

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

WHEREAS, license plate readers previously helped the Austin Police Department locate stolen or wanted vehicles, vehicles connected to AMBER

Alerts, Silver Alerts, missing person reports, abductions reports, and vehicles connected to other crimes; and

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

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

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

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

WHEREAS, the Austin Police Department's General Orders include rules on the Security and Release of Records and Information, General Conduct and Responsibilities, Racial or Biased Profiling, Responsibility to the Community, and other orders to ensure officers keep private or confidential information secure, know and comply with laws, do not engage in racial or biased profiling, perform 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 functions shall be: 1. To
70 retain and query historical data for the investigation of exclusively the
71 crimes and emergencies specified in Section 1A-D; and 2. to scan
72 vehicle license plates and cross reference the license plate with
73 information on the license plate reader "hot list" containing
74 information relating to certain vehicles. The information about these
75 vehicles may be gathered from the Texas Department of Motor
76 Vehicles, Texas Department of Public Safety, including the State
77 Network and its Alert Programs, the state Criminal Justice
78 Information System, Texas Department of Family and Protective
79 Services, the Texas Center for the Missing, the National Crime
80 Information Center, the National Center for Missing & Exploited
81 Children, the FBI Kidnappings and Missing Persons list, or entered by
82 the Austin Police Department. The Austin Police Department must
83 document and preserve the reason for the entry, when the entry was
84 made, the amount of time requested for the entry to remain in the
85 system and why, and when the manual entry was or will be destroyed.
86 Unless otherwise required by state or federal law, the vehicles on the
87 hotlist must be limited to:

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

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 case. One year from the passage of this Resolution, the

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

3. Data sharing with another government agency will only occur for investigating and/or prosecuting criminal activity for APD as permitted under Paragraph 1 above or locating missing or endangered persons. If a circumstance arises where the City is required by state or federal law to share the information at the request of a state or federal agency for another law enforcement purpose, then APD will not grant direct access to the database, but will only supply the requested information for a specific case or investigation that is under its custody and control and is responsive, relevant, and material to the request or only to the extent legally required. If the City receives a request for information that is broader than a specific case or investigation, then APD will report that request to the Office of Police Oversight, Mayor, and Council and may not share the information requested, except to the extent legally required. Before receiving any license plate reader data, a requesting agency must execute an agreement or memorandum of understanding to abide by the requirements of the Austin written administrative policy and procedure for license plate readers and the Austin Police Department General Orders in the use, handling, and preservation of the data, including but not limited to the limitations on the sharing of the data, and agree that all data received will be promptly destroyed upon the conclusion of an active criminal or missing or endangered person case and that notice of such destruction shall be promptly provided to APD.

- 144 4. Annual training of all Austin Police Department personnel will be
145 conducted on the policies and restrictions concerning license plate
146 reader camera use and data, including how to properly respond to
147 requests for data from other law enforcement agencies. No APD
148 personnel is permitted to participate in the license plate reader
149 program or access, view, or use any license plate reader program or
150 access, view, or use any license plate reader data until such training
151 has been successfully completed, and continued participation and
152 access is contingent upon successful completion of such training each
153 calendar year.
- 154 5. The City Manager will post the Austin Police Department's usage and
155 privacy policy regarding license plate readers on the City's website.
- 156 6. No person will be the subject of police action because of actual or
157 perceived race, color, religion, creed, sex, gender, gender identity,
158 sexual orientation, age, national origin, ethnicity, disability, veteran
159 status, marital status, partnership status, pregnancy status, political
160 affiliation or beliefs, and, to the extent permitted by law, alienage or
161 citizenship status, when license plate reader data is used.
- 162 7. Unless there is a criminal nexus, officers will not use, retain, or
163 transmit license plate reader data for the purpose of investigating
164 persons who are exercising their First Amendment rights, including
165 freedom of speech, assembly, association, and exercise of religion,
166 such as attending political rallies, organizational meetings, public
167 demonstrations, and religious gatherings.

- 168 8. A license plate reader alert alone, does not create reasonable suspicion
169 to justify a traffic stop or the detention of an individual. Before
170 making a stop or detention, the officer must: 1. Make a visual
171 confirmation that the license plate matches the information captured
172 by the license plate reader and reported in the last alert; and 2.
173 Confirm the license plate information matches information in the hot
174 list.
- 175 9. License plate readers and the license plate reader data collected by the
176 Austin Police Department will not be used for the purpose of
177 investigations related to immigration status or access to reproductive
178 health services to the extent legally possible.
- 179 10. License plate readers and the license plate reader data collected by the
180 Austin Police Department will not be used for the purpose of
181 collecting traffic fines, Class C misdemeanors, warrant roundups, or
182 any other similar purpose of generating revenue or collecting money
183 owed by the public. APD will not use license plate reader data for the
184 purpose of conducting its own criminal investigations related to
185 immigration status or access to reproductive health services.
- 186 11. The Austin Police Department will use best practice and data security
187 including, but not limited to:
- 188 A. Role-based access to limit database access to specific officers,
189 who are ordered to operate in compliance with policy or else be
190 subject to disciplinary action; and

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

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

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

201 **BE IT FURTHER RESOLVED:**

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

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208
209 **BE IT FURTHER RESOLVED:**

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

shared with the City Council's Public Safety Committee, the Office of Police Oversight, and the Public Safety Commission. Except for law enforcement sensitive information and information considered to be confidential by law, either constitutionally, statutorily, or by judicial decision, the audit and review will be posted on the City's website for the public to view. The audit shall be provided to the City Council by end of the pilot program. This audit shall include, but not be limited to:

- A. The number of license plates scanned;
- B. The names of the lists against which captured plate data were checked, and the number of confirmed matches and the number of matches that upon further investigation did not correlate to an alert;
- C. The number of matches that resulted in arrest, prosecution, or location of a missing or endangered person;
- D. The number of preservation requests received, broken down by number of requests by governmental entity versus by defendants;
- E. The number of data sharing requests received, granted, and denied;
- F. The number of data saring requests resulting in arrest, prosecution, or the location of a missing or endangered person;
- G. The number of manually-entered license plate numbers under Section 1, broken down by reason justifying the entry, and the number of confirmed matches and the number of matches that upon further investigation did not correlate to an alert; and

H. Any changes in Austin Police Department policy that affect
privacy concerns.

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

BE IT FURTHER RESOLVED:

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