suspend a contract for a Surveillance Technology. The Chapter does not provide a private right of action upon any person or entity to seek injunctive relief against the City or any employee unless that person or entity has first provided written notice to the City Manager by serving the City Clerk, regarding the specific alleged violations of this Chapter. If a specific alleged violation is not remedied within 90 days of that written notice, a person or entity may seek injunctive relief in a court of competent jurisdiction. If the alleged violation is substantiated and subsequently cured, a notice shall be posted in a conspicuous manner on the City’s website that describes, to the extent permissible by law, the corrective measures taken to address the violation. If it is shown that the violation is the result of arbitrary or capricious action by the City or an employee or agent thereof in his or her official capacity, the prevailing complainant in an action for relief may collect from the City reasonable attorney’s fees in an amount not to exceed \$15,000 if he or she is personally obligated to pay such fees.

2.99.100 Whistleblower Protections

All provisions of Berkeley’s Protection of Whistleblowers Workplace Policy, as promulgated by the City Manager on November 2, 2016 and including any updates or replacements thereto, shall apply.

2.99.110 Severability

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase of this Chapter, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases is declared invalid or unconstitutional.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on March 13, 2018, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Maio, Wengraf, Worthington and Arreguin.

Noes: None.

Absent: None.

Surveillance Technology Report: Body Worn Cameras

October 1, 2021 – Sept. 30, 2022

<p>Description</p>	<p>A description of all non-privileged and non-confidential information about use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report shall include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing.</p> <p>Body Worn Cameras are used to capture video recordings of contacts between department personnel and the public, to provide an objective record of these events. These recording are used in support of criminal prosecutions, to limit civil liability, increase transparency and enhance professionalism and accountability in the delivery of police services to the community. Body Worn Camera (BWC) files are shared with the Alameda County District Attorney’s office in support of prosecution for crime, and may be shared with other law enforcement agencies to support criminal investigations.</p> <p>Policy regarding activation of the Body Worn Camera BPD Policy 425.7</p> <p>Members shall activate the BWC as required by this policy in (a)-(f) below, and may activate the BWC at any time the member believes it would be appropriate or valuable to record an incident within the limits of privacy described herein.</p> <p>The BWC shall be activated in any of the following situations:</p> <ul style="list-style-type: none"> (a) All in-person enforcement and investigative contacts including pedestrian stops and field interview (FI) situations. (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops. (c) Self-initiated field contacts in which a member would normally notify the Communications Center. (d) Any search activity, including the service of search or arrest warrants; probation, parole, or consent searches where the member is seeking evidence of an offense, or conducting a safety sweep or community caretaking sweep of the premises. Once a location has been secured and the member is not interacting with detainees or arrestees, the member may mute their BWC when conducting a search for evidence. (e) Any other contact that the member determines has become adversarial after the initial contact in a situation where the member would not otherwise activate BWC recording. (f) Transporting any detained or arrested person and where a member facilitates entry into or out of a vehicle, or any time the member expects to have physical contact with that person. <p>What data is captured by this technology:</p> <p>BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigation, and other proceedings</p>
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	<p>protected by confidentiality laws and department policy. Improper use or release of BWC recordings may compromise ongoing criminal and administrative investigations or violate the privacy rights of those recorded and is prohibited.</p> <p>How the data is stored:</p> <p>BWC videos are stored on a secure server. All BWC data will be uploaded and stored on Axon Cloud Services, Evidence.com. Axon complies with the EU-U.S. Privacy Shield Framework and the Swiss-U.S. Privacy Shield Framework as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of personal information transferred from the European Union and Switzerland to the United States (collectively, "Privacy Shield"). Axon has certified to the U.S. Department of Commerce that it adheres to the Privacy Shield Principles.</p> <p>Retention period of data:</p> <p>See attached retention schedule.</p> <p>Summary of Body Worn Camera Videos Uploaded Oct. 1, 2021 to Sept. 30, 2022:</p> <table data-bbox="592 947 1024 1050"> <tr> <td>Total Number of Videos</td> <td>64,688</td> </tr> <tr> <td>Total Hours of Videos</td> <td>17,520</td> </tr> <tr> <td>Total GB of BWC Videos</td> <td>30,420</td> </tr> </table> <p>Summary of Digital Evidence Uploaded, Oct. 1, 2021 to Sept. 30, 2022:</p> <table data-bbox="659 1161 982 1430"> <thead> <tr> <th>Type</th> <th>File Count</th> </tr> </thead> <tbody> <tr> <td>Audio</td> <td>8,425</td> </tr> <tr> <td>Document</td> <td>1,804</td> </tr> <tr> <td>Image</td> <td>496,694</td> </tr> <tr> <td>Other</td> <td>2,807</td> </tr> <tr> <td>Video*</td> <td>79,303</td> </tr> <tr> <td>Total</td> <td>138,716</td> </tr> </tbody> </table> <p>* Includes all uploaded BWC videos and all other videos booked into the evidence management system. Other videos include iPhone videos uploaded, security camera video, copies of BWC videos (for redaction, etc.), and any other videos.</p>	Total Number of Videos	64,688	Total Hours of Videos	17,520	Total GB of BWC Videos	30,420	Type	File Count	Audio	8,425	Document	1,804	Image	496,694	Other	2,807	Video*	79,303	Total	138,716
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<p>Geographic Deployment</p>	<p>Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically.</p> <p>Body Worn Cameras are worn by all BPD uniformed officers city-wide at all times; BWC's are not deployed based on geographic considerations.</p>																				
<p>Complaints</p>	<p>A summary of each complaint, if any, received by the City about the Surveillance Technology.</p> <p>There have been no complaints about the deployment and use of Body Worn Cameras.</p>																				

<p>Audits and Violations</p>	<p>The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response.</p> <p>File meta-data are routinely reviewed by our BWC manager, to ensure required metadata fields are completed. There have been no complaints with regards to violations of the Surveillance Use Policy.</p>
<p>Data Breaches</p>	<p>Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response.</p> <p>There have been no known data breaches or other unauthorized access to BWC data.</p>
<p>Effectiveness</p>	<p>Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes.</p> <p>Body Worn Cameras have proven effective in supporting criminal prosecutions, as video footage is available for all criminal prosecutions. Body Worn Cameras have been effective for training purposes, as footage can be reviewed in incident de-briefs. Body Worn Cameras have been extremely effective in support of Internal Affairs investigations and Use of Force Review.</p>
<p>Costs</p>	<p>Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.</p> <p>The annual cost for the Body Worn Cameras, including cameras, replacement cameras, software, and Axon's secure digital evidence management system is \$222,442 per year over a five-year, \$1,112,213 contract. There is one full-time employee assigned to the BWC program, an Applications Programmer Analyst II, at a cost of \$168,940 per year, including benefits.</p>

Surveillance Technology Report: Global Positioning System Tracking Devices

October 1, 2021 – Sept. 30, 2022

<p>Description</p>	<p>A description of all non-privileged and non-confidential information about use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report shall include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing.</p> <p>Global Positioning System Trackers are used to track the movements of vehicles, bicycles, other items, and/or individuals.</p> <p>What data is captured by this technology: A GPS Tracker data record consists of date, time, latitude, longitude, map address, and tracker identification label. The data does not contain any images, names of subjects, vehicle information or other identifying information on individuals.</p> <p>How the data is stored: The data from the GPS tracker is encrypted by the vendor. The data is only accessible through a secure website to BPD personnel who have been granted security access.</p> <p>Retention period of data: Tracker data received from the vendor shall be kept in accordance with applicable laws, BPD policies that do not conflict with applicable law or court order, and/or as specified in a search warrant.</p> <p>The Global Positioning System “Electronic Stake Out” (ESO) devices were not deployed during this reporting period. This program was suspended in mid-March 2020 due to the COVID-19 pandemic. In June of 2022, we renewed our service with the company and paid for new updated equipment with the intent of restarting the program. The program was not reimplemented during the dates specific to this report.</p> <p>GPS “Slap-N-Track” (SNT) devices were used in three separate investigations during this reporting period:</p> <ul style="list-style-type: none"> (1) An investigation into individuals for their involvement in shootings that occurred in Berkeley. The case resulted in the arrest of two individuals involved in the shootings and the recovery of 2 rifles and 4 handguns. (2) An investigation into individuals involved in a shooting that occurred in Berkeley. The case resulted in 2 individuals being arrested for their involvement in the shooting and the recovery of gun parts, ammunition and various drugs. (3) An investigation into an armed robbery and shooting that occurred in Berkeley. The case resulted in the recovery of 1 shotgun, 2 handguns and drugs. The suspect currently has an outstanding warrant for his arrest. <p>Data may be shared with the District Attorney’s Office for use as evidence to aid in prosecution, in accordance with laws governing evidence; other law enforcement</p>
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	<p>personnel as a part of an active criminal investigation; and other third parties, pursuant to a court order.</p>
Geographic Deployment	<p>Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically.</p> <p>GPS SNT devices are deployed with judicial pre-approval, based on suspect location, rather than geographical consideration.</p>
Complaints	<p>A summary of each complaint, if any, received by the City about the Surveillance Technology.</p> <p>There were no complaints made regarding GPS Trackers.</p>
Audits and Violations	<p>The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response.</p> <p>There were no audits and no known violations relating to GPS Trackers.</p>
Data Breaches	<p>Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response.</p> <p>There were no known data breaches relating to GPS Trackers.</p>
Effectiveness	<p>Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes.</p> <p>The GPS ESO trackers were not used during this time period. The program was suspended in mid-March 2020 due to the COVID-19 pandemic. Our subscription was renewed and we upgraded our equipment. We have not used them during this reporting period.</p> <p>GPS SNT trackers are effective in that they provide invaluable information on suspect vehicle location during the investigation of complex cases where suspects may be moving around the Bay Area and beyond.</p> <p>GPS Trackers greatly reduce costs associated with surveillance operations. A bike may be left for days. Surveillance operations generally involve four or more officers for the entire duration of an operation. A moving surveillance is extremely resource-intensive, requiring multiple officers in multiple vehicles for extended periods of time. Using both types of GPS trackers eliminates the need for officers' immediate presence until officers are ready to apprehend the suspect(s).</p>
Costs	<p>Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.</p> <p>The annual cost for the GPS "Slap-N-Track" (SNT) data service is \$1,800.</p> <p>The annual cost for the GPS "Electronic Stake Out" (ESO) devices this year was \$2,353.85. This was to upgrade our devices and for three years of tracking service for the devices.</p> <p>There are staff time costs associated with preparing and placing SNT trackers. The investigator must prepare a search warrant and obtain a judge's approval, and a small number of officers must place the tracker on the suspect's car. The total number of hours</p>

is a fraction of the time it would take to do a full surveillance operation involving numerous officers.

There are staff time costs associated with preparing ESO trackers and placing ESO tracker-equipped bikes for bait bike operations. These are on the order of two-four hours per operation. The total number of hours is extremely small, given the large number of operations, and resulting arrests.

Surveillance Technology Report: Automated License Plate Readers

October 1, 2021 – Sept. 30, 2022

<p>Description</p>	<p>A description of all non-privileged and non-confidential information about use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report shall include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing.</p> <p>Automated License Plate Readers (ALPRs) are used by Parking Enforcement Bureau vehicles for time zone parking and scofflaw enforcement. The City’s Transportation Division uses anonymized information for purposes of supporting the City’s Go Berkeley parking management program. ALPR use replaced the practice of physically “chalking” tires, which is no longer allowed by the courts.</p> <p>What data is captured by this technology: 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).</p> <p>How the data is stored: The data is stored on a secure server by the vendor.</p> <p>Retention period of data: During this reporting period collected images and metadata of hits were stored no more than 365 days. Metadata of reads were not stored more than 30 days. Current use policy adopted September 13, 2022 sets new retention periods that are now in effect.</p> <p style="text-align: center;">Summary of ALPR Time Zone Enforcement Data</p> <p style="text-align: center;">Read Data (only retained for 30 days per prior policy) There was a total of 3,117,058 reads</p> <p style="text-align: center;">From 10/1/2021 to 9/30/2022 Hit Data There were 76,650 “Hits” 34,976 “Enforced Hits” resulted in citation issuance. 1,134 “Not Enforced” valid, enforceable hits resulted in no citation issued, based on PEO discretion.</p> <p>40,540 Hits were not acted upon for a variety to reasons including but not limited to:</p> <ol style="list-style-type: none"> 1) Customer comes out to move a vehicle. PEO’s are directed not to issue that citation. 2) Officer gets to the dashboard and sees a permit not visible from a previous location.
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	<p>3) Officer does a vehicle evaluation and confirms that the vehicle moved from the hit location (e.g. across the street within GPS range).</p> <p>4) Stolen car.</p> <p>5) Similar Plates.</p> <p>6) 600-700 GIG cars- 100 revel scooters.</p> <p>7) Officers mistakenly leave their LPR “on” collecting time zone enforcement data, but leave the area being enforced to drive to another location on another assignment, such as a traffic post at a collision scene. These hits are not enforced.</p> <p>Genetec is the vendor for the ALPR Time Zone enforcement system. A “read” indicates the ALPR system successfully read a license plate. The information that is generated when a plate is viewed by the ALPR camera is the license plate number, state and geographical (GPS) location it was viewed. A “hit” indicates the ALPR system detected a possible violation, which prompts the Parking Enforcement Officer to further assess the vehicle. At “hit” is when the “read” information is recognized as a license plate that matches, or does not match an entry in a list such as permit list or the stolen vehicle “hot list”. In many cases, hits are “rejected” or “not enforced”, meaning no enforcement action is taken, because the Parking Enforcement Officer determines the vehicle has an appropriate placard or permit, or there is other information or assignment which precludes citation.</p> <p style="text-align: center;">Summary of ALPR Booting Scofflaw Enforcement Data</p> <p style="text-align: center;">0 vehicles booted from 10/1/21-9/30/22</p> <p>The Berkeley Police Department no longer maintains the ALPR Booting Scofflaw Enforcement Program. The contract to provide this service became cost prohibitive and the city opted not to renew the contract with the vendor. The city returned to having each PEO working a beat again become responsible for recognizing when a license plate has accumulated five or more unpaid parking tickets.</p> <p style="text-align: center;">Summary of ALPR Law Enforcement Investigative Inquiry Data</p> <p style="text-align: center;">0 vehicle inquiries from 10/1/21-9/30/22</p> <p>All BPD ALPR data may only be shared with other law enforcement or prosecutorial agencies for official law enforcement purposes, or as otherwise permitted by department policy and law. All ALPR data is subject to the provisions of BPD Policy 415 - Immigration Law, and therefore may not be shared with federal immigration enforcement officials.</p>
<p>Geographic Deployment</p>	<p>Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically.</p> <p>Only Parking Enforcement Vehicles are equipped with ALPRs. ALPRs are deployed based on areas where there are parking time restrictions. ALPRs are not deployed based on geographic considerations not related to parking and scofflaw enforcement.</p>

<p>Complaints</p>	<p>A summary of each complaint, if any, received by the City about the Surveillance Technology.</p> <p>There have been no complaints about the deployment and use of Automated License Plate Readers.</p>
<p>Audits and Violations</p>	<p>The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response.</p> <p>There have been no complaints of violations of the ALPR Surveillance Use Policy.</p>
<p>Data Breaches</p>	<p>Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response.</p> <p>There have been no known data breaches or other unauthorized access to Automated License Plate Reader data.</p>
<p>Effectiveness</p>	<p>Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes.</p> <p>ALPRs have proven effective in parking enforcement for time zone enforcement.</p> <p>ALPRs have proven effective in supporting enforcement upon vehicles which have five or more unpaid citations. The ALPR's ability to read and check license plates while being driven greatly increases efficiency, allowing an operator to cover larger areas more quickly without having to stop except to confirm a hit.</p>
<p>Costs</p>	<p>Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.</p> <p>The annual system maintenance cost for Genetec is \$51,720. This cost is borne by the Transportation Division, which covers warranties, support, and cellular connection costs.</p> <p>Genetec ALPR units are installed on 22 Parking Enforcement vehicles. Parking Enforcement personnel perform a variety of parking enforcement activities, and are not limited solely to time zone enforcement. Therefore, personnel costs specifically attributable to time zone enforcement are not tracked.</p>

Surveillance Technology Report: Street Level Imagery Project

October 1, 2021 – Sept. 30, 2022

<p>Description</p>	<p>A description of all non-privileged and non-confidential information about the use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report will include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing.</p> <p>Street level imagery is utilized exclusively by authorized City staff for infrastructure asset management and planning activities. The street level imagery of City infrastructure assets in the Public Right of Way that is provided to the City will not consist of information that is capable of being associated with any individual or group.</p>
<p>Geographic Deployment</p>	<p>Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically.</p> <p>Street level imagery was collected by driving through the entire community over a three week period. It is accessible to the City through a proprietary third-party application, Street SmartTM.</p>
<p>Complaints</p>	<p>A summary of each complaint, if any, received by the City about the Surveillance Technology.</p> <p>There have been no complaints about the use of Street Smart TM.</p>
<p>Audits and Violations</p>	<p>The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response.</p> <p>There have been no complaints with regards to violations of the Surveillance Use Policy.</p>
<p>Data Breaches</p>	<p>Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response.</p> <p>There have been no known data breaches or other unauthorized access to Cyclomedia Street Level Imagery data.</p>

<p>Effectiveness</p>	<p>Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes.</p> <p>Staff considered hiring contractors to use GPS in the field to create and update the infrastructure asset GIS data. This method is costly and time consuming. Cyclomedia’s unique and patented processing techniques allow positionally-accurate GIS data to be collected in a cost-effective way and over a shorter period of time than a “boots on the ground” GPS field survey.</p> <p>The Imagery extracted the following Citywide Infrastructure assets to create accurate and current Geographic Information Systems (GIS) data inventories:</p> <ul style="list-style-type: none"> • Bus pads / stops • Maintenance Access Holes • Pavement Striping • Curb paint color • Parking meters • Pedestrian Signal • Pavement marking • Storm drains • Signs • Street trees • Traffic lights <p>The street level imagery captured was also being used to:</p> <p>Created a street sign GIS layer with condition assessment to support compliance with the Manual on Uniform Traffic Control Devices Code and provide an accurate inventory of City signs. The existing sign inventory is contained in a spreadsheet that does not have accurate location data.</p> <p>Created a curb color layer with condition assessment to indicate where there are red, yellow, blue, white and green colors. This is critical to support Public Safety.</p> <p>Created pavement striping and paint symbol layers to support Transportation Planning and Vision Zero.</p> <p><u>Benefits Projected:</u></p> <p>The data from the street level imagery is being integrated into the City’s work order and asset management system for planning activities and to document repair and maintenance.</p> <p>Planners can use the street level imagery provided to the City to take measurements remotely, such as sidewalk width and public right of way impacts at proposed development locations.</p> <p>City staff can use the street level imagery to plan the location of road markings for pedestrian crossings, bike lanes or other striping.</p>
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	<p>City staff can remotely take accurate measurements of infrastructure assets to adequately plan for repair and replacement.</p> <p>City staff can use street level imagery to enhance community engagement. The street level imagery can be used to identify and depict the impact of development such as an intersection restriping plan in order to article before and after conditions.</p>			
Costs	<p>Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.</p>			
	<p>The total cost of the system is \$232,611 and is itemized below.</p>			
	Year No.	Description	Cost	Notes
	1	Licenses	\$48,000	Resolution No: 69,482-N.S. 30JUN20
	1	Professional Services for asset extraction	\$139,401	Resolution No: 69,482-N.S. 30JUN20
2	Licenses and Support – One-Time	\$41,100	Resolution No: 70,487-N.S. 26JUL22	
3	License and Support – Ongoing Annual Costs	\$4,110	Resolution No: 70,487-N.S. 26JUL22	

Surveillance Technology Report: Unmanned Aerial Equipment, Drone

October 1, 2021 – Sept. 30, 2022

<p>Description</p>	<p>A description of all non-privileged and non-confidential information about use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report shall include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing.</p> <p>Unmanned Aerial Vehicle (UAV) also commonly referred to as a drone are requested pursuant to our Mutual Assistance protocols. If a situation arises wherein the safety to the community, officers, or the offender can be increased through the means of de-escalation (adding time and distance to the situation) a supervisor can make the request. All requests go to the Chief of Police and then escalate to the City Manager for final approval. During this period, on three occasions the Police Department sought mutual assistance for drones.</p> <p>What data is captured by this technology: Unmanned Aerial Vehicles are owned and operated by the respective agency. While each piece of equipment is unique, generally UAV’s can both record video and audio, while transmitting the data to the operator, thereby qualifying as a piece of Surveillance Technology pursuant to BMC 2.99.020.</p> <p>How the data is stored: During this reporting period Alameda County Sheriff’s Office (ACSO) assisted the Berkeley Police Department by providing drones on three occasions. Per their policy, ACSO retains images captured during a UAV mission if there is reasonable suspicion of criminal activity. BPD personnel would request that evidence from ACSO if it was needed in support of criminal activity. During this rating period no data was stored by BPD. The Department will set storage and retention periods in a Drone Use Policy.</p> <p>Retention period of data: During this rating period no data was stored by BPD. At this time the Berkeley Police Department does not intend to acquire this technology but is actively consulting with the City Attorney’s Office regarding developing a Drone Use Policy. That policy, when complete, will include data retention.</p> <p style="text-align: center;">Summary of Uses of UAV’s</p> <p style="text-align: center;">BPD Case 22-31368 (USE OF UAV) On 07/09/22 BPD officers responded to a robbery with gunfire at 2625 San Pablo Ave. The offenders fled into 1100 block of Carleton Street. Officers secured the perimeter and requested mutual assistance from the ACSO drone team. Officers were able to safely detain and arrest four suspects, and recovered four guns (2 ghost guns including a short-barreled rifle, and 2 Glock semi-automatic firearms- all loaded). <i>Subsequently the City Council was notified of the temporary use of surveillance technology in exigent circumstances.</i></p>
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	<p>BPD Case 22-35231 (USE OF UAV) On 08/02/22 BPD attempted to detain a person who was wanted in connection with a murder in another jurisdiction. The offender fled on foot from BPD officers. Officers secured a perimeter and requested mutual assistance including the request for a drone. ACSO responded and assisted BPD. With the assistance of the drone officers were able to locate the suspect in the 1100 block of Chaucer Street. No injuries were sustained by the officers. The offender had minor injuries as a result of jumping over fences while fleeing from BPD officers, however no injuries were sustained from the detention and arrest. <i>Subsequently the City Council was notified of the temporary use of surveillance technology in exigent circumstances.</i></p> <p>Solano Stroll Event (USE OF UAV) On September 10, 2022, Berkeley and Albany hosted the Solano Stroll street event. Solano Stroll is a long-standing family event that draws tens of thousands to the Solano Avenue Street fair. At the request of Albany PD, the Alameda County Sheriff's Office Drone Team responded to conduct routine checks of the rooftops for potential shooting threats during the event. This was conducted to ensure the event was not targeted by an active shooter in public space, as was the case in Highland Park earlier in the year and a number of other locations in recent years. <i>Subsequently the City Council was notified of the temporary use of surveillance technology in exigent circumstances.</i></p>
<p>Geographic Deployment</p>	<p>Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically.</p> <p>One instance it was deployed in the area of 1100 block of Carleton Street. Another instance it was deployed in the 1100 block of Chaucer Street. The final deployment was along Solano Avenue from the Berkeley/Albany border on the west to The Alameda on the east.</p>
<p>Complaints</p>	<p>A summary of each complaint, if any, received by the City about the Surveillance Technology.</p> <p>The City received one complaint about the deployment and the use of Unmanned Aerial Vehicles (UAV), AKA Drones, specifically related to the Solano Stroll.</p>
<p>Audits and Violations</p>	<p>The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response.</p> <p>The City received one complaint about the deployment of a drone at Solano Stroll not meeting the exigent circumstances threshold of the Surveillance Use Policy. At this time the Berkeley Police Department does not intend to acquire this technology but is actively consulting with the City Attorney's Office regarding developing a Use Policy. It is unclear from the ordinance whether an Acquisition Report is also appropriate so we began consulting with the City Attorney's Office on this matter last month.</p>

<p>Data Breaches</p>	<p>Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response.</p> <p>There have been no known data breaches or other unauthorized access to any of the data from the Unmanned Aerial Vehicles (UAV), AKA Drones.</p>
<p>Effectiveness</p>	<p>Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes.</p> <p>In two instances the use of the Unmanned Aerial Vehicles (UAV), AKA Drones led to the safe apprehension of violent offender(s), and in one instance aided in the safe recovery of four firearms, including a short-barreled assault rifle. The final instance augmented the police in providing a safe environment for a large-scale public gathering and ensured a rapidly evolving situation could be addressed with speed and precision.</p>
<p>Costs</p>	<p>Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.</p> <p>The annual cost for the Unmanned Aerial Vehicles (UAV), AKA Drones is zero as the uses were covered by the responding agencies under the Mutual Assistance agreement. The only costs associated is staff time at each respective incident, however no costs for the use of the technology was incurred.</p>



CONSENT CALENDAR
September 13, 2022

To: Honorable Mayor and Members of the City Council

From: Councilmember Taplin

Subject: Information Report Request: Alternatives to Chemical Agents for Response to Violent Large-Scale Crowd Scenarios

RECOMMENDATION

Direct the City Manager to study alternatives to chemical agents to improve the Berkeley Police Department's ability and capacity to respond to and de-escalate large-scale crowd scenarios, including violent militias, and return a report to the City Council by the end of Fiscal Year 2023.

Report should include but not be limited to the following factors:

- BPD intelligence-gathering capabilities on potentially violent large crowd scenarios
- BPD response protocols including procedures for protecting bystanders, peaceful protesters, and businesses
- Tools and tactics available for crowd control in potentially violent scenarios
- Mutual aid and support from other local/state/federal agencies
- Applicable state and federal laws on crowd control and First Amendment rights

FINANCIAL IMPLICATIONS

Staff time.

CURRENT SITUATION AND ITS EFFECTS

Planning for large-scale crowd scenarios is a Strategic Plan Priority Project, advancing our goal to create a resilient, safe, connected, and prepared city.

As of June 9, 2020, the City of Berkeley has prohibited the use of tear gas, pepper spray, smoke canisters, and other chemical agents for crowd control by the Berkeley Police Department and any other outside agencies providing mutual aid in Berkeley. This prohibition was enacted due to concerns for the health and safety of peaceful protesters, including permanent lung damage and the potential to exacerbate the COVID-19 pandemic (see Attachment 1).

In 2021, the state legislature passed Assembly Bill 48 (see Attachment 2), which imposed restrictions on the use of chemical agents and kinetic energy projectiles by law enforcement officers during protests, including requirements for de-escalation, prohibiting their use for dispersing crowds, and restricting their use to "objectively

reasonable efforts” to only target violent individuals after all other options have been exhausted, while also establishing public reporting requirements.

In June of 2022, the Berkeley Police Department presented to the City Council’s Public Safety Policy Committee on regional best practices and conformance with AB-48 (see Attachment 3).

In August of 2022, the Berkeley City Council was briefly scheduled to discuss potentially lifting the prohibition on chemical agents on a temporary basis in response to reports of violence at protests near People’s Park, due to concerns that the Alameda County Sheriff’s Office would not provide mutual aid. The meeting was canceled, and the prohibition remains in place.¹ UCPD, which is overseeing law enforcement at the park, is permitted to use tear gas in limited situations under its use of force policy.² On August 5, 2022, the Sheriff Gregory Ahern clarified on KTVU that the Alameda County Sheriff’s Office would provide mutual aid to the City, not “to assist with the movement of the crowd.”³

Due to ongoing concerns regarding violent crowds outlined below, it is in the public interest to study feasible alternatives for responding to potentially violent large gatherings while protecting First Amendment rights, de-escalating and preventing bodily harm for all present pursuant to existing City of Berkeley policies.

BACKGROUND

The extreme far-right in the US has become increasingly violent since the election of President Donald Trump, with white supremacist propaganda and neo-Nazi rallies consistently condoned by the highest echelons of the Republican Party. Since former President Trump’s well-documented lies about election theft fomented an attempted insurrection and violent invasion of the US Capitol on January 6, 2021, the need to safeguard democratic institutions from violent extremism has only increased, as far-right figures have openly threatened to increase violent demonstrations while pivoting to more local, decentralized actions.⁴

Berkeley has been the site of several violent encounters with far-right militias and counter-protesters. On February 1, 2017, a faction of protesters opposing a UC

¹ Yelimeli, S. (Aug. 4, 2022). Berkeley City Council will not lift tear gas ban amid People’s Park protests. *Berkeleyside*. Retrieved from <https://www.berkeleyside.org/2022/08/04/berkeley-city-council-will-not-lift-tear-gas-ban-amid-peoples-park-protests>

² https://newspack-berkeleyside-cityside.s3.amazonaws.com/wp-content/uploads/2022/08/Use_of_Force-1.pdf

³ KTVU. (Aug 5, 2022). People’s Park project on hold; debate over tear gas in Berkeley. Retrieved from <https://www.ktvu.com/news/peoples-park-project-on-hold-debate-over-tear-gas-in-berkeley>

⁴ Holt, J. (2022). After the insurrection: How Domestic Extremists Adapted and Evolved After the January 6 US Capitol Attack. *Atlantic Council*. Retrieved from <https://www.atlanticcouncil.org/wp-content/uploads/2022/01/After-the-Insurrection.pdf>

Berkeley speaking event by far-right figurehead Milo Yiannopoulos engaged in looting of commercial retailers and injured peaceful protesters.⁵ On March 4, 2017, Berkeley police arrested 10 individuals following violent clashes at a “March 4 Trump” rally in Civic Center Park where 7 were injured. In response, then-President Trump praised the rallies and threatened to pull federal funding from UC Berkeley.⁶ On April 15, 2017, right-wing protesters (including neo-Nazi militia groups such as Oath Keepers) and counter-protesters fought violently with rocks, sticks, pepper spray, and smoke bombs, resulting in 21 arrests and 11 injuries, including one stabbing.⁷

The City of Berkeley must assess its preparedness for large crowd scenarios in order to prevent future violence.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

CONTACT PERSON

Councilmember Taplin Council District 2 510-981-7120

ATTACHMENTS

- 1: June 9, 2020: Prohibiting Use of Chemical Agents for Crowd Control During COVID-19 Pandemic
- 2: Assembly Bill 48 (2021)
- 3: June 6, 2022: Berkeley City Council Public Safety Policy Committee presentation

⁵ Bodley, M. (2017, Feb 2). At Berkeley Yiannopoulos protest, \$100,000 in damage, 1 arrest. *SFGate*. Retrieved from <https://www.sfgate.com/crime/article/At-Berkeley-Yiannopoulos-protest-100-000-in-10905217.php>

⁶ Wang, A.B. (2017, March 5). Pro-Trump rally in Berkeley turns violent as protesters clash with the president’s supporters. *Los Angeles Times*. Retrieved from <https://www.washingtonpost.com/news/post-nation/wp/2017/03/05/pro-trump-rally-in-berkeley-turns-violent-as-protesters-clash-with-the-presidents-supporters/>

⁷ St. John, P. (2017, Apr 15). 21 arrested as hundreds of Trump supporters and counter-protesters clash at Berkeley rally. Retrieved from <https://www.latimes.com/local/lanow/la-me-ln-berkeley-trump-rally-20170415-story.html>



Office of the Mayor

LATE AGENDA MATERIAL

Pursuant to Government Code Section 54954.2(b)

Meeting Date: June 9, 2020

Item Description: Prohibiting the use of Chemical Agents for Crowd Control during the COVID-19 pandemic

Submitted By: Mayor Arreguin, Councilmember Harrison, Councilmember Robinson

Pursuant to California Government Code Section 54954.2(b) (2), the Mayor submits the attached item to the City Council for placement on the June 9, 2020 meeting agenda. Gov. Code Section 54954.2(b) (2) states that *“Upon a determination by a two-thirds vote of the members of a legislative body presents at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).”*

This item meets the criteria for “immediate action” as follows:

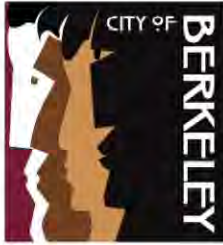
The City of Berkeley is currently in a declared state of emergency regarding the outbreak of a novel coronavirus, causing the respiratory disease COVID-19. COVID-19 is an acute respiratory illness that affects the lungs in addition to other symptoms. The severity of these symptoms increases based on underlying health conditions including asthma, heart and lung problems, diabetes, and other medical conditions.

Despite being in a declared public health emergency, the Berkeley Police Department can use chemical agents (tear gas, pepper spray, and smoke canisters) to disperse a crowd, but subject to the authorization and policies outlined in General Order U-2.

Public health experts have concluded that chemical agents like tear gas may make individuals more susceptible to COVID-19 and increase its community spread. Along with the immediate pain that can cause watering eyes and burning throats, tear gas may cause damage to people’s lungs and make them more susceptible to getting a respiratory illness, according to studies on the risks of exposure. The gas and smoke can also incite coughing, which can further spread the virus from an infected person.

On June 1, 2020, in response to a largely peaceful demonstration against the killing of George Floyd, Oakland Police fired tear gas into a crowd of demonstrators. The tear gas not only affected protestors by also bystanders in the immediate area. The police killing of George Floyd on May 25, 2020 and the deaths of other African Americans have sparked nationwide outrage and protests over police brutality, including demonstrations in the City of Berkeley. Additional protests may occur in the coming days and weeks.

Consideration of late agenda items is subject to approval by a two-thirds vote of the City Council. (California Government Code Section 54954.2(b)(2))



ACTION CALENDAR
June 9, 2020

To: Members of the City Council

From: Mayor Jesse Arreguin, Councilmember Kate Harrison and Councilmember Rigel Robinson

Subject: Prohibiting the use of Chemical Agents for Crowd Control during the COVID-19 pandemic

RECOMMENDATION

Adopt a motion to establish an official City of Berkeley policy prohibiting the use of tear gas (CS gas), pepper spray or smoke for crowd control by the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, during the COVID-19 pandemic, until such time that the City Council removes this prohibition.

BACKGROUND

The use of tear gas (CS gas) and pepper spray are authorized less-than-lethal uses of force which can be deployed in crowd control situations under Berkeley Police Department policy, with specific conditions (See [General Order U-2](#)).

On June 1, 2020, Oakland police deployed tear gas to disperse protesters who failed to move before a legally established curfew. The tear gas not only affected protestors by also bystanders in the immediate area. This has raised concerns over the police use of tear gas in protests, the chilling effect it has on people engaging in First Amendment activity, and the health impacts of tear gas during a public health emergency. In response to this incident, Oakland City Council President Rebecca Kaplan and Councilmembers Nikki Fortunato Bas and Sheng Thao issued a letter to Oakland City administrators requesting that OPD use of tear gas be immediately suspended and not used during the COVID-19 pandemic. Similarly, on June 5, 2020, Berkeley Councilmembers Harrison, Davila, Bartlett and Robinson made a similar request.

International, national, state and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named "SARS-CoV-2." and the disease it causes has been named "coronavirus disease 2019," abbreviated COVID-19, ("COVID-19"). In response to this emergency, on March 3, 2020, the City Manager acting as the Director of Emergency Services declared a local State of Emergency based on COVID-19 (hereinafter referred to as "the State of Emergency"), which the City Council subsequently ratified on March 10, 2020. In addition, on March 4, 2020, the Governor declared a state of emergency in California and the President of the United States declared a national state of emergency on March 13, 2020 regarding the novel coronavirus and COVID-19.

During the COVID-19 state of emergency, there is a heightened risk of individuals contracting the virus if they are exposed to tear gas, pepper spray or smoke. This will put people's safety and lives at risk. As a public health strategy, the deployment of tear gas, pepper spray and smoke must be suspended.

According to a June 2, 2020 KTVU article, infectious disease specialists are circulating an online petition calling for police to stop using tear gas to disperse crowds and calling on police to use "public health best practices" during demonstrations.¹

According to an article in the June 3, 2020, *New York Times*, **"Along with the immediate pain that can cause watering eyes and burning throats, tear gas may cause damage to people's lungs and make them more susceptible to getting a respiratory illness, according to studies on the risks of exposure. The gas can also incite coughing, which can further spread the virus from an infected person."**²

Researchers are concerned that the use of tear gas in crowds "might catalyze a new wave of Covid-19."³

Data show that African Americans are disproportionately impacted by COVID-19 in Berkeley and Alameda County. In addition, "many black Americans disproportionately have pre-existing conditions like asthma that could make tear gas lethal."

Tear gas has been banned for use in warfare, but is legal for police to use in the U.S. Yet, experts say it should be a weapon of last resort for crowd control and for addressing violent behavior of specific individuals because it affects everyone in the area including peaceful protestors.

The use of tear gas and other agents for crowd control adversely affects individuals in crowds of protestors as well as residents who are not involved in protesting, and it can have serious effects on medically vulnerable people and increase the spread of COVID-19.

Oakland Police Department's own police training bulletin (V-F.2. July 26, 2006) states that "Breathing CS (gas) may create a feeling of tightness in the chest, shortness of breath, coughing and/or sneezing." These are reactions that can spread COVID-19.

In response to mass protests over the killing of George Floyd, on Friday, June 5, 2020, Governor Newsom announced that he would work with the State Legislature, activists, law enforcement officers, and journalists to create new standards for policing protests in California.

"Protesters have the right not to be harassed," he said. **"Protesters have the right to protest peacefully. Protesters have the right to do so without being arrested, gassed, being shot at by projectiles."**⁴

¹ Lisa Fernandez, "Infectious disease specialists call for an end to tear gas during COVID-19 pandemic," KTVU News, June 2, 2020, <https://www.ktvu.com/news/infectious-disease-specialists-call-for-an-end-to-tear-gas-during-covid-19-pandemic>

² Mike Baker, "Corrosive Effects of Tear Gas Could Intensify Coronavirus Pandemic," The New York Times, <https://www.nytimes.com/2020/06/03/us/tear-gas-risks-protests-coronavirus.html>

³ Hilary Brueck and Canela López, "Tear gas is banned from war — but police still shoot it at protesters, who cough and bleed as a result. At least one has lost an eye," Business Insider, June 3, 2020, <https://www.insider.com/tear-gas-banned-from-war-why-dangerous-how-to-neutralize-2020-6>

⁴ Alexei Koseff, "Gavin Newsom calls for new protest policing standards in California, ban on carotid holds" San Francisco Chronicle, June 5, 2020 <https://www.sfchronicle.com/politics/article/Gavin-Newsom-calls-for-new-protest-policing-15320403.php>

The police killing of George Floyd on May 25, 2020 and the deaths of other African Americans have sparked nationwide outrage and protests over police brutality, including demonstrations in the City of Berkeley. Additional protests may occur in the coming days and weeks. Therefore, the Council should take immediate action to impose this moratorium on the use of chemical agents during the COVID-19 pandemic.

FINANCIAL IMPLICATIONS

None. Prohibiting the use of tear gas, pepper spray and smoke will require the Berkeley Police Department to use other tactics in crowd control situations.

CONTACT PERSONS

Mayor Jesse Arreguín	(510) 981-7100
Councilmember Harrison	(510) 981-7140
Councilmember Robinson	(510) 981-7170

Assembly Bill No. 48

CHAPTER 404

An act to amend Section 12525.2 of the Government Code, and to add Sections 13652 and 13652.1 to the Penal Code, relating to law enforcement.

[Approved by Governor September 30, 2021. Filed with
Secretary of State September 30, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 48, Lorena Gonzalez. Law enforcement: use of force.

(1) Existing law authorizes a peace officer to use reasonable force to effect the arrest, to prevent escape, or to overcome resistance. Existing law requires law enforcement agencies to maintain a policy on the use of force, as specified. Existing law requires the Commission on Peace Officer Standards and Training to implement courses of instruction for the regular and periodic training of law enforcement officers in the use of force.

This bill would prohibit the use of kinetic energy projectiles or chemical agents by any law enforcement agency to disperse any assembly, protest, or demonstration, except in compliance with specified standards set by the bill, and would prohibit their use solely due to a violation of an imposed curfew, verbal threat, or noncompliance with a law enforcement directive. The bill would include in the standards for the use of kinetic energy projectiles and chemical agents to disperse gatherings the requirement that, among other things, those weapons only be used to defend against a threat to life or serious bodily injury to any individual, including a peace officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control. The bill would define chemical agents to include, among other substances, chloroacetophenone tear gas or 2-chlorobenzalmalononitrile gas. The bill would make these provisions inapplicable within a county jail or state prison facility.

This bill would also require each law enforcement agency, within a specified timeframe, to post on their internet website a summary, as described, of any incident in which a kinetic energy projectile or chemical agent is deployed by that agency for the purpose of crowd control. The bill would require the Department of Justice to provide a compiled list of links to these reports on its internet website.

(2) Existing law requires each law enforcement agency to annually report specified use of force incidents to the Department of Justice and requires the Department of Justice to annually publish a summary of those incidents, as specified.

This bill would require these reports to be made monthly. By imposing new duties on law enforcement agencies, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. Section 12525.2 of the Government Code is amended to read:

12525.2. (a) Each law enforcement agency shall monthly furnish to the Department of Justice, in a manner defined and prescribed by the Attorney General, a report of all instances when a peace officer employed by that agency is involved in any of the following:

- (1) An incident involving the shooting of a civilian by a peace officer.
- (2) An incident involving the shooting of a peace officer by a civilian.
- (3) An incident in which the use of force by a peace officer against a civilian results in serious bodily injury or death.
- (4) An incident in which use of force by a civilian against a peace officer results in serious bodily injury or death.

(b) For each incident reported under subdivision (a), the information reported to the Department of Justice shall include, but not be limited to, all of the following:

- (1) The gender, race, and age of each individual who was shot, injured, or killed.
- (2) The date, time, and location of the incident.
- (3) Whether the civilian was armed, and, if so, the type of weapon.
- (4) The type of force used against the officer, the civilian, or both, including the types of weapons used.
- (5) The number of officers involved in the incident.
- (6) The number of civilians involved in the incident.
- (7) A brief description regarding the circumstances surrounding the incident, which may include the nature of injuries to officers and civilians and perceptions on behavior or mental disorders.

(c) Each year, the Department of Justice shall include a summary of information contained in the reports received pursuant to subdivision (a) through the department's OpenJustice Web portal pursuant to Section 13010 of the Penal Code. This information shall be classified according to the reporting law enforcement jurisdiction. In cases involving a peace officer who is injured or killed, the report shall list the officer's employing jurisdiction and the jurisdiction where the injury or death occurred, if they are not the same. This subdivision does not authorize the release to the public of the badge number or other unique identifying information of the peace officer involved.

(d) For purposes of this section, “serious bodily injury” means a bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member or organ.

SEC. 2. Section 13652 is added to the Penal Code, to read:

13652. (a) Except as otherwise provided in subdivision (b), kinetic energy projectiles and chemical agents shall not be used by any law enforcement agency to disperse any assembly, protest, or demonstration.

(b) Kinetic energy projectiles and chemical agents shall only be deployed by a peace officer that has received training on their proper use by the Commission on Peace Officer Standards and Training for crowd control if the use is objectively reasonable to defend against a threat to life or serious bodily injury to any individual, including any peace officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control, and only in accordance with all of the following requirements:

(1) Deescalation techniques or other alternatives to force have been attempted, when objectively reasonable, and have failed.

(2) Repeated, audible announcements are made announcing the intent to use kinetic energy projectiles and chemical agents and the type to be used, when objectively reasonable to do so. The announcements shall be made from various locations, if necessary, and delivered in multiple languages, if appropriate.

(3) Persons are given an objectively reasonable opportunity to disperse and leave the scene.

(4) An objectively reasonable effort has been made to identify persons engaged in violent acts and those who are not, and kinetic energy projectiles or chemical agents are targeted toward those individuals engaged in violent acts. Projectiles shall not be aimed indiscriminately into a crowd or group of persons.

(5) Kinetic energy projectiles and chemical agents are used only with the frequency, intensity, and in a manner that is proportional to the threat and objectively reasonable.

(6) Officers shall minimize the possible incidental impact of their use of kinetic energy projectiles and chemical agents on bystanders, medical personnel, journalists, or other unintended targets.

(7) An objectively reasonable effort has been made to extract individuals in distress.

(8) Medical assistance is promptly provided, if properly trained personnel are present, or procured, for injured persons, when it is reasonable and safe to do so.

(9) Kinetic energy projectiles shall not be aimed at the head, neck, or any other vital organs.

(10) Kinetic energy projectiles or chemical agents shall not be used by any law enforcement agency solely due to any of the following:

(A) A violation of an imposed curfew.

(B) A verbal threat.

(C) Noncompliance with a law enforcement directive.

(11) If the chemical agent to be deployed is tear gas, only a commanding officer at the scene of the assembly, protest, or demonstration may authorize the use of tear gas.

(c) This section does not prevent a law enforcement agency from adopting more stringent policies.

(d) For the purposes of this section, the following terms have the following meanings:

(1) “Kinetic energy projectiles” means any type of device designed as less lethal, to be launched from any device as a projectile that may cause bodily injury through the transfer of kinetic energy and blunt force trauma. For purposes of this section, the term includes, but is not limited to, items commonly referred to as rubber bullets, plastic bullets, beanbag rounds, and foam tipped plastic rounds.

(2) “Chemical agents” means any chemical that can rapidly produce sensory irritation or disabling physical effects in humans, which disappear within a short time following termination of exposure. For purposes of this section, the term includes, but is not limited to, chloroacetophenone tear gas, commonly known as CN tear gas; 2-chlorobenzalmalononitrile gas, commonly known as CS gas; and items commonly referred to as pepper balls, pepper spray, or oleoresin capsicum.

(e) This section does not apply within any county detention facility or any correctional facility of the Department of Corrections and Rehabilitation.

SEC. 3. Section 13652.1 is added to the Penal Code, to read:

13652.1. (a) Each law enforcement agency shall, within 60 days of each incident, publish a summary on its internet website of all instances in which a peace officer employed by that agency uses a kinetic energy projectile or chemical agent, as those terms are defined in Section 13652, for crowd control. However, an agency may extend that period for another 30 days if they demonstrate just cause, but in no case longer than 90 days from the time of the incident.

(b) For each incident reported under subdivision (a), the summary shall be limited to that information known to the agency at the time of the report and shall include only the following:

(1) A description of the assembly, protest, demonstration, or incident, including the approximate crowd size and the number of officers involved.

(2) The type of kinetic energy projectile or chemical agent deployed.

(3) The number of rounds or quantity of chemical agent dispersed, as applicable.

(4) The number of documented injuries as a result of the kinetic energy projectile or chemical agent deployment.

(5) The justification for using the kinetic energy projectile or chemical agent, including any deescalation tactics or protocols and other measures that were taken at the time of the event to deescalate tensions and avoid the necessity of using the kinetic energy projectile or chemical agent.

(c) The Department of Justice shall post on its internet website a compiled list linking each law enforcement agency’s reports posted pursuant to subdivision (a).

SEC. 4. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

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Berkeley Police Department



Background

- **June 2020:** City Council enacts a ban on tear gas and a moratorium on the use of smoke and pepper spray for crowd-control events.
- **2021 police reform bill AB 48** signed into law, placing restrictions on the types of force law enforcement can use in response to protests. As a general rule, the bill prohibits the use of “kinetic energy projectiles” and “chemical agents” to disperse any assembly, protest, or demonstration, except in compliance with several requirements.
- **January 1, 2022:** AB 48 codified as PC 13652 Section 2



Balanced Approach

Important considerations as to the appropriateness of using tear gas for law enforcement purposes:

Does the use of tear gas have a chilling effect on Free Speech?

Is the use of tear gas reasonable?

- Is the use of tear gas excessive?
- Is there accountability/oversight in its use?
- Is current policy in alignment with AB48?
- What are regional/State best practices?

Health concerns related to smoke and pepper spray during COVID-19

- Enacted when infections were up and there was no vaccine.



Protecting Free Speech

- History of use
- Allows for safe speech:
 - Intervene at lower levels
 - Mitigates co-opting of crowd by bad actors
 - Gives department ability to target individuals committing crimes and violence
 - Smaller contingent of officers able to protect large crowd



Is the use of tear gas reasonable?

- Allows a small number of officers to regain control over a much larger violent crowd.
- Minimal force used:
 - Consequences and level of force are much lower than all other options.
 - Effects are temporary.
 - Effects end as soon as no longer exposed.
 - Dissipates quickly.



Accountability and Oversight

New legal requirement created by AB48 aligns with the department's past use and current policy language. Some of the legal requirements are:

- Requires **de-escalation techniques or alternatives** to force before use.
- Limits use to defend against **threats to life, serious bodily injury**, or to bring objectively dangerous and unlawful situations safely and effectively under control.
- Requires **announcement before use**.
- Requires officers to make objectively reasonable efforts to **identify** persons engaged in **violent** acts and target those individuals.



Accountability and Oversight (continued)

AB48/Penal Code 13652 requirements (continued):

- **Minimize** the possible incidental **impact** on bystanders, medical personnel, journalist, or other unintended targets.
- Use must be **objectively reasonable and proportional** to the threat (including frequency and intensity of use).
- Specifically **prohibited** in response to verbal threats, noncompliance with law enforcement directives, or curfew violations.
- *Note: AB 48 anticipates certain instances where tear gas may be reasonably used and places that responsibility on the commanding officer of the event.*



Accountability and Oversight (continued)

- Our current Use of Force (Policy 300) and First Amendment Assembly (Policy 428) policies align with requirements set forth in Penal Code section 13652.
- Oversight is required and provided via Police Equipment and Community Safety Ordinance.
- If tear gas ban was removed state reporting requirements would require the department to publish an after-action report documenting the equipment's use and the reasons for it within 60 days of an incident.



What is the scope of use in Berkeley?

- To resolve a situation involving an armed barricaded person (SWAT call).
- Respond to a medical or fire emergency, or prevent catastrophic damage to critical infrastructure, where a violent crowd is present.
- To protect officers or community from large-scale violent assaults.
- To disburse a violent crowd through a minimal amount of force.



Regional/State Best Practices

What are other agencies doing?

- Oakland PD has a policy that aligns with State law
- No other local agencies have bans in place
- All agencies in the state are compelled to abide by the requirements and protections outlined in PC 13652.



Use of smoke and pepper spray

- Smoke has been used before deploying tear gas. Although not an alternative, it gives the department an option to try before deploying tear gas.
- Smoke is often used in conjunction with tear gas, and acts as a visual deterrent.
- Pepper Spray provides officers with an intermediate force option to use in response to an individual violent act.
 - Allows officers to respond to a specific threat up to 15 feet away.
 - Effects are temporary; there are no injuries once spray wears off.



Questions?

The mission of the Berkeley Police Department is to preserve the peace and allow for the peaceful expression of First Amendment Rights. These rights include, but are not limited to, assembling, marching, carrying signs, making speeches, or other lawful activity designed to express or advocate political, religious, or social opinions and beliefs.

