

**SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**  
300 Lakeside Drive, P.O. Box 12688, Oakland, CA 94604-2688

Board of Directors  
Minutes of the 1,851st Meeting  
October 24, 2019

A regular meeting of the Board of Directors was held on October 24, 2019, convening at 9:02 a.m. in the BART Board Room, 2040 Webster Street, Oakland, California. President Dufty presided; Patricia K. Williams, District Secretary.

Present: Directors Allen, Ames, Foley, Li, McPartland, Raburn, Saltzman, Simon, and Dufty.

Absent: None.

President Dufty called for Introduction of Special Guests. Mr. Robert Powers, General Manager, recognized BART's American Public Transportation Association (APTA) Leadership graduates, noting that, every year, an APTA committee selects up to 25 people for the leadership program per year from across the country through a very competitive process. Mr. Powers recognized and congratulated Mr. Frederick Edwards, Assistant Chief Transportation Officer, Central Control, as BART's most recent graduate of the APTA Leadership Academy and the following BART employees who graduated from the Academy: Ms. Tamar Allen, Assistant General Manager, Operations; Ms. Pamela Herhold, Assistant General Manager, Performance and Budget; Mr. Roy Aguilera, Chief Transportation Officer; Mr. David Hardt, Chief Mechanical Officer; Mr. Travis Engstrom, Director of Technology; Ms. Tera Stokes-Hankins, Assistant Chief Transportation Officer, Service Delivery; Mr. Leonardo Pica, Assistant Chief Mechanical Officer; Mr. Michael Jones, Deputy General Manager; and Mr. Kenneth Duron, former District Secretary.

President Dufty announced that pursuant to Section 4217.10 et seq. of the Government Code, a publicly noticed hearing was required prior to the Board of Directors acting upon the proposed energy conservation contract with ENGIE Services U.S., Inc. to retrofit the current lighting infrastructure in fourteen (14) District Parking Garages; that this hearing was the venue for the public to comment; and that staff would give a brief presentation on the proposed contract and that the meeting would then be open for comments from the public.

Mr. Val Menotti, Chief Planning and Development Officer, introduced Mr. Rajiv Dabir, Group Manager, Sustainability Program, and Mr. Dabir presented the item.

President Dufty announced that comments from the public would be received. There being no public comments received, the Public Hearing was closed.

Consent Calendar items brought before the Board were:

1. Approval of Minutes of the Meeting of October 10, 2019.
2. Revision to Succession Resolution.

3. Revision of Equal Employment Opportunity (EEO) and Prevention of Sexual Harassment in the Workplace Policies.
4. District Base Pay Schedule.
5. Award of Invitation For Bid No. 9056, Step Chain Assemblies.
6. Award of Invitation For Bid No. 9062, Step Yellow Demarcation Escalators.
7. Award of Invitation For Bid No. 9063A, Step Cast Units.
8. Award of Invitation For Bid No. 9071, Dry Type Transformers.

President Dufty requested that Item 3-D, District Base Pay Schedule, be removed from the Consent Calendar and made the following motions as a unit. Director Simon seconded the motions, which carried by unanimous electronic vote. Ayes: 9 – Directors Allen, Ames, Foley, Li, McPartland, Raburn, Saltzman, Simon, and Dufty. Noes: 0.

1. That the Minutes of the Meeting of October 10, 2019, be approved.
2. That Resolution No. 5429, In the Matter of Designating an Alternate for the General Manager and Authorizing Certain District Officers to Use Facsimile Signatures on District Warrant-Checks, be adopted.
3. That the revised Equal Employment Opportunity and Prevention of Sexual Harassment in the Workplace Policies be adopted.
4. That the General Manager be authorized to award Invitation for Bid No. 9056, an estimated quantity contract, for the purchase of escalator step chain assemblies to ECS Corporation, Broadview, Illinois for the amount of \$368,716.56, including taxes, pursuant to notification to be issued by the General Manager, subject to compliance with the District's Protest Procedures.
5. That the General Manager be authorized to award Invitation for Bid No. 9062, an estimated quantity contract for the purchase of step yellow demarcation escalators, to ECS Corporation located in, Broadview, Illinois for the amount of \$310,816.25, including taxes, pursuant to notification to be issued by the General Manager.
6. That the General Manager be authorized to award Invitation For Bid No. 9063A, an estimated quantity contract, for the purchase of Montgomery 5E Escalator Step Cast Unit Assemblies to Kone Inc. (Kone Spares), Moline, Illinois for the bid price of \$257,174.50, including taxes, pursuant to notification to be issued by the General Manager.
7. That the General Manager be authorized to award Invitation For Bid No. 9071 for the purchase of Dry Type Transformers to Alameda Electrical Dist. for the Bid price of \$928,787.91 including sales tax, pursuant to notification to be issued by the General Manager, subject to compliance with the District's Protest Procedures and the Federal Transit Administration's (FTA) requirements related to protest procedures.

(The foregoing four motions were made on the basis of analysis by the staff and

certification by the Controller/Treasurer that funds are available for this purpose.)

President Dufty called for Public Comment. The following individuals addressed the Board:

Roland Lebrun  
Armando Garcia

Director Simon, Chairperson of the Administration Committee, had no report.

Director Foley, Chairperson of the Engineering and Operations Committee, brought the matter of Response to Roll Call for Introductions Item No. 19-824, Panhandling, before the Board.

The item was extensively discussed. Staff information and presentations were provided by Mr. Powers; Mr. Matthew Burrows, General Counsel; Deputy Chief of Police Lance Haight; and Mr. Tim Chan, Group Manager, Station Planning.

Directors raised concerns, asked questions, expressed opinions, and introduced discussion on elements of the subject as noted below.

Director Ames requested clarification of public forum and non-public forum designations.

Director Simon requested an explanation of how charges under Penal Code sections 640 and 647 relate to the changes in the law via Proposition 47; asked whether charges brought under Penal Code sections 640 and 647 have been prosecuted after BART Police issued a citation and the District Attorney filed charges; and asked whether egregious cases are prosecuted.

Director Foley requested clarification of unreasonably loud sound equipment; and who determines what is “loud and unreasonable noise.”

Director Allen requested the meaning of “infraction,” and noted that an infraction does not criminalize people.

Director McPartland commented on the section of Penal Code 369 pertaining to entertainment on trains; safety concerns regarding acrobatics on trains; a constituent’s comment regarding being a captive audience; and panhandling in the paid area being a deterrent to BART riders.

Director Li inquired on the effectiveness of other agencies’ policies in eliminating or significantly reducing panhandling or solicitation, and what staffing resources were required.

Director Saltzman commented on other agencies’ policies and enforcement, particularly her experience with observing panhandling and enforcement on Los Angeles County Metropolitan Transportation Authority (Metro); busking and enforcement in New York, including her observations of buskers in the New York City Transit system on crowded station platforms; and the need for more data regarding enforcement.

Director Allen noted that without an ordinance there is nothing to enforce.

Director Simon commented on organized groups of women with babies and “Kleenex people;” the media’s accusations of women’s abuse of these children; and BART Police Department’s tracking of the alleged abuse.

The following individuals addressed the Board:

Keith Garcia  
Abre Conner  
Quiver Watts  
Kevin Goldberg  
Tone Oliver  
Roland Lebrun  
Bob Feinbaum  
Charlotta Wallace  
Armando Garcia  
Gerald Cauthen

Director Ames commented on ridership, her experience observing panhandlers on the Dumbarton Express, for a designations, and panhandling restrictions; that customers feeling unsafe or uncomfortable leads to decreasing ridership; artistic performances and the possibility of creating a policy within the Art Program to allow artists to earn income without soliciting on the trains; the importance of art to the transit system; that BART police officers receive training on handling these situations; that while the District desires orderly conduct, BART does not want to punish people who do not have any money.

Director Raburn thanked Ms. Wallace for her work to help protect passengers at Powell Street Station; indicated that the Board should focus on situations that are causing problems for passengers, tourists, and station agents, as it is unfair to everyone involved when station agents are pulled from their booths to address issues at the ticket machines; noted that he had previously explored creating a “no panhandling” zone near ticket machines, but abandoned the idea following the successful legal challenges that scuttled a similar ordinance in Sacramento; commented on artists whose careers began with performances at BART stations; indicated that the Board could not move forward on an ordinance without additional data and would likely be subject to First Amendment challenges; opined that passengers should pay the fare; and indicated he would continue to promote safety on BART through station hardening and work toward equitable fares and fare integration amongst regional transit agencies.

Director Li asked Mr. Powers how he would write a policy and what would he look to achieve in such a policy, if the Board directed him to draft a policy, and asked what feedback he had received from customers regarding a BART presence on the trains and platforms - not necessarily BART Police; commented on her belief of a mutual desire among the Board, BART staff, and the public for a high quality, safe, reliable, welcoming, public transit system that is successful, affordable, and gets people from point A to point B; commented on panhandling, solicitation, and safety and the need for an ambassador program; discussed whether policymaking is a good use of BART resources and whether riders desire such a policy; relayed that Independent Police Auditor Russell Bloom had indicated that enforcement of an anti-panhandling policy would likely result in an increase in sworn law enforcement contacts, complaints, and individual police officers’ workload; expressed concern regarding the risk of increased use of force cases; reviewed information on customer feedback, including opinions regarding fare evasion, homelessness, and enforcement of eating and drinking policies, specifically noting that regular peak-time commuters think that enforcement of eating and drinking policies is more important than enforcing fare evasion policies and that riders indicated that the following issues are more important for BART to deal with than

homelessness, which is conflated with panhandling; station cleanliness, train temperature, on-time performance, seat and standing room availability, and the condition of train windows and exteriors; recommended that BART respond to the data, stop prioritizing issues that riders are not asking for, and deal with public safety through an ambassador program; and requested that staff not bring back a policy on banning panhandling or solicitation but that staff bring a robust ambassador pilot program to the Board for consideration.

Director Simon revisited the significance of arts and culture to a public transportation system and expressed support for artists and buskers; commented on creating an ordinance that would allow law enforcement officers to issue infractions to panhandlers, noting that nothing will improve if a person is cited for solicitation and matriculated through the criminal justice system; discussed poverty, noting that over 12,000 people in her District sleep on the concrete every night and that panhandling and homelessness are different, that poor people can be unjustly criminalized, that cities should house and support people who are unable to do so for themselves, and that while BART is not a social service organization, BART remains in the context of the larger ecosystem of government; and shared her experience with asking for help with adding fare to her ticket inside the paid area and reiterated that everyone wants to get home safely.

President Dufty thanked Director Li for her comments and indicated that BART has been working on issues that riders are concerned about; noted consensus on the Board to better staff and support the BART Police Department; noted that systems serving the poor are inadequate and can promote failure, mentioning lack of homeless shelters, untenable conditions in existing shelters, the long wait times for assistance, and how these issues affect BART; commented that replacement of 41 escalators in downtown San Francisco stations would require six years and that reducing homelessness also would not occur overnight; mentioned the hearing in December regarding the Alameda County Grand Jury Report that criticized BART for safety and quality-of-life issues, stating that he wishes to ask the Alameda County Supervisors about their efforts to address homelessness and related issues; commented on the “one ticket, one seat” ordinance that had been repealed; and shared that this issue is deeply personal to him, and that although problems with aggressive panhandling exist, it is important to maintain compassion and remember that panhandlers are people, and individuals are free to choose not to give.

Director Saltzman expressed support for the comments from Directors Li, Simon, and Dufty; commented that the circumstances on BART and in the Bay Area are uncomfortable because we are all seeing panhandling, although riders’ reactions often reflect differences in communities; questioned if an anti-panhandling ordinance would be enforceable and if limited police resources should be used to carry out such a policy, as BART police officers already make tough decisions in responding to calls; noted that even if there was no panhandling on the trains, people would still be impoverished and panhandling would be pushed into unpaid areas; mentioned that while some people are uncomfortable around buskers, most of the people she has spoken to like most of the buskers; shared her observations of performances and reactions from riders; suggested that buskers be prevented from performing in designated train cars, similar to the bicycle car restrictions; shared a story about a break-dancer who performed on BART to avoid poverty and subsequently became a well-known performer and cautioned against pushing artists out of the Bay Area; and expressed hope for everyone to consider the larger problem and how BART can work with the rest of the Bay Area toward a larger solution.

Director Foley commented that he is a daily rider and personally had no issues with busking or panhandling, but that as an elected official he has to make difficult decisions about the greater

good of the organization, examine how riders feel about this issue, and determine what world-class transit looks like; indicated that while world-class transit may not include panhandling, he does not wish to infringe on First Amendment rights; noted that this issue is not just a BART issue, but also a social, Bay Area, and worldwide issue; highlighted a study of panhandling options conducted by Columbia University and noted that the study included permitted panhandling and busking and that BART can be creative to retain humanity while maintaining world-class transit; and requested staff to try to find an alternative that does not just lead to an infraction.

Director McPartland discussed the difference between policies and ordinances, noting that a policy has no compulsory response, but if an ordinance is enacted, then there is an opportunity for the ordinance to be challenged in court and a decision can be made there; expressed his preference for enacting an ordinance or find other solutions as suggested by Director Foley; stated that he does not have a problem with entertainers on BART trains, but has constituents that do take issue with them, and he works for these constituents; indicated that BART should be providing safe, reliable, clean, transportation, which does not mean creating a captive audience in a target-rich environment for panhandlers; agreed with Director Saltzman's comments that there is a global problem with poverty and homelessness, and encouraged BART as an organization to actively work to address these issues, but ultimately BART must take care of its patrons and he believes the best course of action would be to allow panhandlers and entertainers in the unpaid area and provide spaces for them.

Director Allen commented that she believes that the topic of panhandling has somewhat been blended with other topics, such as homelessness and poverty; noted that there are four categories of soliciting and panhandling that occur on trains: the "ladies carrying the babies with signs;" the "tissue dispensers;" performers; and others, such as poor and homeless people who ask people for help on the trains; expressed that riders desire change at BART, including more police presence, to feel safe, to have cleaner stations, and for the unruly behavior on BART to stop, including people sleeping across the seats, and the elimination of panhandling on trains, although many people who have complained about panhandling have also expressed appreciation for some of the performers; indicated she would be happy to work with staff to create an ordinance, if legally permissible, and to find a place for performances outside of the stations and faregates and inside designated areas in the stations, or to allow permitted performances on trains, but that this activity cannot be completely unregulated, citing incidents where buskers have fought over territory; mentioned that taxpayers pay for 70% of BART so that BART can transport people to and from their destination, that people who advise her that they are no longer riding BART usually say they stopped riding due to the environment on the train, and that workers, riders, and non-riding taxpayers have indicated to her that BART should focus on that transporting mission; explained that BART should have an ordinance because riders express to her that this is a problem, especially the elderly and those with disabilities; commented on other agencies' ordinances that prohibit this type of activity inside of their faregates; mentioned that she believes that increased police presence will create more police contact, which is what the riders in her District are requesting and that she does not believe that an ambassador program is the answer, as that the program will only address the perception of safety; and requested staff present a proposed ordinance and explore expansion of the arts along with the ordinance with the arts activities outside of the paid areas or in designated permitted spaces inside, if that can be bifurcated from the ordinance, and stated that this would be a package she would be willing to support.

There was discussion regarding a potential future Roll Call for Introductions request regarding a panhandling ordinance.

Director Raburn commented that there were a number of positive comments surrounding the creation of a program to identify spaces and provide assistance for busking in the stations.

Director Li exited the meeting.

Director Foley brought the matter of Award of Contract No. 54RR-610, Systemwide HVAC Upgrades, before the Board. Mr. Shane Edwards, Chief Maintenance and Engineering Officer, introduced Mr. Michael Gerbracht, Project Manager, Maintenance and Engineering, and Mr. Gerbracht presented the item.

Director McPartland moved that the General Manager be authorized to award Contract No. 54RR-610, Systemwide HVAC Upgrades, in the amount of \$4,654,444 to Blocka Construction of Fremont, California, subject to the District's Protest Procedures. Director Raburn seconded the motion and noted that Blocka exceeded the Minority Business Enterprise (MBE) and Disadvantaged Business Enterprise (DBE) availability by substantial amounts. The motion brought by Director McPartland and seconded by Director Raburn carried by unanimous electronic vote. Ayes – 8: Directors Allen, Ames, Foley, McPartland, Raburn, Saltzman, Simon, and Dufty. Noes – 0. Absent – 1: Director Li.

Director Raburn, Chairperson of the Planning, Public Affairs, Access, and Legislation Committee, brought the matter of Revision of Surveillance Policy: Automated License Plate Readers, before the Board. Ms. Ryan Greene-Roesel, Manager of Special Projects, Systems Development (Parking Program Manager), presented the item. Director Raburn asked Ms. Greene-Roesel to briefly characterize her discussions with the American Civil Liberties Union (ACLU) and the Electronic Freedom Foundation. Director Raburn's request was addressed by staff. Director Raburn noted that the agenda packet included a redlined document that reflects the changes made to a policy that the Board has adopted in the past.

Director McPartland moved that (1) pursuant to District Ordinance No. 2018-1, the Board of Directors finds: (a) that the benefits to the community arising from the implementation of Automated License Plate Recognition Technology outweigh the costs, and thereby authorizes the General Manager or his designee to proceed with the Automated License Plate Recognition implementation and data collection thereof, and (b) that the Surveillance Use Policy for Automated License Plate Recognition Technology will reasonably safeguard civil liberties and civil rights; and (2) the attached revisions to the Surveillance Use Policy and Impact Reports adding parking enforcement as an authorized use of Automated License Plate Recognition Technology, be approved. Director Saltzman seconded the motion, which carried by unanimous electronic vote. Ayes – 8: Directors Allen, Ames, Foley, McPartland, Raburn, Saltzman, Simon, and Dufty. Noes – 0. Absent – 1: Director Li. (The revisions to the Surveillance Use Policy and Impact Reports are attached and hereby made a part of these Minutes.)

Director Li entered the meeting.

Director Raburn brought the matter of Surveillance Policy: Trip Verification Technology, before the Board. Mr. Holmes and Ms. Rachel Factor, Principal Planner, Systems Development, presented the item.

Director Foley moved that, pursuant to District Ordinance No. 2018-1, the Board of Directors finds: (1) that the benefits to the community arising from the implementation of Trip Verification Technology outweigh the costs, and thereby authorizes the General Manager or his designee to proceed with the Trip Verification Technology implementation and data collection thereof; and (2) that the Surveillance Use Policy for Trip Verification Technology will reasonably safeguard civil liberties and civil rights, and thereby approves the Surveillance Use Policy, Impact Report for Trip Verification Technology. Director Raburn seconded the motion. President Dufty recognized the constituent who inspired the item, and he acknowledged Mr. Powers, BART staff, Mr. Ivar Satero, Airport Director for the San Francisco International Airport, Supervisor Aaron Peskin, Chair of the San Francisco Transportation Authority (SFCTA), and Ms. Tilly Chang, Executive Director of the SFCTA for their expeditious work and cooperation on this item. Director Saltzman commented on a constituent being the inspiration for the item and she expressed support for the item. She asked staff to provide an expected timeline for implementation. Director Saltzman requested that staff present an informational report about the program's progress to the Board three months after the program begins operating. Director Saltzman suggested that if the program works well, then Board could discuss expanding the program to entertainment venues. She also noted that this program could address the decline in off-peak ridership. Director Raburn expressed appreciation for staff's forward-looking ideas.

The motion brought by Director Foley and seconded by Director Raburn carried by unanimous electronic call vote. Ayes: 9 – Directors Allen, Ames, Foley, Li, McPartland, Raburn, Saltzman, Simon, and Dufty. Noes: 0.

Director Raburn brought the matter of Award of Energy Service Contract No. 6M8172, Retrofit of Lighting in Fourteen (14) District Parking Garages, before the Board. Mr. Holmes, Mr. Dabir, and Mr. Menotti, presented the item. Director Raburn indicated that the proposed contract presents an energy-saving effort on behalf of the District. He also noted that the contract provides benefits, such as lowered maintenance costs through longer-life equipment and improved passenger safety through a reduction in outages. Director Raburn expressed that he conducts lighting audits at his stations during this time of year and that it is imperative for BART create reliable systems. Director Raburn requested that the staff monitor the remote controllers' performance; he noted that sometimes adopting a new technology can introduce a new type problem, but he believes that BART is on the right track. Director Simon asked clarifying questions regarding the selection of ENGIE, whether ENGIE would be subject to a Project Labor Agreement (PLA) with ENGIE's subcontractors and workers, and whether the subcontractor is unionized. Director Ames asked if there is plan for the parking lots that is similar to the plan for the parking garages and asked clarifying questions about the solicitation process and control system for the parking lot project.

Director Saltzman moved the following items as a unit:

1. That the Board finds pursuant to the provisions of Government Code Section 4127.12 that the anticipated cost to the District for electrical energy will be less than the anticipated cost for electrical energy that would have been consumed by the District in the absence of the installed energy conservation measures under the Energy Service Contract No. 6M8172 with ENGIE Services U.S., Inc.
2. That the General Manager be authorized to enter into Energy Service Contract No. 6M8172, with ENGIE Services U.S., Inc., for the retrofit of lighting in fourteen (14) BART parking garage locations for an estimated base cost of \$12,000,000 and an Allowance worth



\$2,592,600 for related infrastructure upgrades, as necessary, which include, but are not limited to, additional light fixtures, wiring, and upgrades due to differing site conditions.

3. That the Controller-Treasurer be authorized to execute On-Bill-Financing Loan Agreements with Pacific Gas and Electric Company (PG&E) for the base cost amount of Energy Service Contract No. 6M8172 with ENGIE Services U.S., Inc. for an estimated amount of \$12,000,000.

President Dufty seconded the motions, which carried by unanimous electronic vote. Ayes: 9 – Directors Allen, Ames, Foley, Li, McPartland, Raburn, Saltzman, Simon, and Dufty. Noes: 0.

Director Raburn brought the matter of Update on BART and Valley Transportation Authority Phase I, and the Operations and Maintenance Agreement, before the Board. Mr. Holmes and Mr. Shane Edwards presented item. Director Raburn asked staff to verify which agency bears financial responsibility associated with delayed start of revenue service. Mr. Edwards and Mr. Holmes continued the presentation. Ms. Bernadette Lambert, Project Manager, Extensions, and Ms. Pamela Herhold, Assistant General Manager, Performance and Budget, presented information about the item.

Roland Lebrun addressed the Board.

Director Li commented on staff's efforts and the Termination for Convenience section of the Operating and Maintenance Agreement, highlighting that the terms of termination should be determined if and when service is terminated, not before revenue service has begun. Director Li expressed appreciation for Ms. Lambert and Ms. Herhold's efforts. She also noted that she is looking forward to a ceremony for when the Milpitas and Berryessa Stations open for revenue service. Director Ames commented on Mr. Lebrun's comment and asked staff questions regarding California Public Utilities Commission's (CPUC) approval and involvement in the process. Director Ames' questions were addressed by staff. Director Ames expressed concerns about prematurely employing staff and the revenue service date, and she suggested that BART collaborate with the CPUC and Santa Clara Valley Transportation Authority (SCVTA).

Director Foley referenced Mr. Lebrun's comment and asked staff questions regarding recordings of the BART-SCVTA joint meetings. Director Foley's question was addressed by the District Secretary. Director Raburn commented that at the Diridon Station meeting on August 30, 2019, Commissioner Raul Peralez expressed that not seeing the agenda prior to the meeting was like drinking from a fire hydrant. Director Raburn indicated that the agenda packet was extensive; that Google gave an incredible presentation at the meeting, but was not mentioned in the agenda; and that subsequently the meeting materials were posted online. Director Raburn explained that he hoped that materials would be published this past week and he supported Director Li's comments regarding the Termination for Convenience, specifically noting that BART cannot commit to the unamortized values at this time. He also indicated that the Capital Investment Financial Plan and the scope, schedule, and budget, are BART's responsibility, and that these issues are key elements that BART needs to underline. Director Raburn applauded the hard efforts of Mr. Holmes, Ms. Lambert, Ms. Herhold, and Mr. Edwards.

President Dufty called for the General Manager's Report. Mr. Powers thanked the BART Police Department, Operations staff, and San Francisco Police Department for their joint efforts to reunite a child with his mother at Civic Center Station on October 23, 2019. Mr. Powers report that he

completed Listening Tour sessions at the Bay Fair and Civic Center stations during the past week. He also reported that his upcoming Listening Tour sessions would be held at the Concord and 19<sup>th</sup> Street/Oakland stations. Mr. Powers reported on the incident of October 22, 2019 involving a ballast retention board that caught fire in the Transbay Tube. Mr. Powers explained that Mr. Shane Edwards and his team were investigating the incident. He further reported that the Oakland Fire Department reported to the incident and that BART was single-tracking trains, but full service was restored after 30 minutes due to the work of the Oakland Fire Department and Mr. Edwards and his team. Mr. Powers noted that the incident occurred at commute time and he thanked Ms. Alicia Trost, Chief Communications Officer, Mr. Roddrick Lee, Assistant General Manager, External Affairs, and their staff for how well the issue was published in the public, press, Twitter, and the digital world. He also recognized Mr. Edwards' efforts to place staff at stations to assist people with taking the buses to cross the bridge. Director Li asked Mr. Powers how the ballast retention board fire affected Transbay Tube functionality and whether the fire occurred inside the Transbay Tube. Mr. Powers addressed Director Li's question.

Mr. Powers reported on the Metropolitan Transportation Commission's (MTC) approval of a \$600,000 allocation of Regional Measure (RM) 2 funds for a fare integration study and \$1,000,000 in funding for the implementation of Assembly Bill (AB) 2923. Mr. Powers reported on the expansion of the new carpool application to the West Bay stations, including Daly City, Colma, South San Francisco, San Bruno, and Millbrae stations, and he explained why Glen Park Station was not included in the expansion. Mr. Powers reported that he and Nuria Fernandez, General Manager of the Santa Clara Valley Transportation Authority, met with Senator Jim Beall last week and they discussed the Silicon Valley Extension and Senator Beall's support and leadership for FASTER Bay Area. Mr. Powers reported on the Capitol Corridor Joint Powers Authority's (CCJPA) agenda for the November 20, 2019 meeting in San Jose and he noted the following agenda items: Mr. Robert (Rob) Padgett's presentation of a performance report; the CCJPA's selection of a managing agency; the Fiscal Year 20 Transit Intercity Rail Program application authorization; an upgrade of crossovers in Davis; and discussion of signage and way finding.

Director Saltzman commented on her experience with the Transbay Tube closure and she asked Mr. Powers if staff could publish information about crowding on the platforms. Director Saltzman also asked Mr. Powers about solving the problem of the excursion fare and the long lines for seeking assistance from the station agents. Mr. Powers acknowledged Director Saltzman's questions. Director Foley commented on his experience with the Transbay Tube closure. He indicated that the riding public should not have to search for information and that detailed information should be provided to individuals on the trains through train car audio.

President Dufty called for Board Member Reports, Roll Call for Introductions, and In Memoriam requests.

Director Ames reported that she met with a group of children who participate in a robotics and technology competition and she thanked BART staff for meeting her and the children at the Central Fremont Station. She noted that staff showed the children how various machines work and that BART police officers responded to fare evasion at the station. Director Ames reported on her experience at Tule Ponds, an education center for math and science in Fremont.

Director Raburn reported that he traveled to Sacramento to attend the RailNation Summit. He commented on the presentation by Ms. Alicia Trost and Ms. Seung Lee, Marketing Representative II, at RailNation. He expressed appreciation for staff's presence on Twitter, and he indicated that

other operators were envious of BART's work on Twitter. Director Raburn reported that he attended a session regarding the California Integrated Travel Program, presented by James Allison, Manager of Planning, Capitol Corridor. Director Raburn commented on Clipper® and the California Integrated Travel Project. Director Raburn reported that he attended the San Francisco Bay Area Planning and Urban Research Association's (SPUR) panel regarding overall transit integration. He suggested that a discussion about how BART can consider moving toward greater integration, be included in the 2020 Board Workshop.

Director Li reported that she attended the Chinatown Community Development Center's (CCDC) gala. She also reported on the Gay for Transit Happy Hour event that she organized. Director Li reported that she attended the Silver SPUR event and a Lesbian, Gay, Bisexual, Transgender, and Queer or Questioning (LGBTQ) panel regarding political engagement with the Associated Students of the University of California (ASUC).

Director Simon reported that Ms. Letifah Wilson, the sister of Ms. Nia Wilson, asked her to moderate a discussion at the Reckoning With Nia: A Community Symposium event and she commented on the event. Director Simon also reported that she attended the CCDC gala. Director Simon submitted an *In Memoriam* request for Congressman Elijah E. Cummings.

President Dufty requested the meeting be adjourned in honor of the following:

- Congressman Elijah E. Cummings, former U.S. Representative of the Seventh Congressional District of Maryland.
- Thomas D'Alesandro III, former Mayor of Baltimore, Maryland and the brother of Speaker Nancy Pelosi, U.S. House of Representatives.

Director Saltzman reported that she attended a live podcast interview of Mr. Mike Healy, and that the podcast is entitled "East Bay Yesterday." She recommended the podcast and advised that the podcast is available online. Director Saltzman reported that she spoke at the Berkeley Forum event at University of California, Berkeley.

Director Foley thanked the following employees who toured BART maintenance facilities with him: Joao (John) Arantes, Transit Vehicle Mechanic with Service Employees International Union (SEIU) 1021; David Murphy, Chief Operations Officer, eBART/BART-to-OAK; Robert (Bob) Haslam, Superintendent of eBART Operations; and Richard Severo, Assistant Chief Mechanical Officer, Rolling Stock and Shops. Director Foley thanked a Twitter user and commented on the user's question regarding expansion of BART over the Richmond Bridge. He requested additional information from staff regarding this topic.

President Dufty called for Public Comment. No comments were received.

President Dufty announced that that the Board would enter into closed session under Item 11-A (Public Employee Performance Evaluation) of the Regular Meeting agenda, and that the Board would reconvene in open session at the conclusion of the closed session.

The Board Meeting recessed at 1:06 p.m.

The Board reconvened in closed session at 1:15 p.m.

Directors present: Directors Allen, Ames, Foley, Li, McPartland, Raburn, Saltzman, Simon, and Dufty.

Absent: None.

The Board Meeting recessed at 1:38 p.m.

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The Board reconvened in open session at 1:38 p.m.

Director present: President Dufty.

Absent: Directors Allen, Ames, Foley, Li, McPartland, Raburn, Saltzman, and Simon.

President Dufty announced that there were no announcements to be made from the closed session.

The Meeting was adjourned at 1:39 p.m.

Patricia K. Williams  
District Secretary



# Surveillance Use Policy BART Automated License Plate Recognition (ALPR)

BART Police and Customer Access Departments  
BPD-ALPR-SUP-02

21 Day BART Board Notice – October 3rd, 2019

15 Day Public Notice – October 9th, 2019

Board Meeting – October 24th, 2019



## **A. Purpose**

The use of Automated License Plate Recognition (ALPR) technology seeks to increase the confidence of the public while using BART's public transportation system. Specifically, this technology seeks to improve the safety and protection of BART patrons, employees and their vehicles while in BART owned and operated parking areas and garages. In the future, BART may also consider use of ALPR for parking lot density and potential fee compliance. The ALPR system would record images of vehicle license plates in BART Parking locations. This technology is currently being used by a wide variety of agencies throughout the State of California for both Law Enforcement functions and parking functions. One of the most notably recognizable uses is by the FasTrak system, by the Bay Area Toll Authority for the purposes of fee collection over toll bridges, toll roads and high occupancy vehicle (HOV) express lanes. San Francisco International Airport (SFO) also uses ALPR technology at parking garages at SFO. The proposed implementation of the ALPR system in BART Parking areas would serve the following key purposes:

### **Crime Prevention**

- Reduce the fear of crime and reassure the public and employees of being able to safely park their car in BART parking facilities, which will result in greater ridership for BART.
- Collect license plate numbers to assist in the identification, apprehension and prosecution of criminal offenders.
- Provide evidential support to prosecute offenders for criminal offenses.
- Provides both riders and employees a means of redress against property crimes, such as burglary and auto theft.

### **Efficient Parking Program Compliance**

- Provides a uniform methodology for the enforcement of BART's parking rules.
- Aids in dispute mediation and provides documentation support for complaint resolution.
- Streamline parking validation.
- Help to increase ridership by determining parking lot density and space availability through and enhance efficient enforcement that parking is available only for BART passengers.
- Allow for the capability to automate parking fee collection in the future.

### Location of ALPR and Associated Cameras

The ALPR come in three formats and include Fixed, Mobile or Hand-Held units. Fixed units may be installed in the following locations:

Fixed: Installed in BART owned and/or operated parking facilities, areas and structures.

Mobile: may be installed in the following locations:

On BART Law Enforcement Vehicles

Hand-Held: By Parking Enforcement Officers.

## **B. Authorized Use**

License plate images captured by ALPR shall be used only to advance the BART purposes identified in this section and in Section A of this Policy. Use of the ALPR system and associated cameras will take place 24 hours a day, 7 days per week, and 365 days per year within all San Francisco Bay Area Rapid Transit District parking properties and parking properties owned and operated by BART. The ALPR system shall be used in compliance with the District's Surveillance Ordinance and California Civil Code 1798.90.51 and 1798.90.53. The cameras shall not be used in areas where there is a reasonable expectation of privacy, such as off BART property, and shall not be used to harass, intimidate, or discriminate against any individual or group.

For purposes of this Use Policy, BART purposes include use for BART criminal investigations and to monitor activity to protect against harm to persons and property. It shall be permissible for data collected from the cameras to be used for the following public safety and BART investigation purposes:

- To assist in identifying and preventing crimes against persons and property;
- To locate missing children, adults, and/or elderly individuals, including in response to Amber Alerts and Silver Alerts;
- To assist in identifying, apprehending, and prosecuting criminal offenders;
- To assist in gathering evidence for administrative, civil, and criminal investigations and court actions in accordance with California State Law;
- To help Law Enforcement and Public Safety Personnel respond to emergency events;
- To assist in investigating and resolving staff and customer complaints and/or issues;
- To locate stolen, wanted, and/or other vehicles that are the subject of investigation;
- To locate and/or apprehend individuals subject to arrest warrants.
- To locate victims, witnesses, suspects, and others associated with a law enforcement investigation;
- To support local, state, federal, and regional Law Enforcement departments in the identification of vehicles and drivers associated with criminal investigations, including investigations of serial crimes;
- To protect participants at special events;
- To protect BART Parking Facilities.
- Parking efficiency and enforcement

Administrative functions of ALPR data used for criminal enforcement purposes will be managed by BART and the Northern California Regional Intelligence Center (NCRIC). Any data obtained from ALPR technology shall be used and handled pursuant to this use policy, BART's Surveillance Use Ordinance and applicable State and Federal law.

BART Police shall be permitted to review ALPR Data Images to protect and to respond to law enforcement inquiries, to investigate complaints by customers and employees, and to provide law enforcement authorities with ALPR Data when legally required to do so. All other uses not referenced in this document shall be prohibited. ALPR technology shall not be used for personal or non-law enforcement or parking efficiency purposes and shall adhere to this use policy.

### **C. Data Collection**

Data collection shall be limited to vehicles entering, exiting and parking on BART owned and operated property. Collection may include information on the vehicle license plate and the image of the vehicle. Routine Data Collection shall not be stored beyond 30 days, except when lawfully required to by subpoena, court order or during an ongoing investigation. Data used to substantiate parking citations will be retained for 5 years to allow time for citation appeal and identification of scofflaws.

### **D. Data Access**

Access to ALPR Data shall be restricted to the following personnel:

- All persons designated by the BART Police Department.
- Designated NCRIC Staff involved in the ALPR Administration.
- BART personnel involved in the operation, installation and maintenance of the ALPR system.
- Customer/Public Access (Restricted per the Surveillance Ordinance in item G)
- Per Court Order or Subpoena, or during an ongoing investigation.
- Office of Independent Police Auditor and Internal Affairs Department
- District Legal Affairs Department
- Authorized BART Service Providers hosting parking efficiency and enforcement applications

### **E. Data Protection**

The data collected by the ALPR system that is used for criminal enforcement purposes will be maintained in a secure manner between the BART Police Department and the NCRIC where physical access is limited to authorized individuals and includes physical access protections and firewalls.

Data used for parking efficiency and enforcement purposes will be separately stored and maintained in a secure location where physical access is limited to authorized individuals and includes physical access protections and/or firewall protections from external intrusion.

All ALPR data shall be maintained in a secure manner and be encrypted via BART's IT encryption requirements from the data source capture through transmission and storage.



Data used for criminal enforcement purposes that is stored in the NCRIC offices in the federal building in San Francisco shall maintain 24/7 staffed security, multiple locked doors requiring both electronic keys and knowledge-based PINs and limit access to active NCRIC employees that also possess a valid security clearance of SECRET or better.

- All activity is logged for audit and tracking purposes. Audits are available for an agency to view the actions of their officers.

## **F. Data Retention**

Staff will adhere to the District's Surveillance Ordinance and this policy. All data from the ALPR system will be collected, retained and stored in accordance with the Ordinance and this policy. Data captured from the ALPR and camera system will automatically be downloaded onto a secure data storage system where it will be stored based on the systems' design and recording capabilities before being overwritten by new data; which is thirty (30) days as outlined in section 707.1.5 of BART Surveillance Ordinance. Data shall not be stored beyond 30 days except when lawfully required to by subpoena, court order or during an ongoing investigation. Further a written Memorandum of Agreement with the NCRIC shall specify the retention policy of the ALPR data is only retained for the period as specified by the originating agency (BART). The creation date is automatically tracked for every ALPR data point, and once the lifespan of that point is exceeded, it is removed via automated nightly processes.

Data used to substantiate parking citations will be retained for 5 years to allow time for citation appeal and identification of scofflaws (vehicles with multiple unpaid citations).

## **G. Public Access**

BART shall grant Public access to data collected from the ALPR system per BART Surveillance Ordinance 707.1.8, 707.1.9 only in accordance to California State Law. Information gathered will not be disclosed to the public unless such disclosure is required by law or court order. The BART Police Department is subject to BART's Surveillance Ordinance that has been publicly noticed and approved by the BART Board. ALPR Data Collection will be monitored by BART Police as well as be subject to Police Internal Affairs and State Auditors to ensure the security of information and compliance with applicable privacy laws.

Such data will not otherwise be disclosed/released by the BART Police Department without the consent of the Chief of Police and District Legal. If an ALPR operator is required to provide access to ALPR information, the ALPR operator shall do the following:

- (a) Maintain a record of that access. At a minimum, the record shall include the following:
  - (1) The date and time the information is accessed.
  - (2) The license plate number or other data elements used to query the ALPR system.

- (3) The username of the person who accesses the information, and, as applicable, the organization or entity with whom the person is affiliated.
  - (4) The purpose for accessing the information.
- (b) Require that ALPR information only be used for the authorized purposes described in the usage and privacy policy.
- (1) Indicate the authorized use; such as for criminal investigation.

#### 707.1.8 RELEASE OF ALPR DATA TO THE GENERAL PUBLIC

All ALPR Data shall be used by law enforcement for public safety, security, and parking efficiency/enforcement purposes only; except as required by law, subpoenas or other court process, such data will not otherwise be disclosed/released by the BART Police Department without the consent of the Chief of Police and District Legal.

Department employees shall not release any information, including capabilities regarding the District's ALPR systems to the public without prior authorization from the Chief of Police, or District Legal.

#### 707.1.9 REQUESTS FOR VIDEO IMAGES FROM THE MEMBERS OF THE PUBLIC

Persons that have a subpoena or preservation letter, and are interested in requesting ALPR, shall be directed to the Department's Records Division during normal business hours, or via fax at 510- 464-7089 for consideration of their request. Records shall consult with the Chief of Police and District Legal Prior to any approval of release.

Persons that do not have a subpoena or preservation letter and are interested in requesting ALPR Data are to be directed to the District Secretary's Office for review by District Legal at 510-464-6080 or via fax at 510-464-6011.

## **H. Third Party Data Sharing**

BART shall maintain robust security procedures and practices, including operational, administrative, technical, and physical safeguards, to protect ALPR information from unauthorized access, destruction, use, modification, or disclosure. The Administrator of the data collection will not share information with ICE or any agency conducting immigration enforcement or removal operations. Information is only shared with other law enforcement possessing a need and legal right to know, including the following:

- In response to subpoenas
- Pursuant to a Court Order
- Request by Law Enforcement Agencies for active Criminal Investigations
- In accordance with all applicable California State law

BART will retain all ownership rights to the data. Private vendors cannot share the data unless directed to by BART in writing and in accordance with this policy, and will forward any subpoena requests for the data to BART.

Notwithstanding any other law or regulation:

(a) A public agency such as BART that operates or intends to operate an ALPR system shall provide an opportunity for public comment at a regularly scheduled public meeting of the governing body of the public agency before implementing the program. BART shall present this Impact and Use document to the BART Board of Directors and provide notice to the public in accordance with BART's Surveillance Ordinance. BART Police Department shall also conduct outreach with privacy groups to address any privacy concerns that may be raised.

(b) A public agency shall not sell, share, or transfer ALPR information, except to another public agency, and only as otherwise permitted by law. For purposes of this section, the provision of data hosting or towing services shall not be considered the sale, sharing, or transferring of ALPR information.

## **I. Training**

Training for BART's ALPR system will be provided by BART internal staff and by ALPR service providers and the NCRIC. Training will consist of ALPR operation, installation, data protection and administration of the ALPR System and ALPR Data. Technical training will be both hands on and via electronic instruction.

## **J. Auditing and Oversight**

The BART Police Department shall oversee the BART ALPR System and data retention to ensure compliance with this policy. Additionally, both BART Police will require the management of the system to be open for administrative auditors to ensure the Surveillance Ordinance, Use Policy, and California State Laws are adhered to. The audit process shall ensure that no misuse of the system or parts of the system occurs. Additionally, a secondary check with the reporting agency will be required by BART Police to adjudicate all crimes prior to taking enforcement action on crimes that are not a crime in progress or otherwise present exigent circumstances.

Personnel who are authorized to have access to the system shall be designated in writing and the designation shall ensure that their access to and use of the data complies with the Ordinance.

A log shall be maintained that records when access to ALPR data is requested. This shall include the date, time, data record accessed, and staff member involved. The log shall be available for presentation for all required audits.

# Surveillance Impact Report BART Automated License Plate Recognition (ALPR)

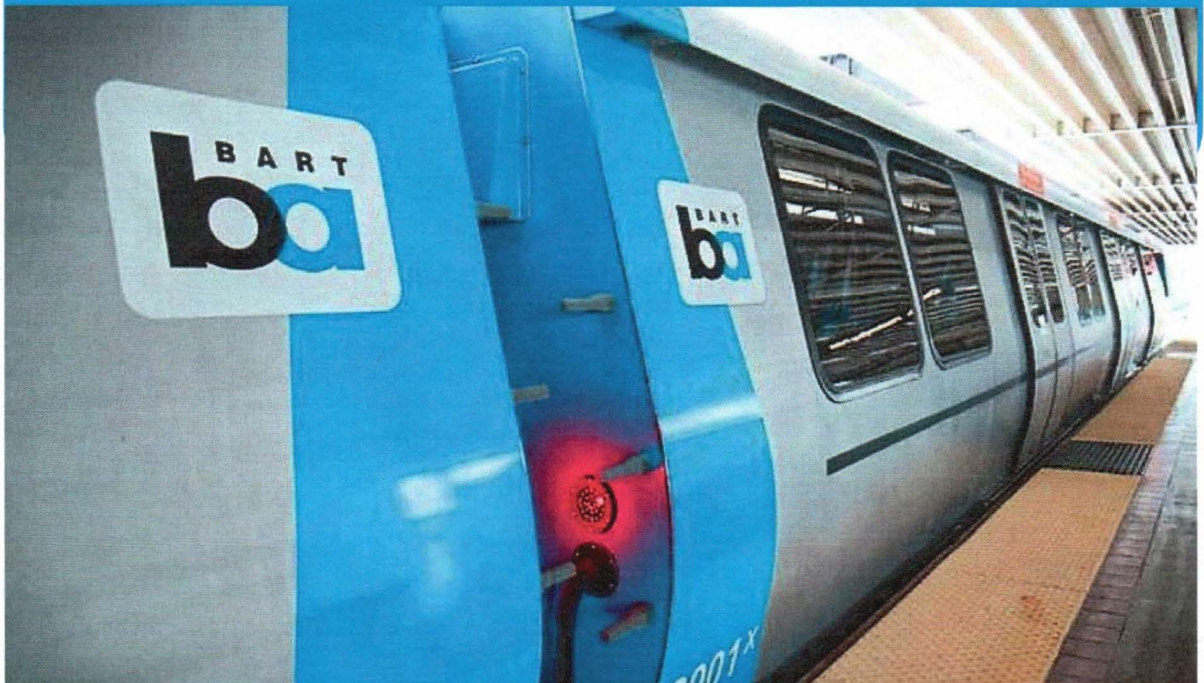
BART Police and Customer Access Departments

**BPD-ALPR-SUP-02**

21 Day BART Board Notice – October 3<sup>rd</sup>, 2019

15 Day Public Notice – October 9<sup>th</sup>, 2019

Board Meeting – October 24<sup>th</sup>, 2019



**A. Information describing the proposed surveillance technology and how it generally works.**

Automated License Plate Recognition (ALPR) systems are camera technologies that can capture vehicle license plate images and a portion of the vehicle. This technology will be used for the safety and security of patrons and employees and protection of their vehicles while using BART owned and operated parking facilities.

ALPR systems may include Fixed visible, mounted technologies. Mobile scan options include mobile units which can be mounted to a police car. Future use may include hand held options and mobile units may be considered parking program enforcement by roving parking enforcement officers.

ALPR technology increases law enforcement's ability to recover lost/stolen property and provide evidentiary support for criminal prosecution. In 2012 the RAND Corporation conducted a study on ALPR Technologies across the United States and found that ALPR was responsible for increasing Stolen Vehicle recovery by 50%. (RAND, Safety and Justice Program; *ALPR for Law Enforcement Opportunities and Obstacles*).

Currently, the ability for BART police to solve crimes such as auto burglaries and thefts is greatly reduced due to a lack of video evidence. ALPR technologies records images of a vehicle's license plate. The image, when compared against a hot list provides information that the vehicle may have been used in a crime. This information often leads to a timelier ability to capture offenders. Accurate information provided to BART Police will increase the ability to successfully prosecute offenders and greatly increase the chances of returning stolen property to the victim.

**B. Information on the proposed purpose(s) for the surveillance technology.**

Implementation of the proposed BART ALPR technology system would serve the following key purposes:

- Aid in the recovery of lost or stolen vehicles.
- Prevent, deter and detect crime, damage to patron and employee vehicles.
- Reduce crime and in doing so, reassure the public and employees using BART owned and operated Parking Facilities.
- Assist in the monitoring, identification, apprehension and prosecution for criminal offenses.
- Aid in the Investigation of complaints or offenses and provide evidentiary support upon which to take criminal and civil penalty actions.
- Parking efficiency and enforcement

**C. Recommendation for Fixed Reader Installations location(s), to be deployed, based on current statistics for Auto Theft and Auto Burglary.**

- A10 – Lake Merritt 5/2 Low Priority Installation
- A20 – Fruitvale 26/16 Priority Installation
- A30 – Coliseum 21/23 Priority Installation
- A40 - San Leandro 21/17 Priority Installation
- A50 - Bay Fair 24/9 Priority Installation
- A60 – Hayward 21/21 Priority Installation
- A70 – South Hayward 17/16 Priority Installation
- A80 – Union City 10/3 Low Priority Installation
- A90 – Fremont 9/5 Low Priority Installation
- L10 - Castro Valley 1/9 Low Priority Installation
- L20 - West Dublin 5/3 Low Priority Installation
- L30 - Dublin / Pleasanton 18/8 Priority Installation
- K10 – 12th Street 0/0 N/A
- K20 – 19th Street 8/4 Low Priority Installation
- K30 – MacArthur 3/2 Low Priority Installation
- R10 – Ashby 4/5 Low Priority Installation
- R20 – Berkeley 0/0 N/A
- R30 – North Berkeley 4/11 Priority Installation
- R40 – El Cerrito Plaza 4/5 Low Priority Installation
- R50 – El Cerrito Del Norte 15/14 Priority Installation
- R60 – Richmond 9/22 Priority Installation
- C10 – Rockridge 6/4 Low Priority Installation
- C20 – Orinda 5/7 Low Priority Installation
- C30 – Lafayette 4/2 Low Priority Installation
- C40 – Walnut Creek 1/4 Low Priority Installation
- C50 – Pleasant Hill 5/4 Low Priority Installation
- C60 – Concord 16/10 Priority Installation
- C70 – North Concord 18/14 Priority Installation
- C80 – Pittsburg Pay Point 27/13 Priority Installation
- M10 – West Oakland 20/9 Priority Installation
- M16 – Embarcadero 0/0 N/A
- M 30 – Powell 0/0 N/A
- M 20 – Montgomery 0/0 N/A
- M 40 – Civic Center 0/0 N/A
- M 50 – 16th Street 0/0 N/A
- M60 – 24th Street 0/0 N/A
- M70 – Glen Park 0/0 N/A
- M80 – Balboa Park 0/0 N/A
- M 90 – Daly City 13/13 Priority Installation

- W10 – Colma 1/3 Low Priority Installation
- W20 – South SF 1/0 Low Priority Installation
- W30 – San Bruno 0/1 Low Priority Installation
- W40 – Millbrae 2/1 Low Priority Installation
- Y10 – SFO 0/0 N/A
- S10 – Irvington (Future) 0/0 TBD
- S 20 – Warm Springs 1/7 Low Priority Installation
- S 40 – Milpitas 0/0 TBD
- S 50 – Berryessa 0/0 TBD
- E 20 – Pittsburg Center 0/0 Low Priority Installation by Operating Contractor
- E 30 – Antioch 0/12 Priority Installation by Operating Contractor
- Hercules Park-and-Ride
- Isabel (Livermore) Park-and-Ride
- Laughlin (Livermore) (Park-and-Ride)
- Irvington (Fremont) (future station)
- All future BART station parking facilities, either owned, operated and/or managed by BART and intended for BART passengers.

**A. Crime statistics used to determine location installation, to deter or detect crime.**

Statistics on Auto Burglary Auto Theft and Catalytic Converter Theft were used to provide recommended priority installations. The proposed implementation of the ALPR System is part of an overall Districtwide security system with functions for crime deterrence and detection, as well as future considerations for a more efficient parking program enforcement through automation. The proposed ALPR system would target hot spots crime areas as identified by the Crime Analysis Unit. Additionally, statistics were used to outline the problem expressed by BART Riders. Numbers for Auto Burglary, Auto Theft and Catalytic Converter Theft were analyzed for 2018 through March of 2019. The cost benefit analysis below was used in part to determine the viability of this technology.

<u>Current Annual Crime Statistics</u>	<u>2018</u>	<u>2019 (March)</u>	<u>15 Month Average</u>
Auto Burglary:	198	264	231
Auto Theft:	102	43	145
Catalytic Converter Theft:	205	51	128

<u>Cost Benefit Analysis</u>	<u>Cost to BART Riders</u>
Auto Burglary: (Average Deductible and Property)	\$1,000 x 231 cases annually = \$231,000
Auto Theft: (No comprehensive Insurance)	\$15,000 x 145 cases annually = \$2,175,000
Catalytic Converter Theft: (Average cost w/labor)	\$1,500 X 128 cases annually = \$192,000
	<b>Total Loss for 15 Months \$2,598,000</b>

Approximate cost of a fixed ALP Reader is between \$15,000 to \$22,000 per installed unit, for 16 Priority Installations total cost \$352,000 for one ALPR at all recommended parking areas.

**B. An assessment identifying any potential impact on privacy rights and discussing any plans to safeguard the rights of the public.**

Data collection by the ALPR System includes information found on the vehicle license plate. BART recognizes that all people have an inalienable right to privacy and BART is committed to protecting and safeguarding this right.

In 2013, data experts introduced to the public the concept of “meta data”, which detailed that larger data can be gathered from individual data points. A recent example included, that by using a simple homemade app that captured simple data points such as phone number called, and time of day, Stanford lawyer and computer scientist Jonathan Mayer was able to accurately identify 80% of the volunteers in his study, using only open source databases such as Yelp, Facebook, and Google. Among the many individuals he identified, he successfully identified a woman that had an abortion, another woman that had cancer, and a man collecting guns and growing marijuana in his home.

Today, data scientists can accurately identify over 95% of individuals based solely on 4 geospatial (time, location) “meta data” points. Human are creatures of habit, typically driving the same way to work, our house of worship, and our neighborhood grocery store. Current attempts to “de-identify” or anonymize data are insufficient, due to modern day computing power and the sheer collection of data points available from public and private sources. License plate scans are collected by both public and private parties, and often shared via large commingled databases accessible by a simple subscription service.

In recognition of these concerns, BART has taken the following steps to mitigate the potential risk inherent in collecting this data from its customers.

As discussed in this Report and the Surveillance Use Policy, only authorized BART personnel, authorized NCRIC personnel or outside law enforcement pursuant to a court order or subpoena, will have access to this data for the purposes identified in this report and in the Surveillance Use Policy. BART and NCRIC shall maintain robust security procedures and practices, including multi layered engineering and administrative protections with the following details: CARD access locked doors with restricted and approved access only for designated personnel. Restricted Administrative rights to data access to provide operational, administrative, technical, and physical safeguards, to protect ALPR information from unauthorized access, destruction, use, modification, or disclosure. BART and NCRIC shall not provide data to federal immigration agencies. Data shall not be stored beyond 30 days, unless lawfully required by subpoena, court order or during an ongoing investigation.



**C. The fiscal costs for the surveillance technology, including initial purchase, personnel and other ongoing costs, and any current or potential sources of funding.**

Initial Purchase Cost

Based on an estimated budget, the cost is approximately \$15,000 to \$22,000 per installed ALPR unit. Costs for ALPR mobile units for enforcement vehicles would be approximately \$20,000 per vehicle.

Personnel Costs

BART personnel could provide installation for the ALPR System, which is estimated to be approximately \$100,000 at normal BART labor rates. However, depending upon the complexity of the installation and the availability of BART labor, the ALPR vendor may also provide ALPR installation at significant cost savings to BART when negotiated into the ALPR purchase contract.

Ongoing Costs

The ongoing costs associated with the deployment of a systemwide ALPR System will be primarily preventative and corrective maintenance costs. There may also be an annual leasing software for the ALPR units used for parking enforcement, depending upon contract details, which is estimated initially to be about \$200,000 annually.

The anticipated lifespan of the ALPR system is about ten (10) years. However, with proper maintenance staff, anticipates the useful operational lifespan of the system could be extended.

Potential Sources of Funding

- FTA Security Grant
- Operating Funds
- FEMA Grants
- Bonds
- Parking Fee Revenue

**D. Whether use or maintenance of the technology will require data gathered by the technology to be handled or stored by a third-party vendor on an ongoing basis.**

Yes, third party in the way of vendor support may require the use of log files and sample image data to be collected for analysis of errors and system malfunctions. The data is not stored after any maintenance or trouble shooting is complete.

The Northern California Regional Intelligence Center (NCRIC) will be the handling center for the captured data that will be accessed by BART Police for law enforcement investigative purposes.

Data used for parking enforcement purposes may be shared with authorized BART Service Providers hosting parking efficiency and enforcement applications.

**E. A summary of alternative methods (whether involving the use of a new technology or not) considered before deciding to use the proposed surveillance technology, including the costs and benefits associated with each alternative and an explanation of the reasons why each alternative is inadequate or undesirable.**

BART examined the current capabilities for preventing and deterring auto burglary and auto. The current law enforcement system uses manpower to physically verify a crime in progress and conduct investigations. The current system is both labor intensive and not highly effective for preventing or deterring auto crimes. As parking lots continue to expand beyond the 47,000 parking spaces, enforcement actions are not able to keep pace with the criminal activity in these new locations. Currently the enforcement actions are limited to observing a crime in progress and catching criminal activity in the parking areas. Statistics from Federal and State Criminal Apprehensions indicate that more than 70% of crimes are committed by people using vehicles. There is currently no method for vehicles entering BART parking areas to be identified. Without this technology, identification of vehicles and associated criminals' activity is limited to observing crime in progress or limited investigative recovery. There is no alternative technology that can meet the needs of the District. The benefits and disadvantages of ALPR are:

Benefits of ALPR

- Improves public safety and security.
- Gives BART Riders using BART Parking Facilities a redress for crimes against their persons and property.
- Provides documentary evidence for prosecution.
- Enhances public confidence when Parking at BART.
- Offers low maintenance operating costs.
- Requires minimal training of personnel on the use of the technology.

Disadvantages of ALPR

- Requires initial installation investment, although recoverable within a few years' time.
- Must be protected from vandalism.
- Privacy risk to customers that use BART Parking Facilities from the collection of their locational data.

**F. A summary of the experience, if any is known, other law enforcement entities have had with the proposed technology, including information about the effectiveness, any known adverse information about the technology such as unanticipated costs, failures, civil rights or civil liberties issues.**

Many other Agencies, including a robust number of Law Enforcement Agencies use ALPR Systems throughout California and the Nation. ALPR System Efficiencies are 98% with a correct Read Rate of 95% resulting in high validity of documentation of incidents. Highly effective read rates protect individuals and civil liberties by ensuring proper, correct capturing of information.

BART would require Annual Certification of the System conducted by third party calibration service parties will ensure the system is maintained at factory read rates.

- California Highway Patrol and multiple County and City LE Agencies use ALPR Technologies for law enforcement function.
- SFMTA Uses ALPR Technologies.
- California State Universities including UC Berkley, Hayward and Merced use ALPR Technologies.
- CALTRANS uses ALPR Technologies for all Bridges, and Tolls via FasTrak which has been widely well received by the Public, with specific positive comments for FasTrak Fare collection and ease of use.
- San Francisco International Airport uses ALPR Technologies using FasTrak to pay for parking at airport lots.

Adverse information on ALPR Technology includes:

- ALPR can be fooled using false plates. Although if reported, this would show as a stolen plate in the ALPR System.
- ALPR System Data must be maintained, failure to do so could reflect old records in the system. It is imperative the agency (BART Police Department) implement a secondary verification procedure for all non-exigent or crimes in progress.
- Some individuals and privacy groups do not like the use of ALPR by law enforcement, because they feel it is an infringement of their privacy. ALPR Technologies record all license plates; including those that have not committed offences or infractions in addition to those that have.
- ALPR has a 95 percent correct read rate which means it also has a 5 percent incorrect read rate. This can be best managed by ensuring a robust policy on acceptable ALPR reads and secondary verification for non-crimes in progress.
- Inaccurate data in the system or inaccurate scans can lead to civil rights abuses. In 2015, the taxpayers of San Francisco paid \$495,000 to Denise Green, a 45-year-old Muni driver after police officers pulled her over at gunpoint based on an erroneous alert from their system – the scan was off by one digit, and officers failed to verify its accuracy.

It is important to note that when used properly and judicially along with proper oversight and with written policies in place, ALPR can greatly enhance the safety and security of all personnel using BART owned and operated parking facilities. The State of California has the largest concentration of Agencies using ALPR, followed by New York and Florida. Enclosed below is a direct link to other California Agencies ALPR Use Policies.

- Central Marin Police Authority
- City and County of San Francisco
- City of Alameda
- City of Alhambra
- City of American Canyon
- City of Anaheim
- City of Antioch
- City of Arcadia
- City of Arcata
- City of Atherton
- City of Auburn
- City of Avenal
- City of Azusa
- City of Bakersfield
- City of Beaumont
- City of Bell
- City of Bell Gardens
- City of Berkeley
- City of Belvedere
- City of Beverly Hills
- City of Brawley
- City of Brea
- City of Brentwood
- City of Brisbane
- City of Buena Park
- City of Burbank
- City of Burlingame
- City of Campbell
- City of Carlsbad
- City of Chico
- City of Chino
- City of Chula Vista
- City of Claremont
- City of Clayton
- City of Clovis
- City of Concord
- City of Corning
- City of Corona
- City of Coronado
- City of Covina
- City of Culver City
- City of Cypress

- City of Daly City
- City of Davis
- City of Dublin
- City of El Cajon
- City of El Centro
- City of Elk Grove
- City of Emeryville
- City of Escondido
- City of Fairfield
- City of Folsom
- City of Fontana
- City of Fountain Valley
- City of Fremont
- City of Fresno
- City of Fullerton
- City of Galt
- City of Gardena
- City of Glendale
- City of Glendora
- City of Hanford
- City of Hawthorne
- City of Hayward
- City of Huntington Beach
- City of Imperial
- City of Inglewood
- City of Irvine
- City of Irwindale
- City of La Habra
- City of La Mesa
- City of La Palma
- City of La Verne
- City of Laguna Beach
- City of Lemoore
- City of Livermore
- City of Lodi
- City of Long Beach
- City of Los Alamitos
- City of Los Altos
- City of Los Gatos
- City of Madera
- City of Manhattan Beach
- City of Manteca
- City of Menlo Park

- City of Milpitas
- City of Modesto
- City of Monrovia
- City of Monte Sereno
- City of Morgan Hill
- City of Montclair
- City of Montebello
- City of Monterey Park
- City of Moraga
- City of Mountain View
- City of Murrieta
- City of National City
- City of Newark
- City of Newport Beach
- City of Novato
- City of Oakland
- City of Oceanside
- City of Oxnard
- City of Pacifica
- City of Palo Alto
- City of Palos Verdes Estates
- City of Pasadena
- City of Petaluma
- City of Piedmont
- City of Pismo Beach
- City of Pittsburgh
- City of Placentia
- City of Placerville
- City of Pleasant Hill
- City of Red Bluff
- City of Redlands
- City of Redwood City
- City of Richmond
- City of Ripon
- City of Riverside
- City of Sacramento
- City of San Bernardino
- City of San Bruno
- City of San Diego
- City of San Fernando
- City of San Gabriel
- City of San Jose
- City of San Leandro

- City of San Luis Obispo
- City of San Marino
- City of San Mateo
- City of San Pablo
- City of San Rafael
- City of San Ramon
- City of Santa Clara
- City of Santa Monica
- City of Sausalito
- City of Seal Beach
- City of Sierra Madre
- City of Signal Hill
- City of Simi Valley
- City of South Beach
- City of South Gate
- City of South San Francisco
- City of Suisun City
- City of Sunnyvale
- City of Torrance
- City of Tulare
- City of Tustin
- City of Ukiah
- City of Upland
- City of Vallejo
- City of Vernon
- City of Visalia
- City of Walnut
- City of Walnut Creek
- City of West Covina
- City of West Sacramento
- City of Westminster
- City of Westmoreland
- City of Whittier
- City of Woodland
- County of Alameda
- County of Contra Costa
- County of Fresno
- County of Los Angeles
- County of Marin
- County of Orange
- County of Riverside
- County of Sacramento (Sheriff)
- County of Sacramento (Department of Human Assistance)

- County of San Bernadino
- County of San Diego
- County of San Luis Obispo
- County of San Mateo
- County of Santa Clara
- County of Shasta
- County of Solano
- County of Ventura
- County of Yolo
- California State University, Long Beach
- Kensington Police Protection and Community Services District
- Port of San Diego
- Town of Hillsborough
- Town of Los Gatos
- Town of Portola Valley
- Town of Tiburon
- University of California - Merced

In conclusion, ALPR Technologies can offer greater safety and security for BART patrons and employees using BART Parking Facilities. Patrons will have an improved safety and security when parking at BART.



**Automatic License Plate Reader (ALPR)**

**Surveillance Use and Impact Report ANNEX**

Privacy Policy (pursuant to State of California Civil Code Sections: 1798.90.51. and 798.90.53)

The State of California has Civil Code Sections which must be met for all operators of ALPR Technologies. While all the items specified herein are also detailed in the ALPR Surveillance Use and Impact Report, the Code requirements specify that they must also be detailed in a separate Privacy Policy.

**California Civil Code Sections: 1798.90.51. Privacy Policy and 1798.90.53 Third Party Sharing Requirements.**

An ALPR operator shall do all of the following:

**(a) Maintain reasonable security procedures and practices, including operational, administrative, technical, and physical safeguards, to protect ALPR information from unauthorized access, destruction, use, modification, or disclosure.**

The data collected by BART's ALPR system will be maintained in a secure location at BART and the Northern California Regional Intelligence Center (NCRIC), where physical access is limited to authorized individuals and includes physical access protections and firewalls.

All ALPR data used for law enforcement purposes shall be maintained in a secure manner and be encrypted via BART's IT encryption requirements from the data source capture through transmission and storage.

ALPR data will be shared with the NCRIC data center, in the NCRIC offices in the federal building in San Francisco. NCRIC facilities have 24/7 staffed security, multiple locked doors requiring both electronic keys and knowledge-based PINs. Only active NCRIC employees that also possess a valid security clearance of SECRET or better are allowed physical access.

ALPR Data used for parking efficiency and enforcement purposes will be separately stored and maintained in a secure location where physical access is limited to authorized individuals and includes physical access protections and/or firewall protections from external intrusion.

All activity is logged for audit and tracking purposes. Audits are available for an agency to view the actions of their officers.

If an ALPR operator accesses or provides access to ALPR information, the ALPR operator shall do both of the following:

- (a) Maintain a record of that access. At a minimum, the record shall include all of the following:
- (1) The date and time the information is accessed.
  - (2) The license plate number or other data elements used to query the ALPR system.

ATTACHMENT B

(3) The username of the person who accesses the information, and, as applicable, the organization or entity with whom the person is affiliated.

(4) The purpose for accessing the information.

**(b)(1) Implement a usage and privacy policy in order to ensure that the collection, use, maintenance, sharing, and dissemination of ALPR information is consistent with respect for individuals' privacy and civil liberties. The usage and privacy policy shall be available to the public in writing, and, if the ALPR operator has an Internet Web site, the usage and privacy policy shall be posted conspicuously on that Internet Web site.**

**(2) The usage and privacy policy shall, at a minimum, include all of the following:**

**(A) The authorized purposes for using the ALPR system and collecting ALPR information.**

BART ALPR Impact and Use Report specify the purpose and use and rationale why ALPR technology is used. BART's Automated License Plate Recognition (ALPR) technology seeks to increase the confidence of the public while using BART's public transportation system. Specifically, this technology seeks to improve the safety and protection of patrons, employees and their vehicles while in BART owned and operated parking areas and garages, and to improve parking enforcement. The ALPR system records vehicle license plates. Data collection shall be limited to vehicles entering or exiting and parking on BART owned and operated property. The proposed implementation of the ALPR system in BART parking areas would serve the following key purposes:

Crime Prevention

- Reduce the fear of crime and reassure the public and employees that they can safely park in BART parking facilities, which may increase BART ridership.
- Collect license plate numbers to assist in the identification, apprehension and prosecution of criminal offenders.
- Provide evidence to support the prosecution of offenders for criminal offenses.
- Provides both riders and employees a means of redress against property crimes, such as burglary and auto theft.

Efficient Parking Program Compliance

- Provides a uniform methodology for the enforcement of BART's parking rules.
- Aids in dispute mediation and provides documentation support for complaint resolution.
- Streamline parking validation.
- Help to increase ridership by determining parking lot density and space availability through and enhance efficient enforcement that parking is available only for BART passengers.
- Allow for the capability to automate parking fee collection in the future.

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**(B) A description of the job title or other designation of the employees and independent contractors who are authorized to use or access the ALPR system, or to collect ALPR information. The policy shall identify the training requirements necessary for those authorized employees and independent contractors.**

Access to ALPR data and images shall be restricted to the following personnel:

- All persons designated by the BART Police Department.
- Designated NCRIC Staff involved in the ALPR Administration.
- BART personnel involved in the operation, installation and maintenance of the ALPR system.
- Customer/Public Access (Restricted per the Surveillance Ordinance in item G)
- Per Court Order or Subpoena, or during an ongoing investigation.
- Office of Independent Police Auditor and Internal Affairs Department
- District Office of the General Counsel
- Authorized BART Service Providers hosting parking efficiency and enforcement applications

All personnel using BART's ALPR shall be authorized in writing and must receive training on system access and administration. ALPR system training will be provided by BART internal staff and, where necessary related, service providers. Training will consist of ALPR operation, installation, data protection and administration of the BART ALPR System and ALPR Data. Technical training will be hands on and via electronic instruction.

**(C) A description of how the ALPR system will be monitored to ensure the security of the information and compliance with applicable privacy laws.**

The ALPR Data Collection will be monitored by BART Police and be subject to Police and or State Auditors to ensure the security of information and compliance with applicable privacy laws.

Such data will not otherwise be disclosed/released by the BART Police Department without the consent of the Chief of Police and the Office of the General Counsel. If an ALPR operator is required to provide access to ALPR information, the ALPR operator shall do both of the following:

(a) Maintain a record of that access. At a minimum, the record shall include the following:

- (1) The date and time the information is accessed.
- (2) The license plate number or other data elements used to query the ALPR system.
- (3) The username of the person who accesses the information, and, as applicable, the organization or entity with whom the person is affiliated.

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(4) The purpose for accessing the information.

(b) Require that ALPR information only be used for the authorized purposes described in the usage and privacy policy.

(1) Indicate the authorized use; such as for criminal investigation. As noted in the Impact and Use Reports, and the Surveillance Ordinance, the ALPR information shall only be used for the authorized purposes described therein.

**(D) The purposes of, process for, and restrictions on, the sale, sharing, or transfer of ALPR information to other persons.**

BART shall maintain robust security procedures and practices, including operational, administrative, technical, and physical safeguards, to protect ALPR information from unauthorized access, destruction, use, modification, or disclosure. The Administrator of the data collection will not share information with Immigration and Customs Enforcement (ICE) or any agency conducting immigration enforcement or removal operations. Information is only shared with other law enforcement possessing a need and legal right to know, including the following:

- In response to subpoenas
- Pursuant to a Court Order
- Request by Law Enforcement Agencies for active Criminal Investigations
- In accordance with all applicable California State law

ALPR Data collected by BART shall not be sold under any circumstances.

**(a) A public agency that operates or intends to operate an ALPR system shall provide an opportunity for public comment at a regularly scheduled public meeting of the governing body of the public agency before implementing the program.**

Pursuant to the District Ordinance 2018-1, public notice and opportunity for public comment regarding the implementation of Surveillance Technology is required at Public Meetings via the BART Board of Directors Meetings; if approved then notification would be made via the BART Website and posted signs informing the public of the surveillance Technology in use.

**(b) A public agency shall not sell, share, or transfer ALPR information, except to another public agency, and only shall share data as otherwise permitted by law.**

BART shall maintain robust security procedures and practices, including operational, administrative, technical, and physical safeguards, to protect ALPR information from unauthorized access, destruction, use, modification, or disclosure. The Administrator of the data collection will not share

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information with Immigration and Customs Enforcement (ICE) or any agency conducting immigration enforcement or removal operations. Information is only shared with other law enforcement possessing a need and legal right to know, including the following:

- In response to subpoenas
- Pursuant to a Court Order
- Request by Law Enforcement Agencies for active Criminal Investigations
- In accordance with all applicable California State law

ALPR Data collected by BART shall not be sold under any circumstances.

**(E) The title of the official custodian, or owner, of the ALPR system responsible for implementing this section.**

BART shall be the owner and official custodian of the ALPR System and any data collected there from. The BART Chief of Police, BART Office of the General Counsel and BART Police Internal Affairs will have specific oversight authority of the Program.

**(F) A description of the reasonable measures that will be used to ensure the accuracy of ALPR information and correct data errors.**

ALPR system efficiency is 98% with a correct read rate of 95% resulting in proper documentation of incidents. Annual certification of the system conducted by third party calibration service parties will ensure the system is maintained at factory read rates.

**(G) The length of time ALPR information will be retained, and the process the ALPR operator will utilize to determine when to destroy retained ALPR information.**

Staff will adhere to the District's Surveillance Ordinance. The data from the ALPR and assorted camera system shall be collected, retained and stored in accordance with the District's Surveillance Ordinance. Data captured from the ALPR and camera system will automatically be downloaded onto a secure data storage system where it will be stored based on the systems' design and recording capabilities before being overwritten by new data; up to thirty (30) days for routine matters. Cases under active criminal investigation may be retained up to a year. Data shall not be stored beyond 1 year except by subpoena, court order or during an ongoing investigation, except in the case of data used to substantiate parking citations, which will be retained for 5 years to allow time for citation appeal and identification of scofflaws (vehicles with multiple unpaid citation). Further, the NCRIC retention policy specifies data is only retained for the period as specified by the originating agency (BART). The creation date is automatically tracked for every ALPR data point, and once the lifespan of that point is exceeded, it is removed via automated nightly processes.