Metropolitan Nashville and
Davidson County, TN
Legislation

Bill (Ordinance): BL2021-841

An ordinance amending Section 13.08.080 of the Metropolitan Code of Laws to pertaining to the use of License Plate Scanner (LPR) Technology in the public rights-of-way.

WHEREAS, the use of LPRs in Davidson County represents a significant intensification of resident surveillance; and

WHEREAS, and use of LPRs should be done in a measured manner that permits the Council maximum flexibility to reevaluate the way the technology is used; and

WHEREAS, a recent study published by the United States Department of Justice found "significantly lower levels of trust in police" among test subjects who encountered mentions of law enforcement using LPRs as compared to a control group; and

WHEREAS, the Vallejo (California) Police Department found that 37 percent of "hits" from fixed LPRs were, in fact, misreads, some of which led to unwarranted stops and traumatic encounters; and

WHEREAS, data from LPRs is scheduled to become subject to Tennessee's Public Records Act; and

WHEREAS, U.S. Immigration and Customs Enforcement (ICE) contracts with LPR operators to target deportations; and

WHEREAS, there are recorded instances of law enforcement using LPRs to surveil Muslim communities and target suspected gang members despite such lists being notoriously far-reaching and unreliable; and

WHEREAS, license plate readers can lead criminals to modify their behavior, such as stealing plates with greater frequency or obscuring their license plates, to thwart any benefit of these devices; and

WHEREAS, the abuse of license plate reader data can be mitigated by limiting reader use to those that are mobile in nature and by implementing policies that regulate the use of mobile readers.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That Section 13.08.080 of the Metropolitan Code is hereby amended by deleting Subsection G in its entirety and replacing it with the following:

1. It is lawful for the Metropolitan Government, or any official, agent, contractor, or employee of the Metropolitan Government acting in their official capacity on behalf of the Metropolitan Government, to operate any license plate scanner (LPR) located a) within or on a law enforcement vehicle and b) employed for uses specifically permitted by this subsection. The use of a LPR is otherwise prohibited within the public rights-of-way unless explicitly permitted in this section.

2. It is lawful to operate a LPR installed onto or within the public right-of-way that meets each of the following conditions:

      a. The LPR is used solely and exclusively in conjunction with a vehicle emissions sensor as part of an emissions inspection program authorized under local, state or federal law;

      b. The data from the LPR and vehicle emissions sensor is used solely and exclusively for purposes of determining compliance with vehicle emissions standards;

      c. A determination by the vehicle emissions sensor that a vehicle identified by the LPR is not in compliance with applicable emissions standards shall not lead to any penalty or punitive action against the registered vehicle owner;

      d. No fewer than two such LPRs shall be in operation within Davidson County at any given time unless no such LPRs are in operation; and

      e. Data that can be used to pair a specific vehicle's license plate number, VIN, or other unique identifier with a specific geographic location shall not be recorded.

3. It is lawful to operate a LPR installed onto or within the public right-of-way that meets each of the following conditions:

      a. The LPR is used solely and exclusively for determining whether a vehicle is currently and actively violating parking restrictions; and

      b. A specific vehicle's license plate number shall be deleted within thirty minutes of its exit from a monitored parking space, unless that vehicle is suspected of violating parking restrictions for which enforcement action would be appropriate.

Section 2. That Section 13.08.080 of the Metropolitan Code is hereby amended by adding the following new Subsection H and by renumbering the existing Subsection H to Subsection I:

H. An LPR used by law enforcement shall meet each of the following conditions:

1. An LPR shall be used for the sole purpose of recording and checking license plates and shall not be capable of photographing, recording, or producing images of the occupants of a motor vehicle.

2. LPR operation and access to LPR collected data shall be for official law enforcement purposes only. LPRs shall only be used to scan, detect, and identify license plate numbers for the purpose of identifying:

      a. Stolen vehicles.

      b. Vehicles associated with missing or endangered persons.

      c. Vehicles registered to a person against whom there is an outstanding felony arrest warrant.

      d. Vehicles for which a probable cause search warrant for a felony offense has been obtained.

3. Prior to stopping a vehicle based on an LPR hit, the officer shall visually verify that the license plate on the list matches the digital image displayed on the LPR.

4. Records of license plates read by each LPR shall not be recorded or transmitted outside the LPR system and shall be purged from the LPR system within 24 hours of their capture in such a manner that they are destroyed and are not recoverable, unless it results in a match with a vehicle falling within paragraph 2 above. Unless otherwise required by law, records of license plates that are matched by an LPR shall be purged from the LPR system within 24

hours of their capture in such a manner that they are destroyed and are not recoverable, unless the match results in an arrest, a citation, or protective custody, or identified a vehicle that was the subject of a missing or endangered person broadcast, in which case the data on the particular license plate shall be destroyed at the conclusion of either (1) an investigation that does not result in any criminal charges being filed; or (2) any criminal action undertaken in the matter involving the captured plate data. Captured license plate data obtained for the purposes described in paragraph 2 above shall not be used or shared for any other purpose.

5. Access to LPR records shall only be allowed on a case-by-case basis, for legitimate law enforcement investigative, prosecution, or audit verification purposes. All inquiries of LPR records shall be recorded for purposes of an audit trail and maintained by the law enforcement agency in the same manner as criminal history logs.

6. To ensure compliance with the provisions of this section or to investigate complaints of misuse of an LPR or LPRs, a) the district attorney general, or a designee; b) the public defender, or a designee; c) the chair of the Community Oversight Board, or a designee; or d) two members of Council as selected by the Metropolitan Council may examine and audit any LPR, any server used to store LPR data, and any records pertaining to the use of LPRs. If the district attorney general, the public defender, or a majority of the Community Oversight Board believes that an LPR or LPRs have been used in violation of this section, either or both may send a letter to the Metropolitan Council requesting suspension of the use of an LPR or LPRs for the purposes of investigation, to prevent ongoing violations, or to deter future violations. The Metropolitan Council may grant such a request by resolution.

7. Deployment of LPRs shall be executed in a manner that distributes their use equitably among MNPD precincts.

8. MNPD shall report to the Metropolitan Council quarterly, beginning no more than three months from the date LPRs are deployed, the following information compiled since the end date of its most recent report:

    a. The number of LPRs in use in total and by precinct.
    b. The number of matches made by the LPR.
    c. The number of matches that identified vehicles and individuals sought by law enforcement and that resulted in stops of vehicles or individuals.
    d. The number of matches that resulted in searches of vehicles and individuals, releases, arrests, or other outcomes, and associated demographic information, including race and ethnicity.
    e. The number of matches where it was determined that all characters were read correctly, and the number of matches where it was determined that at least one character was misread.
    f. Other information requested by the Metropolitan Council by resolution.

9. The Metropolitan Council shall hold a public hearing, set by resolution, regarding the use of LPRs by the Metropolitan government no more than six months from the date LPRs are deployed. The resolution setting the public hearing shall contain the date, time, and location of the public hearing. No more than three weeks after the public hearing, the Metropolitan Council shall vote by resolution on whether to continue use of LPRs. The resolution to continue the use of LPRs shall not be subject to deferral or a motion to reconsider, but amendments to remove certain uses allowed by this section shall be permitted. If the resolution to continue is adopted, the use of LPRs will continue. If the resolution to continue is not adopted, the use of LPRs will be discontinued.

10. In the event that state legislation is enacted which requires LPR data to be retained for longer than this section authorizes and requires LPR data to be shared with any agency not authorized in this section, the Metropolitan Council shall vote by resolution whether to continue the use of LPRs. The resolution to continue the use of LPRs shall be voted on no more than five weeks following the effective date of the state legislation. The resolution shall not be subject to deferral or a motion to reconsider beyond that date. If the resolution to continue is adopted, the use of LPRs will continue. If the resolution to continue is not adopted, the use of LPRs will be discontinued.

Section 3. That this ordinance shall take effect from and after its enactment, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

Mayor _____   **Date** _____

John Cooper