



Metropolitan Nashville and Davidson County, TN

Legislation Text

File #: BL2020-581, **Version:** 1

An ordinance amending Section 13.08.080 of the Metropolitan Code to permit the use of License Plate Scanner (LPR) technology on or within law enforcement vehicles.

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 as follows:

1. By deleting the phrase, "It is unlawful to operate any license plate scanner installed onto or within the public right-of-way, with the exception of uses that meet each of the following requirements:" wherein it appears in subsection G.; and
2. By substituting in lieu thereof the phrase, "It is unlawful to operate any license plate scanner, regardless of the physical location of the scanning equipment, for the purpose of scanning license plates within the public rights-of-way, with the exception of those that are located within or on a law enforcement vehicle and those employed for uses that meet each of the following requirements:".

Section 2. This ordinance shall take effect from and after its enactment, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

Analysis

This ordinance amends Section 13.08.080 of the Metropolitan Code to create an exception for law enforcement vehicles from the prohibition on license plate readers (LPRs). The Code currently prohibits the operation of LPRs installed onto or within the public right-of-way except for use in conjunction with a vehicle emissions sensor as part of an emissions inspection program authorized under local, state or federal law.

This ordinance would create another exception from the LPR ban to allow the use of such scanners by law enforcement. Specifically, the ordinance would allow LPRs located within or on a law enforcement vehicle.

A question has been raised as to whether prohibiting the private use of LPRs violates the First Amendment to the United States Constitution. While there are no cases directly on point, an argument can reasonably be made that preventing private homeowners and businesses from using LPRs, as well as recording and disseminating the data, would be a First Amendment violation. Since the restriction would apply only to LPRs, it would likely be considered content-based, thus triggering the highest strict scrutiny standard of judicial review. In order to survive the strict scrutiny test, Metro would have to show that the restriction is related to a compelling governmental interest, is narrowly tailored to achieve that compelling interest, and is the least restrictive means available to meet that objective. This is an extremely difficult standard to overcome.

There is a proposed amendment for this ordinance to limit the applicability of the LPR use prohibition to Metro

employees and contractors to eliminate the First Amendment concerns.

Additionally, a proposed amendment would allow LPR to be used for parking enforcement.