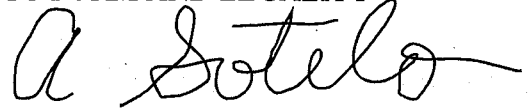


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OAKLAND

APPROVED AS TO FORM AND LEGALITY



CITY ATTORNEY'S OFFICE

AS AMENDED BY CITY COUNCIL ON OCTOBER 18, 2022

OAKLAND CITY COUNCIL

RESOLUTION NO. 89450 C.M.S.

**RESOLUTION APPROVING THE PRIVACY ADVISORY COMMISSION
RECOMMENDED OAKLAND POLICE DEPARTMENT (OPD)
AUTOMATED LICENSE PLATE READER (ALPR) SURVEILLANCE USE
POLICY (SUP) AND RECOMMENDATION THAT THE DEPARTMENT
UPGRADE THE ALPR SOFTWARE WITH A VENDOR THAT WILL
COMPLY WITH THE SURVEILLANCE TECHNOLOGY ORDINANCE**

WHEREAS, ALPR technology consists of cameras that can automatically scan license plates on vehicles that are publicly visible; ALPR reads these license plates with a lens and charge -coupled device (CCD) that senses and records automotive vehicles, and connects the image to an optical character recognition (OCR) system that can connect the image to that actual license plate characters; the ALPR system in a patrol vehicle is activated when the user logs into the software from their vehicle-based computer and starts the system. The system, once initiated, runs continuously and photographs vehicles until turned off manually; the system compares license plate characters against specific databases, and stores the characters along with the date, time, and location of the license plate in a database; and

WHEREAS, OPD's ALPR system updates daily with three California Department of Justice (CA DOJ) hotlists: felony wants, stolen plates, stolen vehicles, and there is no OPD ALPR connection to any federal databases; and

WHEREAS, OPD uses ALPR for: 1) the immediate (real time) comparison of the license plate characters against CA DOJ databases; and 2) the storage of the license plate characters – along with the date, time, and location of the license plate – in a database that is accessible by law enforcement (LEA) agencies for investigative purposes; and

WHEREAS, ALPR technology helps OPD personnel to leverage their public presence and to more effectively use their limited time for more critical crime response activity; and

WHEREAS, Oakland's Surveillance Ordinance No.13489 C.M.S., adopted by the City Council on May 15, 2018 adds Chapter 9.64 to the Oakland Municipal Code (OMC), and covers policy areas related to surveillance technology; and

WHEREAS, OMC 9.64.030.1.C requires City Council approval for new and existing surveillance technology; additionally, OMC Section 9.64.020.1 requires that, "Prior to seeking

City Council approval for existing city surveillance technology under Section 9.64.030, city staff shall submit a Surveillance Impact Report (SIR) and Surveillance Use Policy (SUP) to the Privacy Advisory Commission (PAC) for its review at a regularly noticed meeting. The SIR and SUP must address the specific subject matter specified for such reports as defined under 9.64.010"; and

WHEREAS, OPD staff presented a draft Department General Order (DGO) I-12: Automated License Plate Reader Technology as its Surveillance Use Policy (SUP) as well as a draft Surveillance Impact Report (SIR) at the following PAC meeting dates: January 3, 2019; February 7, 2019; March 7, 2019; April 4, 2019; January 7, 2021; and February 4, 2021; and

WHEREAS, Appendix A to OPD's current SUP provides over 100 examples of CA DOJ hotlist hits notifications to officers; and Appendix B provides over 30 cases where ALPR provided OPD with leads to investigate violent crime including assault, human trafficking, robbery, and homicide; and

WHEREAS, OPD has provided a 2019 and 2020 ALPR Annual Report that provides data on the number of license plate scans, matches and requests for ALPR data by outside agencies; and

WHEREAS, OPD personnel have explained to PAC Commissioners during PAC meetings that the OPD ALPR system is outdated and that a newer system must be acquired to provide data regarding how and for what reasons personnel query the system; and

WHEREAS, the SIR (Attachment X to the accompanying report) covers the following areas as required by the Surveillance Ordinance: • Information describing the system and how it works; • Purpose of the technology; • Locations where, and Situations in which the technology may be used; • Privacy Impact of the technology; • Mitigations to prevent privacy impacts; • Data Types and Sources; • Data Security; • Costs; • Third Party Dependence; • Alternatives Considered; and • Track Record of Other Entities; and

WHEREAS, DGO I-12: Automated License Plate Reader (Attachment X to the accompanying report) covers relevant areas required by OMC 9.64.030, including the following areas: • Technology Description; • Authorized Use; • Use Restrictions; • Data Access, Data Collection and Retention, and Security; • Monitoring and Reporting; and • System Training; and

WHEREAS, OPD is prohibited from acquiring any new ALPR technology, based on the requirements of OMC 9.64, until a SUP and SIR are reviewed by the PAC and approved by the City Council; and

WHEREAS, at the February 4, 2021 PAC meeting the PAC Chair introduced a written motion which read as follows: "Based on the above findings, my motion and recommendation to the City Council is that due to a) the years-long refusal of OPD to comply with its own policy, b) the years-long refusal of OPD to comply with state law pertaining to use of such technology, c) the years-long refusal of OPD to honor public record requests into such use, d) the lack of demonstrated efficacy from use of such technology, and e) the negative impact to our privacy interests and civil liberties from the collection of highly revealing location and association data without a necessary criminal predicate justifying such collection, that OPD's use of automated license plate readers immediately terminate, that the Chief of Police shall certify in writing to the

City Council and the PAC that such use has terminated within thirty (30) days, and that for a period of two years OPD may not seek City Council approval for ALPR use. The above findings #1-18 are to be incorporated into the PAC's recommendation to the Council," after which the PAC voted unanimously to recommend to the City Council a two-year moratorium during which OPD shall not be allowed to use ALPR technology; and

WHEREAS, staff presented two resolutions to the City Council at its May 18, 2021 meeting: 1) a resolution to adopt the OPD ALPR SIR and SUP; and 2) a resolution that "Within 30 days of the date of the below, the Chief of Police shall certify in writing to the City Council and the Privacy Advisory Commission (PAC) that ALPR Use has been terminated;" and the City Council voted not to adopt either resolution but referred the item back to the PAC for further discussion to see if OPD and the PAC could reach some agreement on a single resolution; and

WHEREAS, OPD staff brought back revised ALPR SIR and SUP as well as annual reports for the calendar years of 2019 and 2020 (as required by OPD's earlier ALPR Policy 430) to the August 2021 PAC meeting, and at this meeting PAC Commissioners challenged the documents for lacking proof of the efficacy of ALPR given the expressed negative privacy impacts, and also expressed frustration that OPD could not produce annual reports from prior years although OPD personnel explained that prior year annual reports cannot be produced given the destruction of data over two years old given OPD's current ALPR data retention schedules; and

WHEREAS, OPD staff brought back to the PAC at its August 2021 meeting revised ALPR SIR and SUP as well as annual reports for calendar years 2019 and 2020 (as required by OPD's existing ALPR policy), and at this meeting PAC Commissioners expressed frustration with OPD and its use of ALPR policy compliance, including: not originally producing annual reports as required by Policy ALPR 430, not conducting audits according to Policy 430, for not following a consistent data retention schedule, and for not providing enough evidence to satisfy PAC Commissioners that the evidence of efficacy warranted the potential for negative privacy impacts; and

WHEREAS, OPD staff expressed to the PAC a willingness to reduce the ALPR data retention schedule to less than one year in support of the PACs privacy concerns, OPD's legal counsel remains that state law does not support an ALPR data retention period of less than one year; and

WHEREAS, OPD staff also presented to the PAC procedures for improving auditing and records management to improve all data management systems in alignment with comments and concerns made by PAC Commissioners, as well as better illustrated cases where ALPR data between one month and one year at time of query was useful in violent crime investigations; and

WHEREAS, OPD staff again brought back revised ALPR SIR and SUP as well as 2019 and 2020 annual reports to both the October and November 2021 PAC meetings; and

WHEREAS, at the November 2021 PAC meeting, PAC Chair Brian Hofer presented a spreadsheet of the findings the PAC adopted in May to display what progress had been made on these findings, stating that in some areas, the situation improved, such as a lower retention period, but many others, in his opinion are unchanged, and then proposed a two-year moratorium on the use of ALPR by OPD, and the PAC Commissioners voted unanimously, same as in

February 2021, to recommend a two year moratorium against OPD using ALPR technology for two years; and

WHEREAS, OPD staff again brought a options for City Council's consideration to the September 13, 2022 Public Safety Committee to adopt resolution either 1) approving the Oakland Police Department (OPD) Automated License Plate Reader (ALPR) Surveillance Use Policy (SUP) and Surveillance Impact Report (SIR) or 2) approving a resolution that within 30 days of the date of passage of this resolution, the Chief of Police shall certify in writing to the City Council and the Privacy Advisory Commission (PAC) that the Oakland Police Department (OPD) has terminated its use of Automatic License Plate Reader (ALPR); and

WHEREAS, the September 13, 2022 Public Safety Committee motioned for OPD to return to PAC to answer the PAC's additional questions about OPD's ALPR Use Policy; and

WHEREAS, at their October 6, 2022 meeting, the PAC discussed a new version of the Automated License Plate Reader (ALPR) Surveillance Use Policy (SUP) and made a recommendation that should the City Council authorize a SUP for OPD to use ALPR, such policy shall include additional elements and clarifications including but not limited to data retention and permissible uses of the technology, and also recommended that the City upgrade the ALPR auditing software at an estimated cost of \$16,000 with a vendor that will comply with the Surveillance Technology Ordinance; now, therefore, be it

RESOLVED: that based upon the accompanying staff reports, the Council finds that OPD's ALPR use is an important tool for OPD; and be it

FURTHER RESOLVED: that City Council does hereby: Approve the ALPR Surveillance Use Policy that was recommended by the PAC at its October 6, 2022 meeting (*Attachment GH*) to the report accompanying this resolution) as amended with the following provisions:

- (1) that all ALPR data collected shall be destroyed after six months retention, except for specific information that has been identified within the six-month period as evidence of the commission of a crime per Section G. of the October 6, 2022 Surveillance Use Policy recommended by the Privacy Advisory Commission; and
- (2) that OPD shall provide the Privacy Advisory Commission and the City Council's Public Safety Committee with quarterly reports regarding the efficacy of ALPR, to include at minimum, the following information:
 - (a) case number;
 - (b) date and time that the incident was reported to OPD;
 - (c) justification for the database query;
 - (d) date of any OPD action or response to the incident;
 - (e) nature of the action or response; and
 - (f) confirmation as to whether and how ALPR assisted in resolution of the incident; and
- (3) that no data shall be used or shared with other agencies for the purpose of pursuing criminal charges or civil enforcement against individuals for obtaining, providing, or supporting reproductive health care services, to

- ensure that medical rights of residents of and visitors to Oakland, a Sanctuary City, remain intact; and
- (4) that accessing the data shall be based on a standard of Reasonable Suspicion or greater and the section titled "Database Investigative Queries" in the October 6, 2022 Surveillance Use Policy recommended by the PAC shall be amended to reflect the same; and
- (5) that OPD shall make reasonable efforts to restrict the usage of the ALPR technology to the public right of way and other public property, in alignment with "Restrictions on Use (1) Invasion of Privacy" in the October 6, 2022 Surveillance Use Policy recommended by the Privacy Advisory Commission; and be it .

FURTHER RESOLVED: that pursuant to OMC 9.64.020.2, City Council understands and has considered the PAC's previous recommendation and has worked collaboratively with the PAC and the OPD to disfavor City Council authorization of the authorize acquisition and use of ALPR technology; and be it

FURTHER RESOLVED: That pursuant to OMC Section 9.64.020.2, for the reasons referenced above by and in the agenda report and SIR (*Attachment A*) to the report accompanying this resolution), the City Council finds that the benefits to the community of the surveillance technology outweigh the costs (cost -benefit determination); that the proposal will safeguard civil liberties and civil rights, and that no alternative with a lesser economic cost or impact on civil rights or civil liberties would be as effective; and so authorizes the City Administrator or designee's acquisition and use of ALPR in the PAC's October 6, 2022 recommended SUP for ALPR, as amended above by this City Council (*Attachment GH*); and be it

FURTHER RESOLVED: That in accordance with Article IV, Section 401(6) of the City Charter, the City Attorney's Office shall review and approve all contracts authorized by this resolution as to form and legality before execution, and a copy of each fully executed agreement shall be placed on file with the Office of the City Clerk; and be it

FURTHER RESOLVED: that the City Council recommends that OPD upgrade its existing ALPR software with a vendor that will comply with the Surveillance Technology Ordinance; and be it

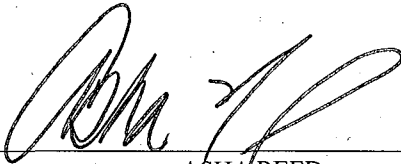
FURTHER RESOLVED: that at any time in the future OPD staff may schedule at a PAC meeting a draft ALPR Use Policy and Impact Report for further consideration as to a new recommendation to the City Council.

IN COUNCIL, OAKLAND, CALIFORNIA, **OCT 18 2022**

PASSED BY THE FOLLOWING VOTE:

AYES - FIFE, GALLO, KALB, KAPLAN, REID, TAYLOR, THAO AND FORTUNATO BAS - 8 PRESIDENT
NOES - 0
ABSENT - 0
ABSTENTION - 0

ATTEST:



ASHA REED
City Clerk and Clerk of the Council of the City of
Oakland, California