

RESOLUTION NO.

WHEREAS, license plate readers gather objective and unbiased facts about vehicles; and

WHEREAS, license plate reader technology focuses solely on extracting empirical data, primarily the license plate numbers which Texas state law requires to be affixed to every vehicle; and

WHEREAS, license plate readers only record the vehicle make, model, and license plate number of a vehicle; and

WHEREAS, license plate readers are not a "live camera" and cannot be used for surveillance, traffic enforcement, or any other purpose; and

WHEREAS, these cameras do not capture images of vehicle drivers; and

WHEREAS, maintaining the privacy of the data collected through license plate readers is paramount; and

WHEREAS, the license plate readers historically used by the Austin Police Department are categorically objective and cannot collect information in ways that discriminate against any resident in the City; and

WHEREAS, the use of license plate readers assists police departments across the country by increasing their investigative efficacy while reducing unnecessary delays in pursuing leads; and

WHEREAS, camera data helps solve crimes when crimes occur; and

21 **WHEREAS**, license plate readers previously helped the Austin Police
22 Department locate stolen or wanted vehicles, vehicles connected to AMBER
23 Alerts, Silver Alerts, missing person reports, abductions reports, and vehicles
24 connected to other crimes; and

25 **WHEREAS**, the use of license plate readers bolsters the capability of local
26 law enforcement to act and apprehend criminals swiftly, leading to the deterrence
27 of crimes; and

28 **WHEREAS**, re-introducing license plate readers to the Austin Police
29 Department will help reduce crime, will prevent residents and visitors to the City
30 from being victimized, particularly from car and property thefts, and will lead to
31 deterrence of crime; and

32 **WHEREAS**, license plate readers can notify Austin Police Department
33 officers within seconds that a license plate has passed within the device's range,
34 allowing Austin Police Department officers to take immediate action in furtherance
35 of public safety;

36 **WHEREAS**, the Texas Penal Code creates a criminal offense for an officer
37 or other public servant who intentionally or knowingly misuses information from
38 the license plate reader with the intent of obtaining a benefit, harming, defrauding,
39 oppressing another person, or disclosing the information for a nongovernmental
40 purpose that has not otherwise been made public.

41 **WHEREAS**, the Austin Police Department's General Orders include rules
42 on the Security and Release of Records and Information, General Conduct and
43 Responsibilities, Racial or Biased Profiling, Responsibility to the Community, and
44 other orders to ensure officers keep private or confidential information secure,

45 know and comply with laws, do not engage in racial or biased profiling, perform
46 their services in an impartial and equitable manner, and provide equal and fair
47 protection of all rights under local, state, and federal law for all members of the
48 community; and

49 **WHEREAS**, a violation of General Orders provides cause to discipline a
50 police officer under Section 143.052 of the Texas Local Government Code and
51 Rule 10 of the Rules of Procedure for the Firefighters', Police Officers' and
52 Emergency Medical Service Personnel's Civil Service Commission; **NOW,**
53 **THEREFORE,**

54 **BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

55 The City Council directs the City Manager to identify funding in the amount
56 of \$114,775.00 that can be used for the license reader program in the Fiscal Year
57 2021-2022 budget and return with any actions that are necessary for Council to
58 authorize this expenditure.

59 **BE IT FURTHER RESOLVED:**

60 Council directs the City Manager to include authorization for continuation of
61 the license reader program for Council consideration during the upcoming budget
62 adoption for Fiscal Year 2022-2023.

63 **BE IT FURTHER RESOLVED:**

64 The City Council directs the City Manager to re-evaluate the Austin Police
65 Department's former policy and/or procedure on license plate readers; work with
66 the Office of Police Oversight and coordinate a minimum of two community input

67 sessions related to the policy; and take appropriate steps to ensure the policy and/or
68 procedure includes, but is not limited to, the following safeguards.

69 1. The license plate reader program's exclusive function will be to scan
70 vehicle license plates and cross reference the license plate with
71 information located on the license plate reader system's "hot list"
72 containing information relating to certain vehicles. The information
73 about these vehicles may be gathered from the Texas Department of
74 Motor Vehicles, Texas Department of Public Safety, including the
75 State Network and its Alert Programs, the state Criminal Justice
76 Information System, Texas Department of Family and Protective
77 Services, the Texas Center for the Missing, the National Crime
78 Information Center, the National Center for Missing & Exploited
79 Children, the FBI Kidnappings and Missing Persons list, or entered by
80 the Austin Police Department. The Austin Police Department must
81 document and preserve the reason for the entry, when the entry was
82 made, the amount of time requested for the entry to remain in the
83 system and why, and when the manual entry was destroyed. Unless
84 otherwise required by state or federal law, the vehicles on the hot list
85 must be limited to:

- 86 A. Vehicles that have been reported as stolen;
87 B. Vehicles registered to an individual for whom there is an
88 outstanding felony or Class A misdemeanor warrant.
89 C. Vehicles associated with missing or endangered persons;
90 D. Vehicles where the vehicles or individuals associated with the
91 license plate numbers are relevant and material to an active, ongoing
92 criminal investigation of felonies or Class A misdemeanor.

92 2. Data used for the license plate reader program will be kept for a
93 maximum of 3 minutes and destroyed thereafter. License
94 plate reader data may not be retained or transmitted unless it
95 matches with a vehicle on a hot list or is related to an active criminal
96 or missing or endangered persons case or investigation, in which case
97 it may be stored in a criminal case folder for that case or investigation
98 for longer periods and is destroyed at the conclusion of:

99 A. An investigation that does not result in any criminal charges
100 being filed;

101 B. The final disposition of any criminal charges filed, including
102 but not limited to dismissal, acquittal, or conviction; or

103 C. A missing or endangered person investigation.

104 Such data may also be preserved pursuant to a court order or a
105 preservation request from a governmental entity or defendant in a
106 pending criminal case until a court of competent jurisdiction
107 determines the data are relevant and material to such case or otherwise
108 orders the data preserved. If a court of competent jurisdiction
109 determines there is no need to preserve the data, or if the criminal case
110 is finally disposed without the court ruling on such preservation, the
111 data will be destroyed as soon as practicably possible and by no later
112 than the expiration of 7 days following the court's ruling or final
113 disposition of the case. One year from the passage of this Resolution,
114 the Austin Police Department will return to Council to provide an
115 evaluation of the 3-minute data retention policy and its effectiveness.
116

- 117 3. Data sharing with another government agency will only occur for
118 investigating and/or prosecuting criminal activity for APD as
119 permitted under Paragraph 1 above or locating missing or endangered
120 persons. If a circumstance arises where the City is required by state or
121 federal law to share the information at the request of a state or federal
122 agency for another law enforcement purpose, then APD will not grant
123 direct access to the database, but will only supply the requested
124 information for a specific case or investigation that is under its
125 custody and control and is responsive, relevant, and material to the
126 request or only to the extent legally required. If the City receives a
127 request for information that is broader than a specific case or
128 investigation, then APD will report that request to the Office of Police
129 Oversight, Mayor, and Council and may not share the information
130 requested, except to the extent legally required.
131 Before receiving any license plate reader data, a
132 requesting agency must execute an agreement or memorandum of
133 understanding to abide by the requirements of the Austin written
134 administrative policy and procedure for license plate readers and the
135 Austin Police Department General Orders in the use, handling, and
136 preservation of the data, including but not limited to the limitations on
137 the sharing of data, and agree that all data received will be promptly
138 destroyed upon the conclusion of an active criminal or missing or
139 endangered person case and that notice of such destruction shall be
140 promptly provided to APD.
- 141 4. Annual training of all Austin Police Department personnel will be
142 conducted on the policies and restrictions concerning license plate

143 reader camera use and data, including how to properly respond to
144 requests for data from other law enforcement agencies. No APD
145 personnel is permitted to participate in the license plate reader
146 program or access, view, or use any license plate reader data until
147 such training has been successfully completed, and continued
148 participation and access is contingent on successful completion of
149 such training each year.

150 5. The City Manager will post the Austin Police Department's usage and
151 privacy policy regarding license plate readers on the City's website.

152 6. No person will be the subject of police action because of actual or
153 perceived race, color, religion, creed, sex, gender, gender identity,
154 sexual orientation, age, national origin, ethnicity, disability, veteran
155 status, marital status, partnership status, political affiliation or beliefs,
156 and, to the extent permitted by law, alienage or citizenship status,
157 when license plate reader data is used.

158 7. Unless there is a criminal nexus, officers will not use, retain, or
159 transmit license plate reader data for the purpose of investigating
160 persons who are exercising their First Amendment rights, including
161 freedom of speech, assembly, association, and exercise of religion,
162 such as attending political rallies, organizational meetings, public
163 demonstrations, and religious gatherings.

164 8. A license plate reader alert alone, does not create reasonable suspicion
165 to justify a traffic stop or the detention of an individual. Before
166 making a stop or detention, the officer must: 1. Make a visual
167 confirmation that the license plate matches the information captured

168 by the license plate reader -and reported in the last alert; and 2.

169 Confirm the license plate matches information in the hot

170 List:-

- 171 9. License plate readers and the license plate reader data collected by
172 the Austin Police Department will not be used for the purpose of
173 collecting traffic fines, Class C misdemeanor warrant roundups, or
174 any other similar purpose of generating revenue or collecting money
175 owed by the public. APD will not use license plate reader data for the
176 purpose of conducting its own criminal investigations related to
177 immigration status or access to reproductive health services.
- 178 10. The Austin Police Department will use best practice and data security
179 including, but not limited to:
- 180 A. Role-based access to limit database access to specific officers,
181 who are ordered to operate in compliance with policy or else be
182 subject to disciplinary action;
- 183 B. Designation of a Security Officer with responsibility for the
184 following: receiving daily alerts on attempts to log in, limiting
185 access to the license plate database for only permissible use,
186 and/or regularly monitoring access to data stored under this
187 provision; and
- 188 C. Other best practice provisions related to data security for data
189 storage, including the most secure options available for
190 maintaining data.

191 The City Manager is directed to consult with the City of Austin Security
192 Officer in the development of these provisions.

193 **BE IT FURTHER RESOLVED:**

194 The City Council directs the City Manager to ensure the Austin Police
195 Department Chief takes appropriate steps to implement changes to the former
196 policy and/or procedure and restore the Austin Police Department's licenseplate
197 reader program promptly upon the completion and adoption of
198 the new policy and/or procedure, if funding is appropriated by Council for this
199 purpose.

200 **BE IT FURTHER RESOLVED:**

201 The City Council directs the City Auditor to review or hire an external party
202 to audit APD's ALPR audit process and review the license plate reader data and
203 program. This will be done with assistance from the Austin Police Department, and
204 to the extent allowed by law, information obtained by the audit and review will be
205 shared with the City Council's Public Safety Committee, the Office of Police
206 Oversight, and the Public Safety Commission. Except for law enforcement
207 sensitive information and information considered to be confidential by law, either
208 constitutionally, statutorily, or by judicial decision, the audit and review will be
209 posted on the City's website for the public to view. The audit shall be provided to
210 the City Council by end of the pilot program. This audit shall include, but not be
211 limited to:

212
213 A. The number of license plates scanned;

- 214 B. The names of the lists against which captured plate data were
215 checked, and the number of confirmed matches and the number of
216 matches that upon further investigation did not correlate to an alert;
217 C. The number of matches that resulted in arrest, prosecution, or location
218 of a missing or endangered person;
219 D. The number of preservation requests received, broken down by
220 number of requests by governmental entity versus by defendants;
221 E. The number of data sharing requests received, granted, and denied;
222 F. The number of data sharing requests resulting in arrest, prosecution,
223 or the location of a missing or endangered person;
224 G. The number of manually-entered license plate numbers under Section
225 1(a), broken down by reason justifying the entry, and the number of
226 confirmed matches and the number of matches that upon further
227 investigation did not correlate to an alert; and
228 Any changes in Austin Police Department policy that affect privacy
229 concerns.

230 The location of the cameras shall not be posted on the City's website or subject to
231 public disclosure unless required by state or federal law.

232 **BE IT FURTHER RESOLVED:**

233 The program's pilot will automatically cease at the end of fiscal year 2023,
234 unless further extended by Council. Four months prior to the cease of the pilot

program, the City Manager will present recommendations on the continuation of the program to Council during a work session, with action to be taken at the following Council meeting.

ADOPTED: _____, 2022 **ATTEST:** _____

Myrna Rios
City Clerk