

MINUTES OF THE REGULAR CITY COUNCIL MEETING
TUESDAY- -FEBRUARY 6, 2018- -7:00 P.M.

Mayor Spencer convened the meeting at 7:07 p.m. and led the Pledge of Allegiance.

ROLL CALL - Present: Councilmembers Ezzy Ashcraft, Matarrese, Oddie, Vella, and Mayor Spencer – 5.

Absent: None.

AGENDA CHANGES

None.

PROCLAMATIONS, SPECIAL ORDERS OF THE DAY AND ANNOUNCEMENTS

(18-058) Proclamation Declaring February 2018 as Black History Month.

Mayor Spencer read the proclamation and presented it to Betty Williams; Margie Sanford; Rosie Parks; and Cindy Acker, Child Unique.

Ms. Williams made brief comments and showed a Proclamation from former Senator Don Perata, newspaper articles and photographs.

Ms. Acker made brief comments.

(18-059) Proclamation Declaring February 6, 2018 as Audrey Lord-Hausman and Richard Hausman Day.

Mayor Spencer read the proclamation and presented it to Ms. Lord-Hausman and Mr. Hausman.

Ms. Lord-Hausman and Mr. Hausman made brief comments.

The Councilmembers made brief comments.

Commended Ms. Lord-Hausman for her work on the universal design ordinance: David Burton, Alameda.

(18-060) Mayor Spencer did the daily reading for the Season for Nonviolence on struggle.

ORAL COMMUNICATIONS, NON-AGENDA

(18-061) Tim Anderson, Renee McLaughlin, Mitchell Dunn, Joan Boucher, Renan Dincer, and Josh Gordonson Maker Farmers, submitted information; discussed the

farm, Upland community and tiny houses; requested assistance from the City Council to help establish and permit the uses.

(18-062) Gretchen Lipow, Alameda Citizens Task Force (ACT), submitted information; stated ACT supports affordable housing and recommends increasing affordable housing requirements.

(18-063) Paula Rainey, Alameda, submitted information on Little Palestine by the Bay event and invited everyone to attend.

(18-064) Ken Peterson, Alameda, expressed support for the Black History Month proclamation and discussed climate change.

(18-065) Rasheed Shabazz, Alameda, announced Black History month events; encouraged everyone to attend.

CONSENT CALENDAR

Councilmember Oddie moved approval of the Consent Calendar.

Councilmember Ezzy Ashcraft seconded the motion, which carried by unanimous voice vote – 5. [Items so enacted or adopted are indicated by an asterisk preceding the paragraph number.]

(*18-066) Minutes of the Regular City Council Meeting Held on January 2, 2018. Approved.

(*18-067) Ratified bills in the amount of \$5,294,180.61.

(*18-068) Recommendation to Authorize the City Manager to Award a Contract in the Amount of \$60,000 to First American Transit for the Discounted Taxi Program Serving Seniors and People with Disabilities. Accepted.

(*18-069) Resolution No. 15344, “Approving Receipt of Revenue from the Caltrans Adaptation Planning Grant Program for Fiscal Year 2017-18, for Preparation of the City of Alameda Climate Adaptation Plan.” Adopted.

REGULAR AGENDA ITEMS

(18-070) Recommendation to Accept Alameda Free Library Fiscal Year 2016-2017 Annual Report.

The Library Director gave a Power Point presentation.

Councilmember Matarrese recognized the Student Connect Program; stated that program is the best program.

Councilmember Oddie suggested a fix it clinic similar to other libraries, which reuses items that would otherwise go into the landfill.

The Library Director stated that the Earth Day committee is discussing a fix it clinic.

Councilmember Ezzy Ashcraft inquired whether the Student Connect Program could be made available to all high school students.

The Library Director responded the program is still in the pilot stage, but staff is looking into adding other schools.

Councilmember Ezzy Ashcraft stated that she hopes all high school students will have access to the program.

Vice Mayor Vella thanked the Library staff for all they do and the programs offered.

Councilmember Matarrese moved approval of accepting the report.

Vice Mayor Vella seconded the motion, which carried by unanimous voice vote – 5.

(18-071) Recommendation to Accept Report on Alameda Crime Data, Statistics, and Trends from 1988 through 2017.

The Police Chief introduced the Crime Prevention Specialist and gave a Power Point presentation.

Mayor Spencer inquired how many cameras for the Sharing Electronic Evidence (SEE) program are around Alameda, to which the Police Chief responded that he does not have a number; stated people need to volunteer to participate in the program.

Mayor Spencer commended the Alameda Police Department for the Shop with a Cop events.

The Police Chief continued the presentation.

Councilmember Oddie inquired about vehicle break-ins due to a key fob extender.

The Police Chief responded a device allows criminals to try to unlock cars with a key fob extender; suggested taking precautions to prevent access to vehicles.

Vice Mayor Vella inquired whether specific information is asked regarding the type of cameras individuals have to be registered in SEE

The Police Chief responded in the affirmative.

Vice Mayor Vella inquired whether the data is available to show how many crimes are committed by people outside of Alameda.

The Police Chief responded that he does not currently have said information; the ratio is approximately 48% from outside of town.

Vice Mayor Vella inquired how long cases are kept open when there is no video or witness to help solve cases.

The Police Chief responded cases are left open; stated cases can be suspended, but can always be reopened; violent crimes are always left open; if there is a statute of limitations, a report will still be done to show who committed the crime.

Expressed concerns with the fear based policy and how residents call in about suspicious people might be the same people advocating for policy and the police forum; urged Council to have regular reporting by race, gender and geography to allow people to see that people in different areas encounter law enforcement differently: Rasheed Shabazz, Alameda.

Outlined the way a criminal might access a vehicle using a key fob extender: Dr. Jeremy Gillula, Electronic Frontier Foundation.

Mayor Spencer inquired whether the code can be copied when someone clicks to lock the car, to which Dr. Gillula responded in the negative.

Councilmember Matarrese moved approval of accepting the report.

Councilmember Ezzy Ashcraft seconded the motion, which carried by unanimous voice vote – 5.

(18-072) Recommendation to Authorize the City Manager, or Her Designee, to Negotiate and Execute Purchase Agreements not to Exceed \$500,000 for the Acquisition of Thirteen Fixed Location Automated License Plate Recognition (ALPR) Systems; and

(18-072A) Resolution No. 15345, “Amending the General Fund and Technology Replacement Fund Budget for Fiscal Year 2017-18.” Adopted.

The Police Chief gave a brief presentation.

Vice Mayor Vella inquired who sets the retention policy, to which the Police Chief responded that he does.

Vice Mayor Vella inquired whether setting the retention policy is within the role of the Police Chief’s discretion, to which the Police Chief responded in the affirmative.

Vice Mayor Vella inquired whether there is a way to limit the access to the information.

The Police Chief responded in the affirmative.

Brian Rodrigues, Northern California Regional Intelligence Center (NCRIC), stated sharing of information with other agencies is only done at the discretion of the official custodian of the data; in response to Senate Bill (SB) 54, Immigration and Customs Enforcement (ICE) has been cut off from the shared data.

Vice Mayor Vella inquired what the policy was prior to SB54.

The Police Chief responded prior to SB54, the policy for Alameda Police Department (APD) was to share information with all other agencies; as soon as he realized ICE could have access, he addressed the situation.

Vice Mayor Vella inquired whether there is a way to know if ICE accessed APD's information.

The Police Chief responded that he does not believe so.

Vice Mayor Vella inquired whether APD receives a notification if another jurisdiction is accessing the information.

Mr. Rodrigues responded it is not possible to look backwards to see who has viewed the information previously.

Vice Mayor Vella inquired if there is a way to change the retention time.

The Police Chief responded the retention time can be set according to the Police Chief's request; stated that he would like to leave the retention policy at six months.

Vice Mayor Vella inquired why policy sets the retention at six months.

The Police Chief responded in the event the crime is reported at a later date; stated six months is a compromise from one year.

Vice Mayor Vella inquired how quickly the data is accessible through the ALPR's.

The Police Chief responded it depends on the type of crime.

Vice Mayor Vella inquired whether data shows how the ALPR information has assisted in solving crimes.

The Police Chief responded that he does not have said data; stated it is difficult to measure the crime that does not occur because people know Alameda has cameras.

Vice Mayor Vella inquired whether there will be signage stating Alameda has ALPR's.

The Police Chief responded signage can be done.

Councilmember Ezzy Ashcraft inquired why the money for the ALPR's is not spent on more police officers and training.

The Police Chief responded the money being spent on the ALPR's is from salary vacancies; stated spending the money is not preventing APD from hiring another officer.

Councilmember Ezzy Ashcraft inquired whether it is challenging to hire new officers, to which the Police Chief responded in the affirmative.

Councilmember Ezzy Ashcraft inquired whether there are retirements coming up in the Police Department.

The Police Chief responded in the affirmative; discussed the difficulties with trying to keep up with the rate of retiring officers.

Councilmember Ezzy Ashcraft inquired whether the camera information could be used to monitor the businesses people frequent or places worship.

The Police Chief responded that is not the intention of APD.

Councilmember Ezzy Ashcraft inquired whether the request is for fixed cameras at the ports to the City, to which the Police Chief responded in the affirmative; stated fixed cameras cannot follow someone around; only a mobile unit could do that.

Councilmember Ezzy Ashcraft inquired whether the audit would capture said information, to which the Police Chief responded the audit would capture the number of hits received and the number of inquiries made into the system.

Councilmember Ezzy Ashcraft inquired whether APD is able to guarantee that ICE would not have access to APD data from an ALPR.

The Police Chief responded that he is 100% certain that ICE cannot access the data from him; stated someone could take a photo and share the information with other agencies but he will ensure anyone working for APD will not share information.

Vice Mayor Vella inquired whether there is an overview photo that is also taken of the vehicle or just the license plate.

The Police Chief responded the cameras APD purchased are designed to only take a photograph of the license plate.

Brian Shockley, Vigilant Solutions, stated two images are taken; an inferred image of

the license plate and a color overview image which does include the area surrounding the license plate; the second image is used for investigations where the Officer may need to identify the make and model of the vehicle.

Vice Mayor Vella inquired whether the image captures parts of the vehicle, to which Mr. Shockley responded in the affirmative.

Councilmember Oddie inquired about the cost for the physical purchase versus the data.

The Police Chief responded part of the contract is for data storage.

Councilmember Oddie inquired whether other vendors can be considered and how going with another vendor would work with the existing cameras.

The Police Chief responded there are other vendors; stated the staff report done in 2013 was a sole source purchase from Vigilant; APD checked with other departments and he feels Vigilant is the best vendor.

Councilmember Oddie inquired whether the City's data is protected due to news reports of ICE accessing Vigilant's information.

The Police Chief responded the data that Vigilant provides to ICE is private data only, not law enforcement data.

Mr. Shockley stated the contract with ICE includes access to private data only.

Councilmember Oddie inquired how the City can guarantee the data will not be shared with ICE.

Mr. Shockley responded in terms of the data security, Vigilant meets or exceeds the security of any law enforcement agency or financial institution.

Councilmember Oddie inquired whether there are ways to be notified if data is accessed or if anyone demands access to the data.

Mr. Shockley responded the data is not Vigilant's data; stated requests for data would be forwarded to the Police Chief.

In response to Councilmember Oddie's inquiry, Mr. Shockley stated the Police Chief would get his personnel to run the report; Vigilant personnel does not have access to the data.

Councilmember Oddie inquired whether an option is to purchase the cameras, but return for more discussion at a later date.

The Police Chief responded in the affirmative.

Councilmember Oddie inquired what the scenario would be in the event that ICE requests information for a criminal investigation.

The Police Chief responded that he has not been asked by ICE for information yet; stated that if he received a request from ICE asking for assistance in a criminal matter, he would request more information and want to see a warrant; he would also report the request to the City Manager; ICE would need to ask for the data.

Councilmember Oddie inquired whether the request would need to be about a suspected criminal or someone who has already been convicted of a violent crime.

The Police Chief responded the most likely scenario would be a suspect identified in a criminal offense and a vehicle associated with the suspect; stated having a search or arrest warrant signed by a judge for a criminal matter is in compliance with SB54 and Sanctuary City laws.

Councilmember Oddie inquired whether the City of Alameda was on the list of cities that received letters from the federal government.

The Police Chief responded in the negative.

Councilmember Matarrese inquired whether the cameras will be on 24 hours a day, 7 days a week and indiscriminately track every license plate that goes past.

The Police Chief responded the cameras photograph the license plates indiscriminately.

Councilmember Matarrese inquired whether deleted data can be recovered, to which the Police Chief responded in the negative.

Councilmember Matarrese inquired whether the data is backed up.

Mr. Shockley responded there are backups, but the backups honor the same retention policy.

Councilmember Matarrese inquired whether an agency that is not authorized by Alameda could access to Alameda's data.

Mr. Shockley responded not through Vigilant System.

Mr. Rodrigues responded not through NCRIC; stated someone could possibly obtain the information through printing.

Councilmember Matarrese stated that he is more concerned with someone obtaining the data electronically.

Councilmember Ezzy Ashcraft inquired how ICE is related to car repossessions and financial institutions.

Mr. Shockley responded there is no connection.

Councilmember Ezzy Ashcraft inquired whether the contract with ICE is recent, to which Mr. Shockley responded the contract originated in 2018.

Councilmember Ezzy Ashcraft inquired whether Vigilant notified APD of the contract.

Mr. Shockley responded a notice was sent out to all California Law Enforcement Agencies immediately following the announcement of the contract; stated the contract itself cannot be discussed.

Councilmember Ezzy Ashcraft stated that she believes Vigilant put the Police Chief at a disadvantage by not giving him a heads up about the contract.

Councilmember Oddie inquired whether data shows the cameras are effective.

The Police Chief responded the Piedmont Police Department has had a 37 to 38% drop in property crime since the installation of the cameras.

Councilmember Oddie inquired whether the reduction in crime has been due to the deterrent factor or if people have actually been apprehended.

The Police Chief responded that he believes there is a deterrent effect if people know there are cameras.

Mayor Spencer inquired whether the Police Chief is willing to look at another vendor.

The Police Chief responded that he is willing to look at other vendors.

Mayor Spencer inquired what the monthly or annual cost.

The Police Chief responded the cost is approximately \$500 per camera per year.

Mayor Spencer inquired whether Alameda currently has four cameras from Vigilant, to which the Police Chief responded four patrol cars have three cameras each.

Mayor Spencer inquired whether all 12 cameras were purchased from Vigilant, to which the Police Chief responded in the affirmative.

Mayor Spencer inquired whether the cameras would be compatible with another vendor; whether license plates are already being captured elsewhere, such as FasTrak; and whether said information is shared with law enforcement.

The Police Chief responded in the affirmative.

Mayor Spencer inquired what other cities are capturing license plates.

The Police Chief responded several cities have them.

Mayor Spencer inquired about hacking data.

The Police Chief responded that he is unaware of any hacking incidents.

Mayor Spencer inquired whether there are examples of cameras helping people.

The Police Chief responded most of the APD's successes have been property crimes.

Vice Mayor Vella inquired whether anything is preventing one agency from sharing the data with another agency.

Mr. Rodriguez responded if a law enforcement agency has access, it could run individual queries that are subject to rules, including who information can be shared with.

Vice Mayor Vella inquired whether the IRS has access to the data and could they share it with other law enforcement agencies.

Mr. Rodriguez responded in the affirmative if that law enforcement agency is conducting an investigation.

Vice Mayor Vella inquired whether there is anything stopping the IRS from sharing the information, Mr. Rodriguez responded such actions would be punishable by law, including loss of employment or worse.

Vice Mayor Vella inquired whether there is an option to immediately delete the overview photo.

Mr. Rodriguez responded eliminating the imagery would be compromising the effectiveness of the tool.

In response to Vice Mayor Vella's inquiry, Mr. Rodriguez descriptors, such as color, are not present, which makes the photo relevant and is used in criminal investigations.

The Police Chief stated there are situations, such as stolen license plates, which require the description of the car.

Vice Mayor Vella inquired whether the technology has been used in the past, to which the Police Chief responded in the affirmative.

Vice Mayor Vella inquired whether there have been more than one case of stolen license plates, to which the Police Chief responded there are many.

Mr. Shockley stated there is not an option to immediately delete the overview images; law enforcement would be at a severe disadvantage if the overview photo is deleted; in the event of duplicate plates, stolen plates, make and model of the vehicle is needed; provided an example of a success story from a contextual image.

Councilmember Ezzy Ashcraft inquired how ALPRs can help officers in the field who are about to make a traffic stop.

The Police Chief responded an alert notifies dispatch to inform officers if the vehicle was involved in a crime.

Councilmember Ezzy Ashcraft inquired whether the Police Chief has identified areas of APD's policy that need to be modified for fixed location cameras and to ensure data is not shared with ICE.

The Police Chief responded in the affirmative; stated regardless of the decision tonight, he will change the policy to ensure data is not shared with ICE.

Councilmember Ezzy Ashcraft inquired whether the same policy reference would be in the contract with Vigilant.

The Police Chief responded in the affirmative; stated that he would be willing to include language that states: "sharing the data with another agency outside of APD's authorization would be cause for immediate termination of the contract.

Mayor Spencer called a recess at 10:03 p.m. and reconvened the meeting at 10:08 p.m. Councilmember Ezzy Ashcraft returned at 10:09 p.m.

Stated a reason he moved to Alameda is because it is safe; he would be upset if the Police Department needed to use the readers to solve a crime and the City did not have it; discussed Police resources: Michael Robles-Wong

Stated that he is concerned about Vigilant Solutions not releasing Alameda's information; suggested getting said agreement in writing: Jeremy Gillula, Electronic Frontier Foundation.

Expressed concern over the cameras; urged funds be spent on other policing methods: Vida Gillula, Alameda.

Expressed concern over the cameras following the cannabis restrictions the City

adopted: Phillip Redd, Alameda Cannabis LLC.

Expressed concern over the cameras having unintended consequences and the cost in respect to the crimes that would be solved; stated that he supports readers on cars, but opposes fixed readers; urged the matter be deferred: Jeff Gould, Alameda.

Discussed information not being private and car break-ins; urged Council to vote for the readers; requested Council make a motion to allow more time: Former Councilmember Lil Arnerich, Alameda.

While Mr. Arnerich continued to speak, Councilmember Oddie moved approval of allowing more time.

Councilmember Matarrese seconded the motion, which failed because a vote was not taken.

(18-073) Mayor Spencer stated a vote is needed to consider the remaining items: the referrals; noted no Councilmember made a motion to do so.

Urged Council to support the Police Chief's request: Mike Fennelly, Alameda.

Expressed strong support for ALPR, which a majority of her neighbors support; thanked the Police Chief for addressing neighborhood concerns: Susan Solomon, Alameda.

Stated the readers are the key to smart crime solutions; the Police Department should have all possible tools: Bill Garvine, Alameda.

Expressed concern over retaining data for six months and data leaks; stated information is subject to subpoenas: Rebecca Jeschke, Alameda.

Submitted his comments stated that he did not want to live in a gated community, which the cameras are a move towards; he is against the proposal: David Teeters, Alameda.

Stated Alameda Progressives opposes spending funds on 13 ALPRs; this is not the time to increase surveillance: Cheri Johansen, Alameda Progressives.

Stated the proposal is fatally flawed and lacks restrictions on how the data can be used; Council should table the matter until another vendor is found and restrictions are in place; Vigilant should release its contract with ICE: Matt Cagle, American Civil Liberties Union (ACLU) of Northern California.

Stated that he opposes the readers; the Bay Area should not be creating this information: Ivar Diehl, Berkeley.

Stated Alameda is only not sharing data with ICE because of the media; urged looking into a different vendor; discussed crime data; stated 0.3% of the data leads to solving crime: Mike Katz-Lacabe, Center for Human Rights and Privacy.

Stated ICE has had intermittent access to data; Vigilant asked clients to sign non-disclosure agreements, which is bad practice; agreement is needed in writing that Vigilant will not release Alameda's data: Tracy Rosenberg, Media Alliance.

Stated Alameda residents have been focused on oversight and use of the data, which are legitimate cause for concern, but mass surveillance is not justifiable for Police activities: Ruth Smiler, Alameda.

(18-074) Mayor Spencer stated a motion is needed to go past 11:00 p.m.

Councilmember Matarrese moved approval.

Mayor Spencer seconded the motion, which carried by unanimous voice vote – 5.

Stated that he has not seen that mobile readers have worked and is concerned about the stationary readers working; expressed concern over data leaks: Dan Wood, Alameda.

Stated that she is opposed mobile readers; requested data only be kept for 24 hours; urged Council not to authorize the purchase: Donna Eystone.

Stated that he has a lot of concerns about the proposal; policy should be decided on fact: Brendan Sullivan-Sariñana, Alameda.

Stated her family comes to Alameda a lot; cautioned voting to add a layer of surveillance: Anonymous.

Stated no one can go anywhere without being recorded; cameras are everywhere because they are effective; law abiding citizens do not care if they are not doing anything wrong: Kevin Peterson, WHOA.

Urged Council to review the contract and do its due diligence: Genevieve Southwick.

Stated Alameda's crime rate is low; the Police response time is low; greater attention should be paid to repaving streets; he does not want his information scanned and held for six months: Eron, Alameda.

Stated crime is up; discussed crime in his neighborhood; he has not heard data has been misused; expressed support for giving the Police Department the tools needed to do their job: Joe Van Winkle, Alameda.

Councilmember Ezzy Ashcraft stated that she is not convinced that Vigilant is the right contractor for Alameda; she would like to look at other vendors and include language in the contract to ensure the data is not shared; inquired what the process was four years ago.

The Police Chief responded that he made a draft policy, the Council made suggestions and the draft was published; stated the policy is a living, modifiable document.

Councilmember Ezzy Ashcraft inquired how often audits would be done with the ALPR's.

The Police Chief responded that he can look at the record; stated four audits have been done so far.

Councilmember Ezzy Ashcraft inquired whether there would be reporting back to Council and public.

The Police Chief responded that he can report back in the interval Council requests.

Councilmember Ezzy Ashcraft inquired whether the Police Chief would look into something other than a single source contract

Councilmember Matarrese raised a point of order; stated he objects because questions should be brought back to the body and the body will direct the City Manager.

Mayor Spencer stated all Councilmembers should make statements, then reassess where Council stands.

Councilmember Ezzy Ashcraft inquired what the process would be to look at other potential vendors.

The City Manager responded if the Council direction is to look at other vendors, staff would do a Request for Proposals (RFP) and return to Council for direction.

Vice Mayor Vella stated that she is concerned with other agencies having access to Alameda's data; she would like the City to be notified if another agency requests Alameda's data; she would like specific language in the event of Vigilant receives a subpoena or warrant for Alameda's data; she is looking for the data that shows the cameras will reduce crime or help solve cases; she has concerns with Vigilant being the vendor; a more robust conversation is needed in terms of the data.

Councilmember Oddie stated that he does not trust Vigilant; he is in favor of the concept, but would like to hear more from the community and the ACLU; he would like to look at other vendors; he is offended by any implications that Alameda is targeting Oakland; he would like a deeper analysis of the data to show that the cameras work to

deter crime; he is concerned with chain sharing of data and the retention period; he would like to see what affect the cameras have on the business district and people wanting to come spend money in Alameda.

Councilmember Matarrese stated Alameda has the finest police force in the Bay Area; he cannot vote for cameras that violate the U.S. Constitution; he would like to see the statistics that show the effectiveness of the data.

Mayor Spencer inquired whether the cameras violate the Fourth Amendment.

The Assistant City Attorney responded there is no reasonable expectation of privacy when people are on the roads.

Mayor Spencer inquired whether it is the Assistant City Attorney's legal opinion that the readers do not violate the Fourth Amendment, to which the Assistant City Attorney responded in the affirmative.

Mayor Spencer inquired whether the Assistant City Attorney has any concerns with ALPR's.

The Assistant City Attorney responded that he has concerns with the firewall and the fact that Vigilant is doing business with ICE; stated policy can be crafted to address security concerns.

Mayor Spencer stressed the significance of the rising trend in the more serious, Part 1, crimes; inquired whether the locations are the best for new cameras.

The Police Chief responded in the affirmative; stated placing the cameras at the entrances and exits of the Island is neutral.

Mayor Spencer inquired whether it is the Police Chief's professional opinion that purchasing the cameras is the best way to utilize the \$500,000.

The Police Chief responded in the affirmative, given the department vacancies; stated if he had Police Officers ready to start working, the answer would be no.

Mayor Spencer stated the number of serious crimes needs to be reduced; she supports the cameras being utilized; she is concerned with using Vigilant as a vendor; she would prefer doing an RFP; she would like annual reports with more data.

Vice Mayor Vella inquired whether there are any circuit court cases on GPS.

The Assistant City Attorney responded in the affirmative.

Vice Mayor Vella inquired which circuit court has addressed ALPR's

The Assistant City Attorney responded the Sixth Circuit.

Vice Mayor Vella inquired whether the Ninth Circuit has addressed ALPR's.

The Assistant City Attorney responded in the negative; stated that he had limited time to conduct more research.

Vice Mayor Vella stated there is a 2009 Ninth Circuit case from San Francisco dealing with ALPR's misreading license plates; stated the Ninth Circuit is holding that technology alone cannot be the basis for a stop; inquired whether APD has something in the policy that specifically addresses said issue.

The Police Chief responded in the affirmative; stated the Officers have to independently verify the hit on the license plate.

Vice Mayor Vella inquired how the Officers conduct the verification.

The Police Chief responded that the Officer verify the make and model of the vehicle with dispatch.

Vice Mayor Vella inquired whether data is exempt from the California Public Records Act due to the data being investigative reports.

The Assistant City Attorney responded in the affirmative.

Vice Mayor Vella stated the California Supreme Court indicated that is not acceptable and sent the matter back down to the Superior Court in 2017.

The Police Chief stated said case was appealed and is pending being heard by the U.S. Supreme Court; the issue is a records issue, not technology or data storage; the issue is whether the data is releasable under the California Public Records Act.

The Assistant City Attorney stated the consensus among the City Attorney community is that ALPR records should be treated as investigative reports just like any other police record and should not be disclosed.

Vice Mayor Vella inquired whether the City of Alameda is following said policy, to which the Assistant City Attorney responded in the affirmative.

Councilmember Ezzy Ashcraft inquired what the process should be if the Council wants to go with another vendor.

The City Manager responded Council could direct staff to allocate the funds for purchase of ALPR's and to move forward with an RFP; the RFP would include specific language on the City's policy; the contract would be open to any contractor, including Vigilant; the criteria will be based on Council input.

Mayor Spencer inquired whether the funds can be allocated tonight, to which the City Manager responded in the affirmative.

Mayor Spencer stated the second part would be the RFP and the terms of the RFP.

Councilmember Ezzy Ashcraft stated that she would like to see a revised policy with Council's input and the contract language.

Councilmember Oddie inquired whether or not the budget could be disconnected from the contract with Vigilant.

The City Manager responded the funds can be set aside; stated choosing the vendor would require an RFP.

Councilmember Oddie suggested there be a workshop to gather comments.

The City Manager stated setting aside the funds for the use does not commit future use of the funds; stated if the RFP comes back and does not meet the criteria, Council can approve or deny the matter at that time.

Councilmember Oddie inquired whether Council could approve or deny the contract in the future, to which the City Manager responded in the affirmative.

Councilmember Matarrese moved approval of allocating the fund savings identified in the report to the Information Technology (IT) fund for a system; stated the system can be debated after.

Mayor Spencer stated there is a resolution listed and the motion could be to adopt the resolution.

Councilmember Matarrese stated he would do said motion [moved adoption of the resolution].

Councilmember Oddie stated he is open to seconding the motion.

The City Manager stated the resolution only addresses the funding, not the vendor.

Mayor Spencer inquired whether Council had a chance to review the resolution that Councilmember Matarrese is referencing; read the title of the resolution.

Vice Mayor Vella clarified the funds are for any technology.

Councilmember Matarrese stated the type of technology used can be debated at a later date.

Vice Mayor Vella stated the technology does not have to be ALPR's.

Councilmember Matarrese stated funds can be used in a different way.

Councilmember Oddie stated he is okay with the suggestions by Councilmember Matarrese and seconded the motion, which carried by unanimous voice vote – 5.

Mayor Spencer inquired whether someone would like to go over the proposal for the next motion.

Councilmember Ezzy Ashcraft moved approval of directing the City Manager to issue an RFP for vendors and to direct the Police Chief to revise the use policy and contract language.

Councilmember Oddie stated that he would like to return to Councilmember Matarrese's original motion and make the direction broader to evaluate and debate different technologies.

Councilmember Matarrese stated the use of the technologies goes back to the policy and standard operating procedures.

Councilmember Oddie stated there may be another tool that could be used.

Mayor Spencer stated the RFP would include ALPR's and any other possible data.

Councilmember Oddie stated the language could read, technology, including, but not limited to, ALPR's.

Councilmember Ezzy Ashcraft stated the Police Chief is up to date on current technology.

The City Manager stated language can be added; she would rather have the option of an RFP or Request for Qualifications (RFQ).

Councilmember Oddie stated the flexibility is acceptable.

Mayor Spencer inquired whether direction is sufficient.

The City Manager responded that she would prefer a motion.

Vice Mayor Vella stated that she would prefer to have a more robust conversation before an RFP is done.

The Police Chief stated more dialogue needs to be done before an RFP or RFQ can be put forward.

Councilmember Ezzy Ashcraft stated there were recurring themes at tonight's City Council meeting: data storage, security, if the data can be shared with other agencies,

such as ICE, the length of data retention and the constitutional issue.

Vice Mayor Vella made a substitute motion to approve having more discussion about the policy and giving more direction before the parameters of the RFQ or RFP are done.

Councilmember Matarrese seconded the motion.

Under discussion, Councilmember Oddie inquired whether the Police Chief would also prefer to have more discussion.

The Police Chief responded that he can go forward if can be advised of the must haves.

Councilmember Oddie stated the public should be heard.

Mayor Spencer stated there have been meetings for the past four years.

Councilmember Ezzy Ashcraft stated the must haves are: specifying what uses of the ALPR system will not be permitted, such as the apprehension of a wanted persons, which begs the question, wanted by whom and for what reason; modifying language to indicate no cooperation with ICE to identify undocumented individuals and no private companies; language specifying that APD will not use any hot lists that include individuals that were sought simply because of their immigration status; scheduling a report to the City Council every time an audit report is done; including a provision that no information would be provided to ICE solely because of immigration status; language that confirmation of the current status on a hot list for license plates that is otherwise of interest specifying that it is never to assist ICE in immigration services; and more information about the data center; data retention should be reviewed and language should be added to highlight specifically that APD ALPR information should never be shared with ICE in searches related solely to a person's immigration status.

Mayor Spencer inquired whether the policy could include the data not being subject to public information requests.

The Assistant City Attorney responded the City Attorney's Office and staff have heard the comments from Council and the public; the City Attorney's Office and the Police Department can work together to prepare an RFP that can be brought back at a future Council meeting and for public comment and Council review.

Vice Mayor Vella also inquired whether the discussion would include amending the current policy that is in place.

The Assistant City Attorney responded in the affirmative.

Vice Mayor Vella stated there could be other concerns; the list outlined by Councilmember Ezzy Ashcraft is not exhaustive.

Vice Mayor Vella called the question.

Mayor Spencer requested the motion be repeated, to which the City Clerk repeated Vice Mayor Vella's motion.

The Assistant City Attorney stated Vice Mayor Vella could adopt his statement as the motion.

Vice Mayor Vella moved approval of having the City Attorney's office work with...

The City Manager stated staff would come back with a draft for Council consideration before it goes out.

Vice Mayor Vella continued the motion... of a draft potential RFP or RFQ and a draft policy that would be reviewed by Council prior to its issuance.

Councilmember Matarrese stated the motion is similar to the prior motion, but the Council will be working against what is being prepared by the City Attorney and the Police Chief so Council will not be free forming, which is going against what has been prepared off of the comments tonight; seconded the motion.

Vice Mayor Vella stated it is a new motion and new second and she withdraws the previous motion.

Councilmember Oddie inquired whether the motion includes some direction to have additional public input other than agendizing the draft RFP to the Council, such as a town hall.

Vice Mayor Vella stated, as part of the process, the matter is going to have to be agendized, which means the public will be noticed; there will be another meeting on the matter for the public to come and comment; prior to the meeting, the public could reach out to the City Attorney's office, the Police Department and Councilmembers, which she would encourage as part of the transparent process, to add comments or concerns.

Councilmember Oddie stated the public should be sure to talk to Councilmembers if they have concerns.

On the call for the question, the motion carried by unanimous voice vote - 5

CITY MANAGER COMMUNICATIONS

(18-075) The City Manager provided an update on the North Housing Memorandum of Understanding (MOU).

ORAL COMMUNICATIONS, NON-AGENDA

(18-076) Janet Gibson, ACT, stated ACT has been advocating for a senior housing with progressive assistance; discussed using developer impact fees for affordable housing and rental assistance.

COUNCIL REFERRALS

(18-077) Update on Tracking of Council Direction through the Referral Process.

(18-078) Consider Directing Staff to Provide Information on the Citywide Dockless Bike Sharing Program and Return to Council with Additional Safety Requirements. Not heard. (Mayor Spencer and Vice Mayor Vella)

(18-079) Consider Banning Motorized Commercial Vehicles, Including Robotic Commercial Vehicles, from Sidewalks and Commercial Drone Aircraft Used for Deliveries. Not heard. (Councilmember Matarrese)

COUNCIL COMMUNICATIONS

(18-080) Councilmember Oddie provided information on StopWaste.org.

ADJOURNMENT

There being no further business, Mayor Spencer adjourned the meeting at 12:37 a.m.

Respectfully submitted,

Lara Weisiger
City Clerk

The agenda for this meeting was posted in accordance with the Sunshine Ordinance.