



Coalition for Justice and Accountability
"Building a community where everyone feels safe."

September 19, 2022

200 E. Santa Clara Street,
San José CA 95113

Re: Agenda item 3.5, "Digital Privacy Program Update and Public Camera Use," of the San José City Council meeting on September 20, 2022

Dear Mayor and Councilmembers,

The undersigned organizations are community organizations in the San José area that are dedicated to protecting civil rights and civil liberties, including the right to be free from intrusive, discriminatory, and dangerous government surveillance. We continue to express strong opposition to the proposed deployment of Automatic License Plate Systems (ALPRs) in San José.

As explained in details in the written public comments submitted by the Santa Clara Valley Chapter of ACLU of Northern California to the PSFSS Committee (<https://sanjose.legistar.com/View.ashx?M=F&ID=10661349&GUID=2EE5541A-3A8E-445B-8937-C0EC33879172>), ALPR systems will make our community less, not more, safe. Despite claims that ALPR systems can reduce crime, researchers have expressed concerns about the rapid acquisition of this technology by law enforcement without evidence of its efficacy. Multiple studies have found no relationship between the deployment of ALPR and vehicle thefts. Instead, ALPR systems have been shown to violate privacy, facilitate dangerous police stops¹, and risk exposing our immigrant community members to harm.

Recognizing that the City Council already approved the ALPR project at the Monterey-Curtner intersection on September 21, 2021 and approved the allocation of \$250,000 for another ALPR project on November 30, 2021, we strongly urge the City Council to mitigate the impact on civil liberties and privacy by adopting a strong, comprehensive, and thorough Data Usage Protocol ("DUP"). We appreciate the City's effort to incorporate some of ACLU's feedback to the Digital

¹ See <https://www.aclu.org/news/privacy-technology/san-francisco-woman-pulled-out-car-gunpoint-because>

Privacy Advisory Taskforce to protect our privacy, but we still have a number of outstanding concerns that the DUP does not go far enough to ensure our civil liberties are being protected.

Section 2 of the DUP states, “The Department and authorized vendors may utilize ALPR technology and any data generated only to do the following: ...” The policy should specify the scenarios in which third-party vendors should be allowed to access the data, much less *use* the data. We question why third-party vendors would need to use the data, and are concerned about personal data being accessed and used by more people and institutions. The policy should specify what types of third-party vendors are included, and the specific situations in which access is necessary.

Usage of ALPR systems for low-level, nonviolent incidents like traffic infractions, as listed in item 4 of Section 2, only opens more community members to further-reaching government surveillance. We caution the city to consider how using these systems for low-level issues can have unintended and disproportionate impacts on communities who already experience over-policing, such as Black people, immigrants, and Muslim communities.

SB 34, codified as Civil Code, Division 3, Title 1.81.23, prohibits a public agency from sharing, transferring, or making available ALPR information, defined in the law to include “information or data collected through the use of an ALPR system,” to entities that are not California public agencies, such as federal or out-of-state government agencies. The Policy should reflect this law and its sharing restriction. While we recognize that the DUP does not mention sharing data with out-of-state agencies, explicit language prohibiting sharing with federal or out-of-state government agencies should be included to fully comply with SB 34.

As we shared in previous feedback to the Digital Privacy Advisory Task Force, usage of ALPR systems should be prohibited in the investigation of low-level offenses such as minor drug offenses, prostitution, loitering, and graffiti.

We continue to urge the city to shorten the data retention period. Data retention for one year will amass an enormous trove of data. If there are specific incidents that are of concern to law enforcement, the policy can be written to allow data related to those incidents to be preserved for a longer period of time, instead of a blanket one-year retention period.

As part of accountability, the DUP should state that the audit logs will be available to any individual charged with a crime as a result of ALPR usage.

We have concerns about the proposed sharing policy, described in Section 10 of the DUP, which would allow the city to “...agree to share access to its ALPR database by law enforcement agencies within the State of California on an agency-by-agency basis if an agreement is put into place.” We strongly urge the city to limit the sharing of ALPR data. Moreover, the policy should prohibit the sharing of ALPR data with California agencies unless they agree to prohibit further sharing with out-of-state and federal agencies. Finally, law enforcement should be prohibited from sharing ALPR data with any law enforcement agency for purposes of enforcing prohibitions on reproductive or gender-affirming care, or interstate travel for reproductive or gender-affirming care.

Moving forward, we urge the City to engage community members in a discussion about non-surveillance alternatives to ALPR that have been demonstrated to actually improve the health and safety of communities like our own. The Digital Privacy Advisory Task Force was consulted only after the Monterey-Curtner APLR project was approved by City Council. Similarly, city staff was asked to work out privacy concerns after approval. This process operates under the assumption that surveillance technologies will always outweigh the cost to civil liberties and that privacy can be protected and harms mitigated. This is simply not true. These technologies pose significant risks and deserve the time and attention of thorough consideration and community involvement. Pursuant to the backlogged list of 2021 priority setting, we encourage the relevant Committee and City Council to pursue adoption of a Surveillance Technology Ordinance to codify best practices for meaningful community engagement and to ensure transparency, accountability, and oversight for all proposals to acquire or use surveillance technology.

Thank you very much for your kind attention.

Sincerely,

Victor Sin
Chair (volunteer)
Santa Clara Valley Chapter of ACLU of Northern California

Richard Konda
Executive Director
Asian Law Alliance

Aram James
Director of Advocacy
Coalition for Justice and Accountability

Bob Nuñez
President
San Jose / Silicon Valley NAACP

Ruth Silver Taube
Coordinator
Santa Clara County Wage Theft Coalition