



March 8, 2018

Mayor Jeffrey Cooper
Vice Mayor Thomas Aujero Small
Councilmember Jim B. Clarke
Councilmember Göran Eriksson
Councilmember Meghan Sahli-Wells
Culver City Council
9770 Culver Blvd.
Culver City, CA. 90232

Re: ACLU of Southern California's Opposition to Culver City's Proposed License Plate Reader and Drone Programs

Dear Members of the Culver City City Council,

We write to raise significant concerns with the Culver City Police Department's proposed acquisition of an automated license plate reader ("ALPR") system from Vigilant Solutions, and another proposal to purchase unmanned aerial vehicles ("drones").

Both proposals are fundamentally flawed. By proposing a partnership with Vigilant Solutions, LLC—an Immigration and Customs Enforcement ("ICE") contractor—and by proposing policies that fail to address the significant privacy and civil rights concerns raised by ALPR systems, the City places immigrants and their families at serious risk. In addition, Culver City's drone proposal lacks meaningful safeguards to prevent dragnet and discriminatory surveillance, and as a result threatens the privacy and civil rights of Culver City residents, particularly those of color. The ACLU of Southern California joins the chorus of concerned Culver City residents who oppose the acquisition of these surveillance technologies, including the Culver City Action Network. We urge the City Council to heed the call of community members by withholding approval for these proposals.

I. Culver City's partnership with ICE contractor Vigilant Solutions, LLC undermines its status as a sanctuary city.

In response to the sustained cruelty wrought by the federal government's immigration enforcement actions, Culver City led the State by declaring itself to be a sanctuary city that would not cooperate with federal immigration authorities, precipitating

municipalities across the state and ultimately the State of California to follow suit.¹ In its Sanctuary resolution passed at the end of its March 27, 2017 meeting, Culver City “reaffirm[ed] its commitment to welcome individuals with diverse backgrounds, and [to] uphold and protect the human and civil rights of all individuals under the State and Federal Constitutions.”² Unfortunately, the City’s consideration of Vigilant’s ALPR system and of drones threatens that very commitment.

The Council should not approve the acquisition of Vigilant’s ALPR system for three principal reasons. First, the company partners with ICE to provide ALPR data collected by its municipal partners nationwide, and has refused to end its partnership following news of this secret arrangement. Second, Culver City’s draft ALPR policy does not adopt explicit and verifiable restrictions that prohibit access to residents’ data by ICE and other third parties. Third, the policy does not adequately protect residents from more generalized concerns about unwarranted government surveillance and data collection inherent in the use of an ALPR system.

No community should acquire or deploy license plate readers without proper safeguards that protect all residents, given the invasiveness of the technology and the breadth of revealing information it can collect about individuals. ALPR systems collect and store license plates of cars that pass through ALPR cameras’ fields of view, which, after being matched to dates, times, and location, can be built into a database that reveal sensitive information about where individuals work, live, associate, and visit.³ Further, ALPR systems are easily misused to harm minority communities. For example, police have used license plate readers to target Muslim Americans by spying on mosques,⁴ and rogue officers have monitored the license plates of LGBT community members.⁵ And blind reliance by San Francisco police on these readers led to the wrongful detention of a black

¹ “Culver City Becomes a Sanctuary City,” City of Culver City Press Release, March 29, 2017, <http://www.culvercity.org/Home/Components/News/News/390/722?arch=1>.

² Resolution No. 2017-R 025, “A Resolution of the City Council of the City of Culver City, California, Declaring Culver City to be a Sanctuary City for all its Residents Regardless of Immigration Status,” March 27, 2017, *available at* <http://www.culvercity.org/home/showdocument?id=7666>.

³ *You Are Being Tracked: How License Plate Readers Are Being Used to Record Americans’ Movements*, American Civil Liberties Union, July 2013, <https://www.aclu.org/files/assets/071613-aclu-alprreport-opt-v05.pdf>. “Automatic License Plate Readers,” Electronic Frontier Foundation, <https://www.eff.org/sls/tech/automated-license-plate-readers>.

⁴ Adam Goldman and Matt Apuzzo, *With cameras, informants, NYPD eyed mosques*, Associated Press, Feb. 23, 2012, <https://www.ap.org/ap-in-the-news/2012/with-cameras-informants-nypd-eyed-mosques>;

⁵ Michael Powell, Sari Horwitz, Toni Locy, *Lt. Stowe’s Sudden Fall From Grace*, Wash. Post, Nov. 30, 1997, <https://www.washingtonpost.com/archive/politics/1997/11/30/lt-stowes-sudden-fall-from-grace/a6ac37f2-57d2-47fb-b6da-0f8f6a45dde8>.

woman at gunpoint, triggering a multi-year civil rights lawsuit.⁶ As with other surveillance technologies, police deploy license plate readers disproportionately in poor areas, regardless of crime rates.⁷

These concerns have taken on a new urgency with news that ICE has struck a deal that allows the agency to access license plate information held by Vigilant.⁸ Vigilant's database is comprised of data collected by its public sector and private customers operating the company's license plate readers.⁹ As a result of their contract, ICE can tap into Vigilant's nationwide database of license plate and associated location records for the purposes of targeting immigrants while they are driving to work, running errands, or bringing their kids to school.¹⁰ Vigilant has not released the contract or meaningfully explained its business relationship with ICE to the general public.

Alarming, Culver City's draft ALPR policy does not prohibit the sharing of local ALPR data with ICE. The draft policy simply states that "sharing ALPR data with other law enforcement or prosecutorial agencies shall be consistent with California SB54." While the policy appropriately acknowledges Senate Bill 54 passed last year, also known as the California Values Act, the draft policy lacks language that actually prohibits the voluntary sharing of ALPR information with ICE "for immigration enforcement purposes." Cal. Govt. Code §§ 7282, 7282.5. Such information sharing violates the spirit, if not the letter, of the California Values Act, which prohibits the City from sharing personal information about individuals with federal immigration authorities. Since Vigilant has not made public details of its contract with ICE, the City cannot be sure whether ICE can directly or indirectly (through another Vigilant client) access data captured here.

Elsewhere, the policy explicitly states, "ALPR data may be shared with other law enforcement or prosecutorial agencies." The policy does not explicitly prohibit

⁶ Matt Cagle, *San Francisco – Paying the Price for Surveillance Without Safeguards*, ACLU of Northern California, May 22, 2014, <https://www.aclunc.org/blog/san-francisco-paying-price-surveillance-without-safeguards>.

⁷ Alvaro M. Bedoya, *The Color of Surveillance*, Slate.com, Jan. 19, 2016, http://www.slate.com/articles/technology/future_tense/2016/01/what_the_fbi_s_surveillance_of_martin_luther_king_says_about_modern_spying.html; Alex Campbell & Kendall Taggart, *The Ticket Machine*, BuzzFeed News, Jan. 26, 2016, <https://www.buzzfeed.com/alexcampbell/the-ticket-machine>.

⁸ Russell Brandom, *Exclusive: ICE is about to start tracking license plates across the US*, The Verge, Jan. 26, 2018, <https://www.theverge.com/2018/1/26/16932350/ice-immigration-customs-license-plate-recognition-contract-vigilant-solutions>.

⁹ *Id.*

¹⁰ Privacy Impact Assessment, *Acquisition and Use of License Plate Reader (LPR) Data from a Commercial Service*, DHS/ICE/PIA-039(a), Dec. 27, 2017, <https://www.dhs.gov/sites/default/files/publications/privacy-pia-ice-lpr-january2018.pdf>.

information sharing with ICE or any other out-of-state government agency; if anything, the policy permits such sharing, subject to internal reporting requirements. The policy also does not place contractual limits on the City's engagement with Vigilant, does not impose any restrictions on Vigilant's system to restrict direct sharing with ICE or via any Vigilant-administered network that is accessible by ICE, and does not require the City perform periodic audits to verify how it uses or discloses ALPR data.

Finally, the policy does not meaningfully address widespread community concerns about the invasiveness of ALPR data collection and the risks such information gathering poses to all residents, regardless of immigration status. The policy does not meaningfully limit the type of investigations ALPR data can be used for, does not mandate that records concerning innocent people be deleted promptly, does not place strong access controls on who can access collected data within the City's police department, and does not mandate public auditing or reporting on how the City operates the system.

In response to these serious concerns, Culver City Police Department circulated a letter claiming that the federal Driver's Privacy Protection Act protects individuals' privacy by placing limits on the Department's ability to match license plates with names and addresses of car owners. But this protection is illusory: as the ACLU has previously noted, the Act is riddled with loopholes that allow the Department to easily make the link between a license plate and an individual.¹¹ In any event, the abuses and privacy violations flowing from the use of the technology all occur despite the presence of the Act on the books.

Given the conflict between the City's sanctuary resolution and Vigilant's status as an ICE contractor, given the secrecy which shrouds the sharing of Vigilant's database with local and federal authorities, and given the failure of the proposed policy to adequately protect all individuals who live and travel through the City, we urge the City Council to heed the call of community members and end plans to partner with Vigilant on an ALPR system.

II. The City's proposed drone policy does not protect residents from their invasive surveillance powers.

ACLU SoCal also opposes the City's proposed acquisition of unmanned aerial vehicles, commonly known as drones, for use by the Culver City Police Department in light of the inadequate restrictions the City's proposed drone policy places on their use.

¹¹ Statement of Legislative Counsel Gregory T. Nojeim on Drivers' Privacy and Amendments to the Driver's Privacy Protection Act Before the Senate Appropriations Subcommittee on Transportation, April 4, 2000, *available at* <https://www.aclu.org/other/statement-legislative-counsel-gregory-t-nojeim-drivers-privacy-and-amendments-drivers-privacy> (listing at least six loopholes that prevent drivers from objecting to disclosure of their identities to police).

Drones offer unprecedented surveillance power to law enforcement agencies, and intrude into the public's privacy in a far more significant and invasive fashion than most investigative tools commonly used by police officers. Drones are small, quiet, agile, and can be deployed surreptitiously and without notice.¹² Given their power, drones can—and do—surveil individuals in their private homes, workplaces, and places of worship, as well as in public spaces and during public events like protests.¹³ When coupled with powerful technologies like high-resolution video cameras, infrared night vision, facial recognition software, and other forms of biometric data collection programs—none of which Culver City's draft policy prohibit—drones enable law enforcement agencies to collect broad swaths of data about individuals and community members which law enforcement traditionally would not have access to.

Culver City's draft drone use policy does not protect individuals and their families from these risks. First, the draft policy does not circumscribe permissible uses of drones to only those where their use would be both necessary and important, instead setting forth a non-exhaustive list of permissible uses that contemplate even the most basic law enforcement functions (e.g. "crowd control situations," "illegal drug investigations," and "perimeter searches and security"). The policy's prohibition on "random surveillance" introduces confusing ambiguity and further deprives police operators and the public of clear guidance on the rules for these devices.

Second, the draft policy does not prohibit equipping drones with invasive surveillance technologies, like biometric data collection technologies, facial recognition capabilities, or thermal imaging devices.

Third, and as with the proposed ALPR policy, the draft drone policy does not adequately limit the collection, retention, and sharing of sensitive data that may be acquired by the Culver City Police Department's drones. The policy does not specifically provide for the deletion of recordings and media made of innocent people, and provides for an overbroad minimum data retention time of two years. Nor does the policy list immigration status in its anti-discrimination provisions, or specifically prevent the sharing of collected data with federal immigration authorities. And although the policy states that release of drone media and recorded images outside the Police Department is "strictly prohibited," it

¹² "Due to the heights at which drones can fly, they are often beyond the range of sight for most people. In addition, drones can also be designed to be very small and maneuverable. This means drone surveillance often occurs without the knowledge of the individual being monitored." *Domestic Unmanned Aerial Vehicles (UAVs) and Drones*, Electronic Privacy Information Center (last visited March 8, 2018), <https://epic.org/privacy/drones/>.

¹³ Jeff Stone, *UK police may use drones to monitor protests, siege operations*, International Business Times (January 5, 2016), <http://www.ibtimes.com/uk-police-may-use-drones-monitor-protests-siege-operations-2250287>.

simultaneously gives the Chief of Police nearly unbridled discretion to release collected data to anyone.

In light of these concerns, Southern Californians overwhelmingly reject the use of drones by local law enforcement. When the Los Angeles Police Department proposed acquiring and using drones last year, Angelinos inundated LAPD with letters, public comments, and petitions opposing the deployment of drones. Prior to a vote on the program, LAPD received over 1,675 letters in response to requests for public comment on its proposed drone program, with fewer than one hundred of those letters supported the LAPD's use of drones (amounting to about 6% of all comments received).¹⁴ The vast majority of the letters urged LAPD to halt the program in its entirety, with the remaining urging the Department to impose strenuous limits on the drones' use. The public also expressed its opposition to the drone program in two separate petitions, one with over 1,900 signatories¹⁵ and another with more than 800 signatories.¹⁶

In light of the public's opposition to the drone program and the policy's failure to appropriately restrict their use, we also urge the City Council not to approve their acquisition under its draft policy.

III. The City Council must maintain open and public debate about the City's use of surveillance technologies.

We commend the City Council for publically considering both the ALPR proposal and the Police Department's drone program. This type of public debate should occur each time surveillance technology is considered. To ensure that it does, we also urge the Council to memorialize a process that requires transparency, oversight, and meaningful community engagement on the future deployment of surveillance technologies.

Multiple cities in California and across the United States are currently considering an ordinance that requires public debate, the creation of a robust usage policy with restrictions on data use and sharing, and annual oversight of all surveillance technologies. The ACLU has published a model ordinance that cities can adapt for their local needs.¹⁷

¹⁴ Makeda Easter and Kate Mather, *Civilian oversight panel hears guidelines for LAPD use of drones*, (October 3, 2017), available at <http://www.latimes.com/local/lanow/la-me-ln-lapd-drones-20171002-story.html>.

¹⁵ See "Protect Your Privacy; Keep Drones Out of L.A.," ACLU of Southern California, www.aclusocal.org/lapd-drone-petition-signatures (1,982 signatories as of March 7, 2018).

¹⁶ See "Drone-Free LAPD. No Drones, LA!", MoveOn.org Petitions, <https://petitions.moveon.org/sign/drone-free-lapd-no-drones-1> (803 signatories as of March 4, 2018).

¹⁷ The ACLU's surveillance reform resources are available online: *Making Smart Decisions About Surveillance: A Guide for Community Transparency, Accountability & Oversight*, ACLU of Northern California, <https://www.aclunc.org/smartabouts-surveillance>; *Community Control Over Police Surveillance*, ACLU, <https://www.aclu.org/issues/privacy-technology/surveillance-technologies/community-control-over-police-surveillance>.

This ordinance would require agencies seek public approval of surveillance technologies in advance of their deployment, and requiring them to explain the purpose of the acquisitions, the policies that will govern their use, their costs, their risks to communities' privacy and civil rights, and the availability of alternatives to the technology. If acquired, technologies must be reexamined to ensure any benefits outweigh the civil liberties and civil rights costs. Armed with this information, the public can make smarter and more informed decisions about whether to sanction the use of such technologies—helping secure much-needed trust between the community and its government.

In conclusion, we urge the City Council to withhold approval of the proposed ALPR system and the acquisition of drones. Please let us know if you would like to discuss the prospect of such an ordinance for Culver City, or if you have any other questions. Thank you for considering this letter and our feedback.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Tajsar', with a long horizontal line extending to the right.

Mohammad Tajsar