

Terry Taplin
Councilmember, District 2
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Councilmember, District 6

SUPPLEMENTAL MATERIAL for Supplemental Packet 2

Meeting Date: June 13, 2023

Item Number: 24

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

Submitted by: Councilmembers Taplin & Wengraf

RECOMMENDATION

- Adopt a Resolution approving the Surveillance Ordinance items related to Fixed Surveillance Cameras and Unmanned Aerial Systems (UAS) with the City Manager's June 13 revised language.
- Revise retention period in Policy 351.5 to: "The cameras should record minimally for ~~one-year~~ 180 days as guided by Government Code 34090."
- Revise retention period in Policy 1304.7 to: "The cameras should record minimally for ~~one-year~~ 180 days as guided by Government Code 34090."

RATIONALE FOR RECOMMENDATION

The authors support the separation of policies for various security cameras in the City Manager's supplemental in response to Council and the community's concerns. We note that earlier drafts had been presented and discussed in the Public Safety Policy Committee over the past three months, with ample notice to the public. The current scope of uses and proposed retention period achieve a balance between individual privacy protections and law enforcement investigations, given the complexity of criminal investigations and *post hoc* nature of the review of evidence, including exonerating evidence for innocent parties.

Security cameras have already been used to investigate and solve violent crimes in Berkeley. For example, a resident's security camera helped identify and apprehend a

suspect who attempted to assault two teenage girls in 2021.¹ A 2018 assault was solved with the aid of surveillance footage, which also resulted in solving a 2015 rape case.²

While most peer-reviewed empirical research has been conducted on security cameras with live monitoring, this does not invalidate the effectiveness of security cameras with which the Berkeley community is already intimately familiar. The Berkeley Police Department currently does not have the resources to quantify the discrete public safety impact of unmonitored security cameras, but the authors welcome further research from social scientists and public policy professionals. Furthermore, the positive relationship between apprehension of suspects and deterrence of criminal activity is well-documented, and is far stronger than the severity of punishment itself.³

While the Berkeley community broadly supports alternative approaches to traffic enforcement, two major approaches—civilian enforcement and automated speeding cameras—remain prohibited under California law. At the same time, the Berkeley Police Department's critical staffing shortage has significantly impacted traffic enforcement operations. The Department of Public Works' staffing shortage has also significantly hindered the implementation of engineering-first traffic safety solutions.⁴ Without security cameras in the public right of way, there is no alternative in the short term that can improve effective accountability mechanisms for unlawful motorist behaviors.

ATTACHMENTS

1. Surveillance Ordinance items related to Fixed Surveillance Cameras and Unmanned Aerial Systems (UAS)

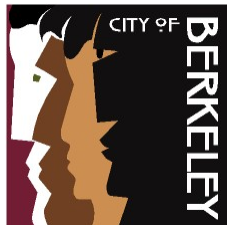
¹ Raguso, E. (2021, Dec. 7). Cop impersonator accosts another teenage girl in Berkeley, asks for hug. *Berkeleyside*. Retrieved from <https://www.berkeleyside.org/2021/12/07/cop-impersonator-accosts-another-teenage-girl-berkeley>

² Raguso, E. (2019, Jul. 8). Trial begins for man accused of raping 15-year-old girl, attacking Cal freshman. *Berkeleyside*. Retrieved from <https://www.berkeleyside.org/2019/07/08/trial-begins-for-berkeley-man-accused-of-raping-high-school-girl-attacking-cal-freshman>

³ Bun, M. J., Kelaher, R., Sarafidis, V., & Weatherburn, D. (2020). Crime, deterrence and punishment revisited. *Empirical economics*, 59, 2303-2333.

⁴

<https://berkeleyca.gov/sites/default/files/documents/Transportation%20Off%20Agenda%20Memo%20Packet.pdf>



Office of the City Manager

REVISED AGENDA MATERIAL

Meeting Date: June 13, 2023

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

Submitted by: Dee Williams-Ridley, City Manager
Chief Jennifer Louis, Police Department

These updated policies reflect many of the edits proposed by Councilmember Harrison in her Supp 2 as well as the discussion of Council on May 23, 2023 that the BPD policies related to Fixed Surveillance Cameras be “decoupled” from an overarching City policy covering cameras that may regularly capture public facing City facilities and employees engaged in their work. These policies are intended to cover the Berkeley Police Department uses allowing work to continue forward with the Council approved fixed cameras at intersections as well as continue to use the cameras at the Marina and San Pablo Park.



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. Department Personnel shall adhere to requirements for External Fixed Video Surveillance Cameras covered in this policy as well as the corresponding Surveillance Use Policy – 1304.

351.2 POLICY

The Berkeley Police Department utilizes a video surveillance system to enhance its anti-crime strategy, to effectively allocate and deploy personnel, and to enhance safety and security in public areas and City property. ~~As specified by this policy, Cameras may be placed in strategic locations throughout the City to detect, record and deter crime, to help the City 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 specified in Section 351.3.1.~~

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

351.3 OPERATIONAL GUIDELINES

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

351.3.1 PLACEMENT, REVIEW AND MONITORING

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

Camera placement includes, ~~but is not limited to,~~ existing cameras such as those located at San Pablo Park, the Berkeley Marina, and cameras placed in Council identified and approved intersections throughout the City, and potential future camera locations as approved by City Council.

Commented [LJ1]: Supp 2

Commented [DMR2R2]: "Supp 2" reference in comments indicates Department accepted proposed edits.

Commented [LJ3]: Supp 2

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Commented [LJ11]: Noted from CC 5/23/23

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 administrative investigations. The video surveillance system may shall only be utilized 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 and natural disasters.~~
- ~~(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 withaid in traffic related investigations.~~
- ~~(h) To document employee, employer, and/or customer conduct during interactions to safeguard the employee, employer, and customer from misconduct~~

The cameras shall only record video images and not sound. Recorded images may be used and video surveillance may be monitored for the following purposes:

- (a) To support specific and active criminal or administrative investigations.
- (a)(b) To respond and review critical incidents or natural disasters.

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

Commented [LJA12]: Reflects council discussion from May 23rd meeting to set clear purpose for allowable BPD uses. Uses language proposed in Supp 2

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. **BPD Members** seeking access to the camera system shall seek the approval from the Investigations Division Captain, or their designee.

Commented [LJ13]: Supp 2

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

Commented [LJ14]: Supp 2

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

Commented [DMR15]: Retention period remained unchanged for further discussion and decision by Council on 6/13/23.

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 pursuant to this section shall be maintained until such matter is fully adjudicated, at which time it shall be deleted in line with the Department's evidence retention policy, and any applicable orders from the court.

Commented [LJ16]: Supp 2

Commented [LJ17]: Supp 2

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

Commented [LJ18]: Supp 2

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

Commented [DMR19]: Already defined in policy.

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 [the](#) 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 responsibility [ies](#) 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. Department Personnel shall adhere to requirements for External Fixed Video Surveillance Cameras covered in this policy as well as the corresponding Use Policy – 351.

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

1304.2 AUTHORIZED USE

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

The cameras shall only record video images and not sound. Recorded images may be used and video surveillance may be monitored for the following purposes:

(a) To support specific and active criminal or administrative investigations.

(b) To respond and review critical incidents or natural disasters.

~~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~~

Commented [LJA1]: Reflects council discussion from May 23rd meeting to set clear purpose for allowable BPD uses. Uses language proposed in Supp 2

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. BPD mMembers seeking access to the video surveillance system shall seek the approval from the Investigations Division Captain, or their designee.

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

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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 pursuant to this section shall be maintained until such matter is fully adjudicated, at which time it shall be deleted in line with the Department's evidence retention policy, and any applicable orders from the court. All data will automatically delete after the aforementioned retention period by the System Administrator from Public Works.

Any recordings needed as evidence in a criminal or ~~administrative~~~~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 ~~video images~~ from other law enforcement agencies shall be referred to the Investigations Division Captain, or their designee for release in accordance with ~~this policyspecific 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 ~~the~~ Professional Standards Bureau.

1304.12 MAINTENANCE

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

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 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

The cameras shall only record video images and not sound. Recorded images may be used and video surveillance may be monitored for the following purposes:

(a) To support specific and active criminal or administrative investigations.

(b) To respond and review critical incidents or natural disasters.

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

Commented [LJA1]: Reflects council discussion from May 23rd meeting to set clear purpose for allowable BPD uses. Uses language proposed in Supp 2

PUBLIC WORKS DEPARTMENT SURVEILLANCE ACQUISITION REPORT

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
- 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

PUBLIC WORKS DEPARTMENT SURVEILLANCE ACQUISITION REPORT

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.

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.

PUBLIC WORKS DEPARTMENT SURVEILLANCE ACQUISITION REPORT

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.
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.

PUBLIC WORKS DEPARTMENT SURVEILLANCE ACQUISITION REPORT

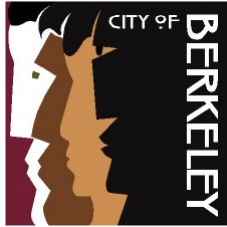
J. ALTERNATIVES

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.

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.



Kate Harrison
Councilmember District 4

SUPPLEMENTAL 3 AGENDA MATERIAL

Meeting Date: May 23, 2023

Item Number: 46

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

Supplemental/Revision Submitted By: Councilmember Harrison

“Good of the City” Analysis:

The analysis below must demonstrate how accepting this supplement/revision is for the “good of the City” and outweighs the lack of time for citizen review or evaluation by the Council.

Submitting the Police Accountability Board’s March 2023 recommendation letters (without attachments) regarding Fixed Surveillance Cameras and Unmanned Aerial Systems.

This supplemental is for the “Good of the City” because under the Surveillance Ordinance and Charter the PAB is charged with providing recommendations on proposed policies.

Consideration of supplemental or revised agenda material is subject to approval by a two-thirds vote of the City Council. (BMC 2.06.070)

A minimum of **42 copies** must be submitted to the City Clerk for distribution at the Council meeting. This completed cover page must accompany every copy.

Copies of the supplemental/revised agenda material may be delivered to the City Clerk Department by 12:00 p.m. the day of the meeting. Copies that are ready after 12:00 p.m. must be delivered directly to the City Clerk at Council Chambers prior to the start of the meeting.

Supplements or Revisions submitted pursuant to BMC § 2.06.070 may only be revisions of the original report included in the Agenda Packet.

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



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Berkeley Police Department

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Police Accountability Board
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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.



**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

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Police Accountability Board
&
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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.

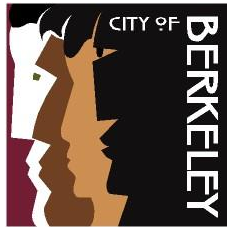
The PAB recognizes that UAS technology has the potential to be used for legitimate law enforcement purposes. However, to ensure the technology is used responsibly and transparently, policies must be put in place to guide their use. The PAB believes that the policy being considered by the BPD should clearly 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.

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Kate Harrison
Councilmember, District 4

SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: May 23, 2023

Item number: 46

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

Submitted by: Councilmember Harrison

RECOMMENDATION:

Adopt revised version of the External Fixed Surveillance Cameras Policy 351 consistent with Councilmember Taplin and Kesarwani's legislative intent and 2021 Council action approving the budget referral.

BACKGROUND

The authors' 2021 budget referral item was explicit that it was limited to criminal investigations: "deter gun violence and obtain evidence to solve criminal investigations." In addition, the authors explicitly stated their limited intent: "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."

Nevertheless, the policy proposed by BPD broadly expands uses to include monitoring of pedestrian and traffic activity, and civil investigations.

Further, in approving the camera budget referral in 2021 the Council was clear to state that data should be strictly used for "active [criminal] investigations only." Minutes from the Council action in October 2021 read:

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

The amended version included in this item narrows the scope to the version Council approved.

The proposed Policy 351 as drafted also attempts to re-litigate the question of whether video or image recordings constitute "government records" that have to be kept for a year or more. During the Parking Enforcement ALPR development process, Councilmember Harrison successfully worked with the City Attorney to determine that collection of data which did not result in an investigation does not constitute a government record in and of itself. For example, thousands of drivers may pass through a given intersection in a day; images of their vehicles should not be retained unless part of an active City investigation. As with ALPRs parking enforcement, data should only be retained for purposes identified in the policy. The proposed version clarifies that unless a video recording has a nexus to an active investigation, use of force by a police officer, detention, arrest, or recordings relevant to a formal or informal complaint, all recordings shall be purged within 30 days.

Finally, as drafted, Policy 351 permits expansive installation of cameras potentially at locations not approved by Council with the phrase "Camera placement includes, but is not limited to." The policy also conflates two distinct types of surveillance: recording and live monitoring, which needs to be delineated and clarified to match the authors' and Council's intent. This updated version of Policy 351 separates policies around recording and monitoring to properly achieve the intent of the authors and Council.

ATTACHMENT

Revised BPD Policy 351

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. Department Personnel shall adhere to requirements for External Fixed Video Surveillance Cameras covered in this policy as well as the corresponding Surveillance Use Policy – 1304.

351.2 POLICY

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

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

351.3 OPERATIONAL GUIDELINES

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

351.3.1 PLACEMENT, [REVIEW](#) AND MONITORING

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

Camera placement includes, ~~but is not limited to~~: existing cameras such as those located at San Pablo Park, the Berkeley Marina, and cameras placed in Council identified and approved 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 [pursuant to Section 351.5](#) may be used for [specific and active City](#) criminal or [civil administrative](#) investigations. The video surveillance system may be ~~use~~[monitored by the City](#)~~ful strictly~~ for the following purposes:

- (a) ~~To [support specific and active criminal or administrative investigations](#) prevent, deter and identify criminal activity.~~
- (b) ~~To address identified areas of criminal activity.~~
- (e)(b) [To respond to critical incidents or natural disasters.](#)
- (d) ~~To assist in identifying, apprehending and prosecuting offenders.~~
- (e) ~~To document officer conduct during interactions to safeguard the rights of the public and officers.~~
- (f) ~~To monitor pedestrian and vehicle traffic activity in order to assist with traffic related investigations.~~
- (g) ~~To document City of Berkeley employee, employer, and/or customer conduct during interactions to safeguard the City of Berkeley 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. ~~BPD Members~~ 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 BPD members are complying with ~~in~~ this policy, other applicable department policy and applicable laws. Supervisors should ensure such use and access is appropriately documented.

351.4.1 VIDEO LOG

No one without authorization will be allowed to login and view the recordings. Access to the data must be obtained through the Public Works Department. 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

Video surveillance recordings are transient means to create potential government records, but are not government records in and of themselves. Except as otherwise permitted in this section, video surveillance recordings shall be purged within thirty (30) days. ~~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 pursuant to this section shall be maintained until such matter is fully adjudicated, at which time it shall be deleted in line with the Department's evidence retention

policy, and any applicable orders from the court.

Any recordings needed as evidence in a criminal or [civil-administrative](#) 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-video](#) from other law enforcement agencies shall be referred to the Investigations Division Captain, or their designee for release in accordance with [this policy](#) [and](#) a specific [and active and legitimate law enforcement purpose](#) [criminal investigation](#).

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 [the](#) 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 responsibility of the Public Works Department to facilitate and coordinate any updates and required maintenance.



Office of the City Manager

ACTION CALENDAR

June 13, 2023

(Continued from May 23, 2023)

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Jennifer Louis, Chief of Police
Subject: Surveillance Ordinance items related to Fixed Surveillance Cameras and Unmanned Aerial Systems (UAS)

RECOMMENDATION

Adopt a Resolution approving the Surveillance Ordinance items related to Fixed Surveillance Cameras and Unmanned Aerial Systems (UAS).

FISCAL IMPACTS OF RECOMMENDATION

There are no additional fiscal impacts associated with the acquisition of this equipment. There may be minimal fiscal impacts associated with training staff on the use of Fixed Surveillance Cameras.

INTRODUCTION

The City of Berkeley enacted the Surveillance Ordinance in 2018 with the stated purpose 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 policies the Department decided to develop parallel equipment '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 parameters of both policies. Recognizing the important of the Surveillance Use Policies, the Department has a chapter in our Departmental Policies specifically 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 completed acquisition

and use policies which underwent review by the Police Accountability Board and Public Safety Policy Committee.

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

The Berkeley Police Department has made several exigent uses of Unmanned Aerial System (UAS) technology and believes circumstances may arise in the future necessitating further use. The Surveillance Ordinance provides guidance to 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

Each of the above 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.

Each of the above policies received City Attorney office review. Attached to this report are the revised versions of all the aforementioned policies considering feedback from the Police Accountability Board and Public Safety Policy Committee meetings. Track changes are included to show the revisions the Department made.

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 Department provided the PAB the acquisition and use policies for UnManned Aerial Systems on January 24, 2023 and Fixed Cameras on February 8, 2023. The PAB provided written recommendations to the Department and the PSPC. The Department provided information and solicited feedback on these policies from the Public Safety Policy Committee at the Committees March 20, 2023 and April 24, 2023 meetings.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects, climate impacts, or sustainability opportunities associated with the subject of this report.

CONTACT PERSON

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

ATTACHMENTS:

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

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. Department Personnel shall adhere to requirements for External Fixed Video Surveillance Cameras covered in this policy as well as the corresponding Surveillance Use Policy – 1304.~~

351.2 POLICY

The Berkeley Police Department utilizes a video surveillance system to enhance its anti-crime strategy, to effectively allocate and deploy personnel, and to enhance safety and security in public areas and City property. 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:

REVISED-351 External Fixed Video Surveillance Cameras (Final).docx

- 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)~~(f) To monitor pedestrian and vehicle traffic activity in order to assist with traffic related investigations.
- ~~(h)~~(g) To document City of Berkeley employee, employer, and/or customer conduct during interactions to safeguard the City of Berkeley 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 responsibilityies 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. Department Personnel shall adhere to requirements for External Fixed Video Surveillance Cameras covered in this policy as well as the corresponding Use Policy – 351.

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

1304.2 AUTHORIZED USE

Only BPD members who receive training on this policy, who are then granted access by an administrator may access the data from the video surveillance cameras. This data may only be accessed to further a legitimate law enforcement purpose. 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)~~(f) To monitor pedestrian and vehicle traffic activity in order to assist with traffic related investigations.
- ~~(h)~~(g) To document City of Berkeley employee, employer, and/or customer conduct during interactions to safeguard the City of Berkeley 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 responsibility 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-vi.~~ vii-vi. To monitor pedestrian and vehicle traffic activity in order to assist with traffic related investigations.

~~viii-vii.~~ viii-vii. To document City of Berkeley employee, employer, and/or customer conduct during interactions to safeguard the City of Berkeley 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.

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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.

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.

Policy
611

Berkeley Police Department
Law Enforcement Services Manual

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. This policy is intended to be the Use Policy, however all aspects of the Surveillance Use Policy – 1303 which corresponds with the Unmanned Aerial System is equally applicable. Department Personnel shall adhere to requirements for Unmanned Aerial Systems covered in this policy as well as the corresponding Surveillance Use Policy – 1303.

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.

All requests and deployments shall be reported annually in the Surveillance Technology Report as outlined in BMC 2.99.070. Additionally, the Department shall publish data regarding the specific requests and deployments on the Department's transparency portal within 14 days of use.

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.

Unmanned Aerial System (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.

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:

Unmanned Aerial System (UAS) Operations

- (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 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. Department Personnel shall adhere to requirements for Unmanned Aerial Systems covered in this policy as well as the corresponding Use Policy – 611.

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 investigations has concluded and/or adjudicated.

All requests and deployments shall be reported annually in the Surveillance Technology Report as outlined in BMC 2.99.070. Additionally, the Department shall publish data regarding the specific requests and deployments on the Department's transparency portal within 14 days of use.

1303.9 THIRD-PARTY DATA-SHARING

Data collected from the UAS may be shared with the following:

Surveillance Use Policy-Unmanned Aerial System (UAS)

- (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.

1303 APPENDIX A

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). Department Personnel shall adhere to requirements for Unmanned Aerial Systems covered in this policy as well as the corresponding Surveillance Use Policy – 1303. 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:

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

- i. Barricaded suspects;
- ii. Hostage situations;
- 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

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

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

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.

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.

All requests and deployments shall be reported annually in the Surveillance Technology Report as outlined in BMC 2.99.070. Additionally, the Department shall publish data regarding the specific requests and deployments on the Department's transparency portal within 14 days of use.

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.

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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

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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

An 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.

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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 drone, 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

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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.

DRAFT

RESOLUTION NO. ##,###-N.S.

SURVEILLANCE ORDINANCE ITEMS: FIXED SURVEILLANCE CAMERAS
AND UNMANNED AERIAL SYSTEMS

WHEREAS, the Berkeley City Council adopted Ordinance NO. 7,592-N.S., the Surveillance Technology Use and Community Safety Ordinance on March 13, 2018; and

WHEREAS, BMC section 2.99.020 (4) mandates a Surveillance Use Policy for use of Surveillance Technology; and

WHEREAS, External Fixed Video Surveillance Cameras and Unmanned Aerial System are considered Surveillance Technology per BMC section 2.99.020 (1); and

WHEREAS, per BMC section 2.99.030 (1)(b), requires the City Manager to obtain City Council approval for the acquisition of new Surveillance Technology, Fixed Video Surveillance Cameras, by placing an item on the Action Calendar; and

WHEREAS, per BMC section 2.99.030 (1)(c), requires the City Manager to obtain City Council approval for the use of new Surveillance Technology, Unmanned Aerial System by placing an item on the Action Calendar.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it approves the acquisition and Use Policies for the External Fixed Video Surveillance Cameras and for the Unmanned Aerial System.

