

**SUBSTITUTE ORDINANCE NO. 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 and oversight 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 a) not permanently and not semi-permanently affixed to its location, such as a LPR located within or on a law enforcement vehicle and a mobile LPR trailer, 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 deleting Subsection H in its entirety and replacing it with the following:~~

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

1. An LPR shall be ~~used~~ designed and intended 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. An LPR shall not be placed in a specific location for a period of more than seven days at any one time, where "specific location" means the location of placement plus a 50-yard radius as well as the entire block face of the location of placement. Once an LPR is placed in a specific location for a period of up to seven days, no LPR shall be placed in that same specific location for a period of at least seven days. Further, an LPR shall not be placed within one-half mile of any rally, march, or political event for which a permit has been issued or for which notification has been provided to the mayor's office. An LPR that is not operating and is located in or on a law enforcement vehicle that is in maintenance is not subject to this restriction.

~~23.~~ 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.

e. Suspects for whom probable cause exists for an arrest for a felony offense.

34. 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.

45. Data obtained by LPRs:

a. 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 24-72 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 3 above.

b. subject to the exception in paragraph 5.a and uUnless otherwise required by law, records of license plates that are matched by an LPR shall be purged from the LPR system within 24-72 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.

c. Captured license plate data obtained for the purposes described in paragraph 2 above shall not be used or shared for any other purpose other than as authorized in paragraph 3 above.

5d. Access to LPR records shall only be allowed accessed 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.

e. shall be secured in the same manner as criminal history logs

6. The installation and maintenance of LPR hardware and software, as well as LPR data access, retention, and security, shall be managed by an LPR Custodian ("Custodian") designated by the department using the LPR system, who will assign personnel under their command to administer the day-to-day operation of the LPR system as defined below. The Custodian's name shall be provided on the department's website. The Custodian shall be the administrator of the LPR system and shall be responsible for developing guidelines and procedures regarding the department's use of its LPR system, including, but not limited to:

- a. Establishing and maintaining reasonable security procedures and practices, including operational, administrative, technical, and physical safeguards, to protect LPR information from unauthorized access, destruction, use, modification, or disclosure;
- b. Maintaining a list of the name and job title of all users who are authorized to use or access the department's LPR system;
- c. Developing training requirements for and ensuring training of authorized users on the operations of, and usage and privacy policy for the department's LPR system;
- d. Developing procedures and a regular timetable for conducting audits of LPR system usage, including audits of user searches;
- e. Developing procedures for, and ensuring the proper retention and destruction of, the agency's LPR data;
- f. Ensuring that this policy and its related procedures are posted conspicuously on the department's public website; and
- g. Managing the relationship with the LPR provider, which shall include ensuring that the provider meets all contractual obligations; the system is maintained as per Service Level Agreements; log retention is adequate; and data ownership is clearly understood.

7. Access and use of the department's LPR system is strictly restricted to the authorized users, as outlined below:

- a. Authorized users must receive appropriate supervisory approval, as determined by the Custodian, prior to receiving LPR system access.
- b. Access shall only be approved for designated personnel whose roles require them to use the LPR system, and LPR system access shall be further limited to those tasks within the employee's job responsibilities. Access shall be limited to no more than ten authorized users per department.
- c. Personnel authorized to use the department's LPR system as defined in subsection H.7.b of this section shall be specifically trained in the system and the usage and privacy policy prior to receiving account access. This training shall include, but not be limited to applicable local, state, and federal laws; applicable policies, including the usage and privacy policy; functionality of the equipment; authorized and prohibited uses; accessing data; safeguarding password information and data; data sharing policies and procedures; and reporting breaches, errors, and other issues.

68. 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; or 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 not otherwise deemed confidential under state law. 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.

~~79.~~ Deployment of LPRs shall be executed in a manner that distributes their use equitably among MNPDP precincts such that their use is distributed in a generally equitable manner among MNPDP precincts.

~~8~~10. MNPDP shall report to the Metropolitan Council quarterly, by posting the information on a public webpage which shall be navigable from MNPDP's main departmental page on Nashville.gov, 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.

11. No LPR shall be manufactured by or procured through any organization which has a data-sharing agreement or other cooperative agreement with any immigration agency.

~~9~~12. The Metropolitan Council shall hold a public hearing, set by resolution, regarding the use of LPRs sanctioned under Subsection 13.08.080.H 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, amendments, 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.

~~40~~13. In the event that state legislation is enacted which requires LPR data obtained by LPRs to be retained for longer than this section authorizes and requires LPR data obtained by LPRs 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. One resolution shall be required to authorize continuation of the use of LPR for parking enforcement and emissions, as authorized by Subsections G.2 and G.3. A separate resolution shall be

required to authorize continuation of LPR for use by law enforcement, as authorized by Subsection H. The resolutions to continue the use of LPRs shall be voted on no more than five weeks following the effective date of the state legislation. The resolutions shall not be subject to deferral, amendments, or a motion to reconsider beyond that date. If the resolution to continue is adopted, the use of LPRs ~~will~~ shall continue. If the resolution to continue is not adopted, the use of LPRs ~~will~~ shall be discontinued.

Section 3. That Section 13.08.080 of the Metropolitan Code is hereby further amended by adding the following new Subsection I:

I. Notwithstanding the foregoing, the provisions of this section shall not apply to the Nashville Electric Service, the Metropolitan Nashville Airport Authority, the Metropolitan Development and Housing Agency, and the Metropolitan Transit Authority.

Section ~~3~~4. That this ordinance shall take effect from and after its enactment, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

SPONSORED BY:

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Dave Rosenberg  
Member of Council