



POLICE DEPARTMENT

Council Meeting Date: May 13, 2014
Staff Report #: 14-083

Agenda Item #: F-1

REGULAR BUSINESS: Request for City Council to consider adoption of a resolution or introduction of an ordinance regarding the use of Automated License Plate Readers and neighborhood surveillance cameras

RECOMMENDATION

Staff requests that the City Council consider whether to adopt a resolution or introduce an ordinance regarding the use of Automated License Plate Readers and neighborhood surveillance cameras in the City of Menlo Park.

BACKGROUND

On September 24, 2013, the City Council approved the purchase and installation of mobile Automated License Plate Readers (ALPRs), mounted on three police vehicles. Council also approved the purchase and installation of four fixed neighborhood surveillance cameras, in the Belle Haven neighborhood. The recommendations for this technology came from public input at numerous meetings with the Belle Haven community, regarding an increase in gang violence in the area in 2012.

During the September 24, 2013 meeting, some council members raised privacy concerns regarding the use of the technology. The then Mayor Pro Tem Mueller made a motion to create a Council Subcommittee to explore these privacy concerns and provide direction to staff regarding the drafting of an ordinance and/or resolution for consideration by the City Council. Mayor Pro Tem Mueller and Councilmember Keith were appointed to the subcommittee.

The subcommittee met on several occasions with the Police Chief, Commander and City Attorney. Existing laws, regulations and privacy protections were discussed along with the draft police department policy on the use of ALPRs and neighborhood surveillance cameras. At the conclusion of these discussions, the subcommittee decided to have the City Attorney draft both a resolution and an ordinance to be presented to the full Council for consideration. The subcommittee members recommend that Council adopt an ordinance.

ANALYSIS

The City Attorney has drafted both a resolution of the City Council adopting policies and procedures for the operation of ALPRs and a public safety camera system; and an ordinance of the City Council adding chapter 2.56 [Public Safety Information] to Title 2 of the Menlo Park Municipal Code. The draft copies of both documents are attached.

Resolution

The attached draft resolution includes the procedures for the use, storage, and dissemination of the Automated License Plate Reader equipment. The resolution addresses the privacy concerns discussed by the Council Subcommittee along with the specific retention periods requested by members of the Subcommittee. The resolution also outlines the allowed and prohibited uses of the above mentioned equipment.

If the Council adopts this resolution, it would take effect immediately upon adoption.

Ordinance

The attached draft ordinance also includes the same procedures for the use, storage, and dissemination of the Automated License Plate Reader equipment as set forth in the Resolution. The ordinance addresses the same privacy concerns discussed by the Council Subcommittee along with the specific retention periods requested by members of the Subcommittee. The ordinance also outlines the allowed and prohibited uses of the above mentioned equipment.

If the Council prefers to enact an ordinance rather than the resolution, the Council would introduce the ordinance, which would be considered a first reading and the ordinance would then return to the Council for a second reading and adoption and would then be in effect 30 days after adoption.

IMPACT ON CITY RESOURCES

As the equipment has already been approved and purchased, there is no further impact on City Resources.

POLICY ISSUES

The decision whether to adopt a resolution or enact an ordinance that would then be codified in the City's Municipal Code is a policy matter for determination by the City Council. It should be noted that generally policies regulating internal matters are typically adopted by resolution and policies regulating third party behaviors are typically adopted by Ordinance. In either case, the proposed action is consistent with City policy, department policy and State law.

ENVIRONMENTAL REVIEW

Not Applicable – Activity is not a project as defined by Section 15378 of the CEQA Guidelines.

PUBLIC NOTICE

Public Notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting.

ATTACHMENTS

- A. Draft Resolution of the City Council of the City of Menlo Park Adopting Policies and Procedures for the Operation of ALPR's and the Public Safety Camera System
- B. Draft Ordinance of the City Council adding chapter 2.56 [Public Safety Information] to Title 2 of the Menlo Park Municipal Code.

Report prepared by:
Dave Bertini
Police Commander

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RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
ADOPTING POLICIES AND PROCEDURES FOR THE OPERATION OF
AUTOMATED LICENSE PLATE READERS (“ALPRs”) AND PUBLIC
SAFETY CAMERA SYSTEM**

WHEREAS, the Menlo Park Police Department has acquired Automated License Plate Readers (ALPRs) to be installed on one or more Police Department vehicles to be used by the Department to convert data associated with vehicle license plates for official law enforcement purposes, including identifying stolen and wanted vehicles, stolen license plates and missing persons, and to gather information related to active warrants, homeland security, electronic surveillance, suspect interdiction and stolen property recovery; and

WHEREAS, the City of Menlo Park plans to operate a public safety neighborhood surveillance camera system in fixed locations for the purpose of creating a safer environment for all those who live, work and visit the City, which cameras may be used for the purpose of detecting and deterring crime, to help emergency services personnel maintain public order, to help manage emergency response situations during natural and man-made disasters, to monitor pedestrian and vehicle traffic activity, to assist in the preparation of traffic reports, and to assist City officials in prosecuting and/or defending civil or administrative actions; and

WHEREAS, the City Council is concerned about protecting the privacy of its residents and visitors with respect to the retention and use of data obtained by ALPRs and neighborhood surveillance cameras.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Menlo Park does hereby approve and adopt the following policies regarding the retention and use of data obtained by ALPRs and public safety camera system owned and/or operated by the City of Menlo Park:

1. Definitions

For the purposes of this Resolution, the following words and phrases shall have the meanings ascribed to them in this Section:

- A. “Automated License Plate Reader” or “ALPR” means technology, also known as License Plate Recognition, which provides automated detection of license plates.
- B. “Data” means information gathered by the Automated License Plate Reader in the form of license plates and metadata (location and time license plate was viewed).
- C. “Public Safety Camera System” means cameras that record images only and not sound and that are placed in strategic fixed locations within the City at the direction of the Chief of Police and with the approval of the City Council for the purpose of detecting and deterring crime, to help emergency services personnel maintain public order, to help manage emergency response situations during natural and man-made disasters, to monitor

pedestrian and vehicle traffic activity, to assist in the preparation of traffic reports, and to assist City officials in prosecuting and/or defending civil or administrative actions.

- D. "Recordings" means the recorded images, without sound, recorded by the Public Safety Camera System.

2. Automated License Plate Reader Data Use

- A. Data will be securely transmitted to the Northern California Regional Intelligence Center ("NCRIC") as part of a multi-jurisdictional public safety program created to assist local, state, federal and tribal public safety agencies and critical infrastructure locations with the collection, analysis, and dissemination of criminal threat information, provided NCRIC has executed an agreement with the City agreeing to comply with the retention/destruction provisions set forth in this section.
- B. Data transmitted to NCRIC from the Police Department shall be kept no more than six months, and then destroyed, unless retention of specific identified license plate data is necessary for an active criminal case or pursuant to a valid court order.
- C. Data may only be accessed by law enforcement personnel who are approved to access the data and who have undergone required NCRIC training for legitimate law enforcement purposes only, such as when the data relates to a specific criminal investigation or department-related civil or administrative action.
- D. Data may be accessed by other NCRIC agencies that have executed a Memorandum of Understanding with NCRIC, but only for legitimate law enforcement purposes and by authorized/trained personnel and only in compliance with all policies, procedures and reporting requirements of NCRIC.
- E. Data may be released to other non-NCRIC authorized and verified law enforcement officials and agencies for legitimate law enforcement purposes, with approval of the Chief of Police or Police Commander, provided any such official and/or agency has executed an agreement with the City agreeing to comply with the terms and provisions of Sections 2 and 3 of this Resolution.
- F. All data and images gathered are for official use of the Police Department and because such data may contain confidential California Law Enforcement Telecommunications Systems ("CLETS") information, it is not open to public view or inspection.

3. Prohibited Use of Automated License Plate Reader and Data

- A. ALPR shall not be used to invade the privacy of individuals, to look into private areas or areas where the reasonable expectation of privacy exists, nor shall they be used to harass,

intimidate or discriminate against any individual or group, nor for any purpose not specifically authorized by this Resolution.

- B. Unauthorized access, possession or release of data is a violation of Police Department policy and various federal and state criminal statutes. Any employee, who accesses, possesses or releases data, from the ALPR database without authorization or in violation of this Resolution and such additional policies established by the Police Department, may face department discipline up to and including termination, criminal prosecution and/or civil liability.

4. Automated License Plate Reader Auditing and Reporting

- A. NCRIC will give a quarterly report to the Police Department which shall indicate the number of license plates captured by the ALPR in the City of Menlo Park, how many of those license plates were "hits" (on an active wanted list), the number of inquiries made by Menlo Park personnel along with the justifications for those inquiries, and information on any data retained beyond six months and the reasons for such retention in compliance with Section 2B of this Resolution.
- B. Following receipt of the NCRIC report described in subsection 4A., above, the Police Department shall provide an information report to the City Council.
- C. ALPR system audits will be randomly conducted by the California Department of Justice and in conjunction with yearly CLETS audits.

5. Public Safety Camera System Data Use

- A. Public safety camera recordings may only be used for the purpose of criminal investigations, detecting and deterring crime, to help emergency services personnel maintain public order, to help manage emergency response situations during natural and man-made disasters, to monitor pedestrian and vehicle traffic activity, to assist in the preparation of traffic accident reports, and to assist City officials in prosecuting and/or defending civil or administrative actions.
- B. Recordings will be made in a professional, ethical and legal manner.
- C. All recordings will be stored by the Police Department in a secure area with access restricted to authorized persons, and shall not be accessible by third parties without express permission.
- D. Recordings not otherwise needed for reasons in subsection A. shall be retained for a period of up to 90 days and then erased or recorded over as limited by the storage capacity of the cameras.

- E. Any recordings needed as evidence in a criminal or civil case proceeding or for another reason specified in subsection 5A. shall be collected and booked in accordance with current Police Department evidence procedures.
- F. Recordings may only be released to other authorized and verified law enforcement officials and agencies for legitimate law enforcement purposes as specified in subsection A. with approval of the Chief of Police or Police Commander, provided such official or agency executes an agreement with the City agreeing to comply with the terms and provisions of Sections 5 and 6 of this Resolution, or with a valid court order.
- G. Except as required by a valid court order or other lawful process, recordings do not constitute public records and will not be disclosed to the public.
- H. Facial recognition and cognitive security software may only be used to review recordings from the Public Safety Camera System with the approval of the Chief of Police or Police Commander in specific criminal investigations or specific threats to public safety.

6. Prohibited Use of Public Safety Camera System and Data

The Public Safety Camera System will not be used to invade the privacy of individuals, to look into private areas or areas where the reasonable expectation of privacy exists. The Public Safety Camera System shall not be used to harass, intimidate or discriminate against any individual or group, nor for any purpose not authorized by this Resolution.

7. Public Safety Camera System Auditing and Reporting

The Chief of Police or his/her designee will conduct an annual review of the Public Safety Camera System, its use, effectiveness and adherence to policy, including frequency and purpose for use of facial recognition or cognitive security software and frequency and purpose for retention of recordings beyond 90 days, and will provide an annual information report to the City Council regarding such review.

BE IT FURTHER RESOLVED by the City Council of the City of Menlo Park that the Police Department is directed to adopt policies to be included in its policy manual consistent with the provisions of this Resolution, which policies may be more restrictive, but not less restrictive, than the policies set forth in this Resolution.

BE IT FURTHER RESOLVED by the City Council of the City of Menlo Park that this Resolution shall be applicable to and be binding upon the use of ALPRs and any public safety camera systems operated by the City of Menlo Park and the policies set forth herein may not be amended, modified or waived, except with the approval of the City Council of the City of Menlo Park.

I, PAMELA AGUILAR, City Clerk of the City of Menlo Park, do hereby certify that the above and foregoing Resolution was duly and regularly passed and adopted at a meeting by said City Council on May 13, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City Council on this 13th day of May, 2014.

PAMELA AGUILAR
City Clerk

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ORDINANCE NO.

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
MENLO PARK ADDING CHAPTER 2.56 [PUBLIC SAFETY
INFORMATION] TO TITLE 2 [ADMINISTRATION AND
PERSONNEL] OF THE MENLO PARK MUNICIPAL CODE**

The City Council of the City of Menlo Park does ordain as follows:

SECTION 1. FINDINGS AND DETERMINATIONS. The City Council of the City of Menlo Park hereby finds and declares as follows:

- A. The Menlo Park Police Department has acquired Automated License Plate Readers to be installed on one or more Police Department vehicles to be used by the Police Department to convert data associated with vehicle license plates for official law enforcement purposes, including identifying stolen and wanted vehicles, stolen license plates and missing persons, and to gather information related to active warrants, homeland security, electronic surveillance, suspect interdiction and stolen property recovery.
- B. The City of Menlo Park plans to operate a Public Safety Camera System for the purpose of creating a safer environment for all those who live, work and visit the City, which cameras may be used for detecting and deterring crime, to help safeguard against potential threats to the public, to help manage emergency response situations during natural and man-made disasters and to assist City officials in providing services to the community.
- C. The City Council is concerned about protecting the privacy of its residents with respect to the retention and use of data obtained by Automated License Plate Readers and the Public Safety Camera System and desires to add Chapter 2.56 [Public Safety Information] to Title 2 [Administration and Personnel] of the Menlo Park Municipal Code to address the use and retention of this information.

SECTION 2. ADDITION OF CODE. Chapter 2.56 [Public Safety Information] is hereby added to Title 2 [Administration and Personnel] of the Menlo Park Municipal Code to read as follows:

Chapter 2.56

PUBLIC SAFETY INFORMATION

Sections:

- 2.56.010 Purpose
- 2.56.020 Definitions
- 2.56.030 Automated License Plate Reader Data Use
- 2.56.040 Prohibited Use of Automated License Plate Reader and Data
- 2.56.050 Automated License Plate Reader Auditing and Reporting
- 2.56.060 Public Safety Camera System Data Use
- 2.56.070 Prohibited Use of Public Safety Camera System and Data
- 2.56.080 Public Safety Camera System Auditing and Reporting
- 2.56.090 Adoption of Department Policies

2.56.010 Purpose

The purpose of this Chapter is to provide for the proper use of data and recordings gathered by the City through the use of Automated License Readers and the Public Safety Camera System.

2.56.020 Definitions

For the purposes of this Chapter, the following words and phrases shall have the meanings ascribed to them in this Section:

- A. "Automated License Plate Reader" or "ALPR" means technology, also known as License Plate Recognition, which provides automated detection of license plates.
- B. "Data" means information gathered by the Automated License Plate Reader in the form of license plates and metadata (location and time license plate was viewed).
- C. "Public Safety Camera System" means cameras that record images only and not sound and that are placed in strategic fixed locations within the City at the direction of the Chief of Police and with the approval of the City Council for the purpose of detecting and deterring crime, to help emergency services personnel maintain public order, to help manage emergency response situations during natural and man-made disasters, to monitor pedestrian and vehicle traffic activity, to assist in the preparation of traffic reports, and to assist City officials in prosecuting and/or defending civil or administrative actions.
- D. "Recordings" means the recorded images, without sound, recorded by the Public Safety Camera System.

2.56.030 Automated License Plate Reader Data Use

- A. Data will be securely transmitted to the Northern California Regional Intelligence Center (“NCRIC”) as part of a multi-jurisdictional public safety program created to assist local, state, federal and tribal public safety agencies and critical infrastructure locations with the collection, analysis, and dissemination of criminal threat information, provided NCRIC has executed an agreement with the City agreeing to comply with the retention/destruction provisions set forth in this section.
- B. Data transmitted to NCRIC from the Police Department shall be kept no more than six months, and then destroyed, unless retention of specific identified license plate data is necessary for an active criminal case or pursuant to a valid court order.
- C. Data may only be accessed by law enforcement personnel who are approved to access the data and who have undergone required NCRIC training for legitimate law enforcement purposes only, such as when the data relates to a specific criminal investigation or department-related civil or administrative action.
- D. Data may be accessed by other NCRIC agencies that have executed a Memorandum of Understanding with NCRIC, but only for legitimate law enforcement purposes and by authorized/trained personnel and only in compliance with all policies, procedures and reporting requirements of NCRIC.
- E. Data may be released to other non-NCRIC authorized and verified law enforcement officials and agencies for legitimate law enforcement purposes, with approval of the Chief of Police or Police Commander, provided any such official and/or agency has executed an agreement with the City agreeing to comply with the terms and provisions of Sections 2.56.030 and 2.56.040.
- F. All data and images gathered are for official use of the Police Department and because such data may contain confidential California Law Enforcement Telecommunications Systems (“CLETS”) information, it is not open to public view or inspection.

2.56.040 Prohibited Use of Automated License Plate Reader and Data

- A. ALPR shall not be used to invade the privacy of individuals, to look into private areas or areas where the reasonable expectation of privacy exists, nor shall they

be used to harass, intimidate or discriminate against any individual or group, nor for any purpose not specifically authorized by this Chapter.

- B. Unauthorized access, possession or release of data is a violation of Police Department policy and various federal and state criminal statutes. Any employee, who accesses, possesses or releases data, from the ALPR database without authorization or in violation of this Chapter and such additional policies established by the Police Department, may face department discipline up to and including termination, criminal prosecution and/or civil liability.

2.56.050 Automated License Plate Reader Auditing and Reporting

- A. NCRIC will give a quarterly report to the Police Department which shall indicate the number of license plates captured by the ALPR in the City of Menlo Park, how many of those license plates were “hits” (on an active wanted list), the number of inquiries made by Menlo Park personnel along with the justifications for those inquiries, and information on any data retained beyond six months and the reasons for such retention in compliance with Section 2.56.030B.
- B. Following receipt of the NCRIC report described in subsection A., above, the Police Department shall provide an information report to the City Council.
- C. ALPR system audits will be randomly conducted by the California Department of Justice and in conjunction with yearly CLETS audits.

2.56.060 Public Safety Camera System Data Use

- A. Public safety camera recordings may only be used for the purpose of criminal investigations, detecting and deterring crime, to help emergency services personnel maintain public order, to help manage emergency response situations during natural and man-made disasters, to monitor pedestrian and vehicle traffic activity, to assist in the preparation of traffic accident reports, and to assist City officials in prosecuting and/or defending civil or administrative actions.
- B. Recordings will be made in a professional, ethical and legal manner.
- C. All recordings will be stored by the Police Department in a secure area with access restricted to authorized persons, and shall not be accessible by third parties without express permission.

- D. Recordings not otherwise needed for reasons in subsection A. shall be retained for a period of up to 90 days and then erased or recorded over as limited by the storage capacity of the cameras.
- E. Any recordings needed as evidence in a criminal or civil case proceeding or for another reason specified in subsection A. shall be collected and booked in accordance with current Police Department evidence procedures.
- F. Recordings may only be released to other authorized and verified law enforcement officials and agencies for legitimate law enforcement purposes as specified in subsection A. with approval of the Chief of Police or Police Commander, provided such official or agency executes an agreement with the City agreeing to comply with the terms and provisions of Sections 2.56.060 and 2.76.070, or with a valid court order.
- G. Except as required by a valid court order or other lawful process, recordings do not constitute public records and will not be disclosed to the public.
- H. Facial recognition and cognitive security software may only be used to review recordings from the Public Safety Camera System with the approval of the Chief of Police or Police Commander in specific criminal investigations or specific threats to public safety.

2.56.070 Prohibited Use of Public Safety Camera System and Data

The Public Safety Camera System will not be used to invade the privacy of individuals, to look into private areas or areas where the reasonable expectation of privacy exists. The Public Safety Camera System shall not be used to harass, intimidate or discriminate against any individual or group, nor for any purpose not authorized by this Chapter.

2.56.080 Public Safety Camera System Auditing and Reporting

- A. The Chief of Police or his/her designee will conduct an annual review of the Public Safety Camera System, its use, effectiveness and adherence to policy, including frequency and purpose for use of facial recognition or cognitive security software and frequency and purpose for retention of recordings beyond 90 days, and will provide an annual information report to the City Council regarding such review.

2.56.90 Adoption of Department Policies

The Police Department is directed to adopt policies to be included in its policy manual consistent with the provisions of this Chapter, which policies may be more restrictive, but not less restrictive, than the policies set forth in this Chapter.

SECTION 3. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION. The City Council hereby finds that this ordinance is not subject to the provisions of the California Environmental Quality Act (“CEQA”) because the activity is not a project as defined by Section 15378 of the CEQA Guidelines. The ordinance has no potential for resulting in physical change to the environment either directly or indirectly.

SECTION 4. SEVERABILITY. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 5. EFFECTIVE DATE AND PUBLISHING. This Ordinance shall become effective 30 days after the date of its adoption. Within 15 days of its adoption, the Ordinance shall be posted in three public places within the City of Menlo Park, and the Ordinance, or a summary of the Ordinance prepared by the City Attorney shall be published in the local newspaper used to publish official notices for the City of Menlo Park prior to the effective date.

INTRODUCED on the ____ day of _____, 2014.

PASSED AND ADOPTED as an Ordinance of the City of Menlo Park at a regular meeting of the City Council of the City of Menlo Park on the ____ day of _____, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Pamela Aguilar
City Clerk

Ray Mueller
Mayor