



PUBLIC CORRESPONDENCE

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With the Flock ALPR system approved for Los Altos, we hope that as representatives of the public, City Council will strengthen our ALPR policies to safeguard our civil liberties and privacy rights. As LARE members, we readily admit that we are not legal experts, but we have done extensive research into the changes we are recommending, and they have strong support from the ACLU, the US Department of Justice, and/or the Policing Project from NYU School of Law, all of whom very clearly are legal experts in policing.

Here, we first briefly describe the 6 recommendations we feel are most important to implement, in priority order. We cite the research and organizations that support these changes in the next section for better readability. As always, we are happy to discuss any of the particular changes.

Changes Requested

1. Change the wording in section 462.4(g) and 462.4(h)(1) to bring into compliance with USDOJ recommendations and follow CA case law rulings:

(g) ~~if practicable~~, the officer ~~should~~ **must** verify an ALPR response through the California Law Enforcement Telecommunications System (CLETS) before taking enforcement action that is based solely on an ALPR alert. Once an alert is received, the operator ~~should~~ **must** confirm that the observed license plate from the ALPR system matches the license plate of the observed vehicle. Before any law enforcement action is taken due to an ALPR alert, the alert will be verified through a CLETS inquiry via MDC or through dispatch. Members will not take any police action that restricts the freedom of any individual based solely on an ALPR alert unless it has been validated. **This provision shall not prevent a law enforcement officer from taking immediate action when a verifiable emergency situation exists for officer safety.**

(h) Hot Lists- designation of hot lists to be utilized by the ALPR system shall be made by the ALPR Administrator or her/his designee. Occasionally, there may be errors in the ALPR's system's read of a license plate. Therefore, an alert alone shall not be a basis for police action (other than following the vehicle of interest). Prior to initiation of a stop of a vehicle or other intervention based on an alert, Los Altos Police Department members shall undertake the following steps:

1. Verification of status on a Hot List. An officer must receive confirmation from a communications dispatcher or other department computer device, that the license plate is still stolen, wanted or otherwise of interest before proceeding (~~absent exigent circumstances~~).
2. Visual verification of license plate number. Officers shall visually verify that the license plate of interest matches with the image of the license plate number captured (read) by the LPR, including both the alphanumeric characters of the license plate, state

of issuance, and vehicle descriptors before proceeding. Officers alerted to the fact that an observed motor vehicle's license plate is entered as a "Hot plate" or "hit" in a specific BOLO (be on the lookout) list are required to ~~make a reasonable effort to~~ confirm that a wanted person is actually in the vehicle and/or that a reasonable basis exists before a Department member would have a lawful basis to stop the vehicle.

2. Change the wording in section 462.4(a), 462.4(b) and 462.4(c) to align with ACLU recommendations:

462.4 OPERATIONS

Use of an ALPR is restricted to the purposes outlined below. Department members shall not use or allow others to use the equipment or database records for any unauthorized purpose (Civil Code § 1798.90.51; Civil Code § 1798.90.53).

(a) ~~An ALPR shall only be used for official law enforcement business.~~ ALPR hotlists may be used and ALPR historical data may be accessed for the following investigative purposes:

- (i) Pursuing information relevant to an ongoing criminal investigation of a felony, violent crime, or terrorist act;
- (ii) Apprehending an individual with an outstanding felony warrant;
- (iii) Locating a missing or endangered person; or
- (iv) Locating a lost or stolen vehicle.

(b) ~~An ALPR may be used in conjunction with any routine patrol operation or criminal investigation. Reasonable suspicion or probable cause is not required before using an ALPR.~~

(c) ~~ALPR may be used to canvass license plates around any crime scene. Partial license plates and unique vehicle descriptions reported during major crimes should be entered into the ALPR system in an attempt to identify suspect vehicles.~~

3. Change 462.4(h) to clearly define hotlists that can be used for ALPR hit notifications to align with Brennan Center and Electronic Frontier Foundation recommendations:

462.4(h) Hot Lists- ~~designation of hot lists to be utilized by the ALPR system shall be made by the ALPR Administrator or her/his designee.~~ The following hotlists are approved for use by the ALPR system. Any additions must be approved by the City Council.

- (i) NCIC Stolen Vehicle files; ·
- (ii) NCIC Stolen plates and Stolen Canadian plates; ·
- (iii) NCIC Wanted persons; ·
- (iv) NCIC Missing or Endangered person files;

- (v) NCIC Nationwide Domestic Violence Protection Orders
- (vi) NCIC Known or Suspected Terrorist;
- (vii) NCIC Sexual Offender;

4. Change 462.5 Data Collection & Retention to align with ACLU recommendations and reflect our agreement with Flock Safety.

462.5

The Administrative Division Captain is responsible for ensuring systems and processes are in place for the proper collection and retention of ALPR data.

The City contracted ALPR vendor will store the fixed position ALPR data and ensure proper maintenance and security of data stored in their data towers. The vendor will purge their data at the end of 30 days of storage. However, this will not preclude Los Altos Police Department from maintaining any data obtained from the system after that period pursuant to any open/active investigations relevant to the vehicle data. **Data saved locally that is not being used in an open/active investigation will be purged after 30 days.**

Information gathered or collected and records retained by the vendor, will not be sold, **by either the vendor or by PD, and will only be** accessed or used **by the PD** for ~~any reason other than~~ legitimate law enforcement or public safety purposes.

5. Make audit findings public in 462.6

The audit will be documented in the form of an internal department memorandum to the Chief of Police. The memorandum will 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 will be filed and retained by the Custodian of Records. **The memorandum, minus any personally identifiable information (PII) will also be made available to the public.**

In addition, a designated law enforcement agency will do an annual audit of ALPR data, as an added layer of accountability, to ensure members of the Los Altos Police Department are in compliance with this policy. **This annual audit will also be made publicly available, minus PII, to ensure transparency and accountability.**

6. Ensure our compliance with Assembly Bill 1242 for Reproductive Rights in 462.7

(d) The Chief of Police or the authorized designee will consider the California Values Act (Government Code 7282.5; Government Code 7284.2 et seq), and [Assembly Bill 1242 for Reproductive Rights](#) before approving the release of ALPR data. The Los Altos Police Department does not permit the sharing of ALPR data gathered by the City or its contractors/subcontractors for purpose of federal immigration enforcement, these federal immigration agencies include Immigrations and Customs (ICE) and Customs and Border Patrol (CBP). [The Los Altos Police Department also does not permit sharing of ALPR data with out-of-state authorities in states that have criminalized abortion.](#)

Research

1. When the PD gets an alert that a car's license plate has matched a hotlist (like the stolen car database), our policy outlines procedures that should be followed prior to engaging with the car/driver due to the high potential for error. However, our Lexipol policy makes repeated exceptions for "exigent circumstances" or "If practicable" (section 462.4(g), 462.4(h)(1)) when specifying these steps. Instead of the broad language that Lexipol has created, it is critical that we adopt stronger language such as what the USDOJ suggests on Required Steps Preliminary to Police Action in

<https://vrnclearinghousefiles.blob.core.windows.net/documents/License%20Plate%20Reader%20Policy%20Development%20Template.pdf> policy point H.2. (page 18), quoted here:

"Whenever a license plate reader alerts on license plate information, prior to taking any law enforcement action, officers will be required, to the fullest extent possible, to visually verify that the actual vehicle license plate information matches the license plate information used and alerted upon by the LPR system, including both alphanumeric characters of the license plate and the state of issuance; verify the current status of the plate as active through [insert name of source, such as mobile information terminal [MDT] query, NCIC, etc.]; and confirm whether the alert pertains to the registrant of the car or the car itself. Receipt of an LPR alert for a stolen or felony vehicle may not rise to the level of reasonable suspicion and is not sufficient probable cause to arrest without confirmation that the alert is still valid and active. If the alert is for another type of transaction, the officer will read the description of the alert and follow the appropriate action or reporting method. If an LPR alert cannot be verified both visually and for validity, then law enforcement should not act on the alert and it should be rejected. If the officer witnesses a violation of law or other action that establishes reasonable suspicion for a stop, the officer may conduct a stop based on that reasonable suspicion. This provision shall not prevent a law enforcement officer from taking immediate action when a verifiable emergency situation exists for officer safety."

This policy point clearly balances flexibility for officers in emergencies as well as restricting unauthorized, unsafe and unlawful practices.

Why is this important? As shown by Green vs. City & County of SF case in 2014 <https://willamette.edu/law/resources/journals/wlo/9thcir/2014/05/green-v.-city--cnty.-of-san-francisco.html>, "*An officer who does not verify the plates of a stolen vehicle while making a stop may be making an unlawful stop.*" **Our policy as currently written would allow officers to make unlawful stops, opening our city up for lawsuits.**

2. Much clearer limits on ALPR usage should be set than what we have in section 462.4(a), 462.4(b), and 462.4(c). This is supported by the ACLU, and was actually recommended as changes to the Alameda ALPR Policy. https://www.aclunc.org/sites/default/files/20140129-aclu_analysis_of_alameda_alpr_policy.pdf pages 5 & 6. While this policy is old, our Lexipol policy still has the same problematic wording as the original Alameda one. Instead, we support taking specific usages recommended by the Policing Project - NYU School of Law <https://static1.squarespace.com/static/58a33e881b631bc60d4f8b31/t/622f6cc6d019c948ad3f904a/1647275206590/PP+Model+ALPR+Statute.pdf> p.2, section III (B).

This model policy describes a prohibited use case in section III (C), which we are happy to see explicitly called out in our "Permitted/Prohibited Uses" section.

Why is this important? As shown in the ACLU analysis, the lack of limits on ALPR usage by 462.4(a) & 462.4(b) allows for its widespread deployment for almost any use case. 462.4(c) **is permissive of using ALPRs to monitor and discourage constitutionally protected activities by directing officers to pay special attention to "major incidents".**

3. Originally, Chief Averiett proposed that we would only subscribe to Amber, Silver, and Stolen Vehicle alerts or "hotlists". Now, our policy states that the ALPR Administrator will decide which hotlists we can subscribe to, and since there is no requirement for any approval of changes, the hotlists could change at any time. The National Criminal Information Center (NCIC) hotlists include:

- NCIC Stolen Vehicle files; ·
- NCIC Stolen plates and Stolen Canadian plates; ·
- NCIC Wanted persons; ·
- NCIC Missing or Endangered person files;
- NCIC Supervised Release (Federal Probationers);
- NCIC Nationwide Domestic Violence Protection Orders;
- NCIC Gang File
- NCIC Known or Suspected Terrorist;
- NCIC Sexual Offender;

In addition, we could also subscribe to other hotlists including
-DMV Records of Suspended/Revoked Registrations.

- CalGang
- No insurance
- Parking violations/fines

(compiled from various sources, including <https://www.ojp.gov/pdffiles1/nij/grants/239605.pdf>, <https://www.brennancenter.org/our-work/research-reports/automatic-license-plate-readers-legal-status-and-policy-recommendations>, <https://www.ojp.gov/pdffiles1/nij/grants/247283.pdf>, and https://www.alamedaca.gov/files/assets/public/departments/alameda/police/hate-crime-stats/automated_license_plate_readers_alprs_.pdf)

Why is this important? We do not want to allow hotlist hits for DMV fines or auto insurance violations. In addition, The NCIC Gang File and the statewide CalGang file have been known for being notoriously secretive and error prone. The LAPD had to suspend its usage of CalGang after 20 officers were found guilty of framing innocent people as gang members in 2019.

<https://ktla.com/news/local-news/lapd-suspends-use-of-calgang-database-months-after-announcing-probe-of-officers-accused-of-falsifying-information/>. If we want to focus on property crime reduction through our use of ALPRs, then our usage does not need to be open-ended. In addition, the ALPR hotlists should not be changeable without public notice and review and a vote by City Council. This is also mentioned in <https://www.brennancenter.org/our-work/research-reports/automatic-license-plate-readers-legal-status-and-policy-recommendations> in the "Policy Concerns" section. Usage of only the hotlists for the most serious crimes is also in the Electronic Frontier Foundation's recommendations for ALPR policy, found here: <https://www.eff.org/deeplinks/2020/02/california-auditor-releases-damning-report-about-law-enforcements-use-automated>

4. License plate & thumbprint data can be downloaded from the Flock cloud system onto a local machine at the PD. This data should be deleted eventually, just like the cloud data is deleted after 30 days, unless being used for an investigation.

Additionally, the third paragraph seemed to indicate that both the vendor and PD could sell, access, and use the data as long as it was for legitimate law enforcement or public safety reasons. Actually, Flock makes it very clear that they do not own our data, therefore this clause should not create an opening whereby they could sell, access, and use our data. In addition, our own PD should not be able to sell our data, only access and use it.

Why is this important? Downloaded data, just like data in the cloud should not have long periods of retention - it opens up data for misuse. This is supported by the ACLU. https://www.aclunc.org/sites/default/files/20140129-aclu_analysis_of_alameda_alpr_policy.pdf page 8. It is also important to keep in mind the specifics of our Flock Safety agreement, where we are the owners of our data and not create additional loopholes for Flock Safety to be able to sell, use, or access our data.

5. We spoke with George Brown, the Executive Director for the Stanford Center for Racial Justice. He made this suggestion to further improve transparency of our Police Department.

Why is this important? Improves transparency of the police department to the public.

6. There have been a slew of news articles (<https://www.sacbee.com/news/politics-government/capitol-alert/article276848586.html> , <https://www.sfchronicle.com/politics/article/abortion-license-plate-readers-18119527.php>, <https://www.eff.org/press/releases/civil-liberties-groups-demand-california-police-stop-sharing-drivers-location-data>) uncovering various CA police agencies (including Gilroy PD in Santa Clara County and the Sacramento Sheriff's Office) that have been found to be sharing ALPR data with law enforcement in states that criminalize abortion. So just as we have explicitly stated our non-sharing with ICE, we should explicitly state our non-sharing with states that have criminalized abortion.

Why is this important? We need to ensure that California law is followed when it comes to protecting women's reproductive rights.

From: jollyperk@aol.com
To: [Public Comment](#)
Subject: [External Sender]Agenda item #10
Date: Saturday, July 8, 2023 5:57:20 PM

Dear members of the city council,
We are writing in support of the “flock safety” pilot program through the LAPD. We live in the santa rita neighborhood that banded together a year ago to self fund such a program. We have one of the two cameras for our neighborhood stationed on our property. We feel it has been effective technique in helping to deter crime.
Thank you,
Jolly and Ron Perkocha
900 santa Rita ave
Los altos, ca

From: [Janice Bohman](#)
To: [Public Comment](#)
Subject: [External Sender]Public Comment Agenda #10, 11 July
Date: Sunday, July 9, 2023 10:29:25 AM

Los Altos City Council:

My neighborhood installed Flock cameras last year in response to a number of burglaries. My family supports this program to help the police department deter and solve crimes. Please approve and fund the Flock camera program for Los Altos.

Thank you,
Janice Bohman
777 Dixon Way

From: reed@taussigfamily.com
To: [Public Comment](#)
Subject: Public Comment Agenda #10, 11 July
Date: Sunday, July 9, 2023 4:58:47 PM

I have lived in North Los Altos for 33 years. For the majority of that time crime was almost non-existent in the city. Many of my friends didn't even bother to lock the doors to their homes or cars. But over the past two to three years things have changed. There have been repeated burglaries, car break-ins, catalytic converter thefts, mailbox thefts and porch delivery thefts in my neighborhood. These events have changed the conversation in the neighborhood from positive conversation to what can we do about crime.

To some, maybe this seems like we are in an arms race with the criminals and that these kind of surveillance measures threaten our privacy. It is a legitimate concern, however, having your home broken into and ransacked, your valuables stolen, your physical safety potentially put at risk also is a direct assault on your privacy and happiness with potential downstream threats of identity theft and further financial cost to you.

Our neighbors, including myself, pitched in and purchased for ourselves FLOCK license plate reader cameras to help protect the neighborhood. The whole of Los Altos Hills has taken this step as well. I would urge the city council to approve the FLOCK cameras as a needed protection for the citizens of Los Altos.

Best regards,

Reed Taussig
461 Van Buren Street
Los Altos, CA
