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RESOLUTION NO.

1

2   **WHEREAS**, license plate readers gather objective and unbiased facts about

3 vehicles; and

4   **WHEREAS**, license plate reader technology focuses solely on extracting

5 empirical data, primarily the license plate numbers which Texas state law requires

6 to be affixed to every vehicle; and

7   **WHEREAS**, license plate readers only record the vehicle make, model, and

8 license plate number of a vehicle; and

9   **WHEREAS**, license plate readers are not a "live camera" and cannot be

10 used for surveillance, traffic enforcement, or any other purpose; and

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

12   **WHEREAS**, maintaining the privacy of the data collected through license

13 plate readers is paramount; and

14   **WHEREAS**, the license plate readers historically used by the Austin Police

15 Department are categorically objective and cannot collect information in ways that

16 discriminate against any resident in the City; and

17   **WHEREAS**, the use of license plate readers assists police departments

18 across the country by increasing their investigative efficacy while reducing

19 unnecessary delays in pursuing leads; and

20   **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

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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; and

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; and

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

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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.

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1.   The license plate reader program's exclusive functions shall be: 1. To retain and query historical data for the investigation of exclusively the crimes and emergencies specified in Section 1A-D; and 2. to scan vehicle license plates and cross reference the license plate with information on the license plate reader "hot list" containing information relating to certain vehicles. The information about these vehicles may be gathered from the Texas Department of Motor Vehicles, Texas Department of Public Safety, including the State Network and its Alert Programs, the state Criminal Justice Information System, Texas Department of Family and Protective Services, the Texas Center for the Missing, the National Crime Information Center, the National Center for Missing & Exploited Children, the FBI Kidnappings and Missing Persons list, or entered by the Austin Police Department. The Austin Police Department must document and preserve the reason for the entry, when the entry was made, the amount of time requested for the entry to remain in the system and why, and when the manual entry was or will be destroyed. Unless otherwise required by state or federal law, the vehicles on the hotlist must be limited to:

     A. Vehicles that have been reported as stolen;
     B. Vehicles registered to an individual for whom there is an
          outstanding felony or Class A misdemeanor warrant;
     C. Vehicles associated with missing or endangered persons;
     D. Vehicles where the vehicles or individuals associated with
          the license plate numbers are relevant and material to an

Page **4** of **11**

active, ongoing criminal investigation of felonies, Class A misdemeanors, and/or hate crimes.

2. Data used for the license plate reader program will be kept for a maximum of 30 days and destroyed thereafter. License plate reader data may not be retained or transmitted unless it matches with a vehicle on a hot list or is related to an active criminal case or investigation, in which case it may be stored in a criminal case folder for that case or investigation for longer periods and is destroyed at the conclusion of:

a. An investigation that does not result in any criminal charges being filed; or

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

c. A missing or endangered person investigation.

Such data may also be preserved pursuant to a court order or a preservation request from a governmental entity or defendant in a pending criminal case until a court of competent jurisdiction determines the data are relevant and material to such case or otherwise orders the data preserved. If a court of competent jurisdiction determines there is no need to preserve the data, or if the criminal case is finally disposed without the court ruling on such preservation, the data will be destroyed as soon as practicably possible and by no later than the expiration of 7 days following the court's ruling or final disposition of the caseOne year from the passage of this Resolution, the

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121 Austin Police Department will return to Council to provide an evaluation of
122 the 30-day data retention policy and its effectiveness.

123 3. Data sharing with another government agency will only occur for
124 investigating and/or prosecuting criminal activity for APD as
125 permitted under Paragraph 1 above or locating missing or endangered
126 persons. If a circumstance arises where the City is required by state or
127 federal law to share the information at the request of a state or federal
128 agency for another law enforcement purpose, then APD will not grant
129 direct access to the database, but will only supply the requested
130 information for a specific case or investigation that is under its
131 custody and control and is responsive, relevant, and material to the
132 request or only to the extent legally required. If the City receives a

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133 request for information that is broader than a specific case or
134 investigation, then APD will report that request to the Office of Police
135 Oversight, Mayor, and Council and may not share the information

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136 requested, except to the extent legally required. Before receiving any

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137 license plate reader data, a requesting agency must execute an
138 agreement or memorandum of understanding to abide by the
139 requirements of the Austin written administrative policy and
140 procedure for license plate readers and the Austin Police Department
141 General Orders in the use, handling, and preservation of the data,
142 including but not limited to the limitations on the sharing of the data,
143 and agree that all data received will be promptly destroyed upon the
144 conclusion of an active criminal or missing or endangered person case
145 and that notice of such destruction shall be promptly provided to
146 APD.

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150   4.   Annual training of all Austin Police Department personnel will be
151   conducted on the policies and restrictions concerning license plate
152   reader camera use and data, including how to properly respond to
153   requests for data from other law enforcement agencies. No APD
154   personnel is permitted to participate in the license plate reader
155   program or access, view, or use any license plate reader program or
156   access, view, or use any license plate reader data until such training
157   has been successfully completed, and continued participation and
158   access is contingent upon successful completion of such training each
159   calendar year.

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

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

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

8.   A license plate reader alert alone, does not create reasonable suspicion to justify a traffic stop or the detention of an individual. Before making a stop or detention, the officer must: 1. Make a visual confirmation that the license plate matches the information captured by the license plate reader and reported in the last alert; and 2. Confirm the license plate information matches information in the hot list.

9.   License plate readers and the license plate reader data collected by the Austin Police Department will not be used for the purpose of investigations related to immigration status or access to reproductive health services to the extent legally possible.

10.   License plate readers and the license plate reader data collected by the Austin Police Department will not be used for the purpose of collecting traffic fines, Class C misdemeanors, warrant roundups, or any other similar purpose of generating revenue or collecting money owed by the public. APD will not use license plate reader data for the purpose of conducting its own criminal investigations related to immigration status or access to reproductive health services.

11.   The Austin Police Department will use best practice and data security including, but not limited to:

      A.   Role-based access to limit database access to specific officers, who are ordered to operate in compliance with policy or else be subject to disciplinary action; and

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B. Designation of a Chief Security Officer with responsibility for
the following: receiving daily alerts on attempts to log in,
limiting access to the license plate database for only permissible
use, and/or regularly monitoring access to data stored under this
provision; and

C. Other best practice provisions related to data security for data
storage, including the most secure options available for
maintaining data.

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

BE IT FURTHER RESOLVED:

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

BE IT FURTHER RESOLVED:

The City Council directs the City Auditor to review or hire an external party
to audit APD's ALPR audit process and review the license plate reader data and
program. This will be done with assistance from the Austin Police Department, and
to the extent allowed by law, information obtained by the audit and review will be

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225 shared with the City Council's Public Safety Committee, the Office of Police

226 Oversight, and the Public Safety Commission. Except for law enforcement

227 sensitive information and information considered to be confidential by law, either

228 constitutionally, statutorily, or by judicial decision, the audit and review will be

229 posted on the City's website for the public to view. The audit shall be provided to

230 the City Council by end of the pilot program. This audit shall include, but not be

231 limited to:

232   A. The number of license plates scanned;

233   B. The names of the lists against which captured plate data were

234   checked, and the number of confirmed matches and the number

235   of matches that upon further investigation did not correlate to

236   an alert;

237   C. The number of matches that resulted in arrest, prosecution, or

238   location of a missing or endangered person;

239   D. The number of preservation requests received, broken down by

240   number of requests by governmental entity versus by

241   defendants;

242   E. The number of data sharing requests received, granted, and

243   denied;

244   F. The number of data saring requests resulting in arrest,

245   prosecution, or the location of a missing or endangered person;

246   G. The number of manually-entered license plate numbers under

247   Section 1, broken down by reason justifying the entry, and the

248   number of confirmed matches and the number of matches that

249   upon further investigation did not correlate to an alert; and

250   H. Any changes in Austin Police Department policy that affect

251   privacy concerns.

252   The location of the cameras shall not be posted on the City's website or

253 subject to public disclosure unless required by state or federal law.

254 **BE IT FURTHER RESOLVED:**

255   The program's pilot will automatically cease at the end of fiscal year 2023,

256 unless further extended by Council. Four months prior to the cease of the pilot

257 program, the City Manager will present recommendations on the continuation of

258 the program to Council during a work session, with action to be taken at the

259 following Council meeting.

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

262   Myrna Rios

263   City Clerk

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When and the number of times the devices were used;¶
Number and locations of cameras used;¶
Action(s) taken due to the device; and ¶
Demographic information on who the devices were used on.¶