

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 authorizes the City Manager to use funding in the amount
56 of \$114,775.00 from the APD Fiscal Year 2021-2022 budget for the license reader
57 program.

58 **BE IT FURTHER RESOLVED:**

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60 To the extent that the 2021-2022 funding is not encumbered, Council
61 authorizes the City Manager to use additional APD funds from the approved Fiscal
62 Year 2022-2023 APD budget to purchase the license plate readers.

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64 **BE IT FURTHER RESOLVED:**

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

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

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

- 89 A. Vehicles that have been reported as stolen;
90 B. Vehicles registered to an individual for whom there is an
91 outstanding felony or Class A misdemeanor warrant;
92 C. Vehicles associated with missing or endangered persons;

93 D. Vehicles where the vehicles or individuals associated with
94 the license plate numbers are relevant and material to an
95 active, ongoing criminal investigation of felonies, Class A
96 misdemeanors, and/or hate crimes.

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98 2. Data used for the license plate reader program will be kept for a
99 maximum of 30 days and destroyed thereafter. License plate reader
100 data may not be retained or transmitted unless it matches with a
101 vehicle on a hot list or is related to an active criminal case or
102 investigation, in which case it may be stored in a criminal case folder
103 for that case or investigation for longer periods and, to the extent it
104 does not conflict with APD's retention policy for criminal cases, is
105 destroyed at the conclusion of:

- 106 a. An investigation that does not result in any criminal charges being
107 filed; or
108 b. The final disposition of any criminal charges filed, including but
109 not limited to dismissal, acquittal, or conviction; or
110 c. A missing or endangered person investigation.

111 Such data may also be preserved pursuant to a court order or a preservation
112 request from a governmental entity or defendant in a pending criminal case
113 until a court of competent jurisdiction determines the data are relevant and
114 material to such case or otherwise orders the data preserved. If a court of
115 competent jurisdiction determines there is no need to preserve the data, or if
116 the criminal case is finally disposed without the court ruling on such

117 preservation, the data will be destroyed as soon as practicably possible and
118 by no later than the expiration of 7 days following the court's ruling or final
119 disposition of the case. One year from the passage of this Resolution, the
120 Austin Police Department will return to Council to provide an evaluation of
121 the 30-day data retention policy and its effectiveness.

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

143 conclusion of an active criminal or missing or endangered person case
144 and that notice of such destruction shall be promptly provided to
145 APD.

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

168 such as attending political rallies, organizational meetings, public
169 demonstrations, and religious gatherings.

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

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

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

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

- 190 A. Role-based access to limit database access to specific officers,
191 who are ordered to operate in compliance with policy or else be
192 subject to disciplinary action; and
- 193 B. Designation of a Chief Security Officer with responsibility for
194 the following: receiving daily alerts on attempts to log in,
195 limiting access to the license plate database for only permissible
196 use, and/or regularly monitoring access to data stored under this
197 provision; and
- 198 C. Other best practice provisions related to data security for data
199 storage, including the most secure options available for
200 maintaining data.

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

203 **BE IT FURTHER RESOLVED:**

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

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211 **BE IT FURTHER RESOLVED:**

212 The City Council directs the City Auditor to review or hire an external party
213 to audit APD's ALPR audit process and review the license plate reader data and
214 program. This will be done with assistance from the Austin Police Department, and
215 to the extent allowed by law, information obtained by the audit and review will be
216 shared with the City Council's Public Safety Committee, the Office of Police
217 Oversight, and the Public Safety Commission. Except for law enforcement
218 sensitive information and information considered to be confidential by law, either
219 constitutionally, statutorily, or by judicial decision, the audit and review will be
220 posted on the City's website for the public to view. The audit shall be provided to
221 the City Council by end of the pilot program. This audit shall include, but not be
222 limited to:

- 223 A. The number of license plates scanned;
- 224 B. The names of the lists against which captured plate data were
225 checked, and the number of confirmed matches and the number
226 of matches that upon further investigation did not correlate to
227 an alert;
- 228 C. The number of matches that resulted in arrest, prosecution, or
229 location of a missing or endangered person;
- 230 D. The number of preservation requests received, broken down by
231 number of requests by governmental entity versus by
232 defendants;
- 233 E. The number of data sharing requests received, granted, and
234 denied;
- 235 F. The number of data sharing requests resulting in arrest,
236 prosecution, or the location of a missing or endangered person;

- 237 G. The number of manually-entered license plate numbers under
238 Section 1, broken down by reason justifying the entry, and the
239 number of confirmed matches and the number of matches that
240 upon further investigation did not correlate to an alert; and
241 H. Any changes in Austin Police Department policy that affect
242 privacy concerns.

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

245 **BE IT FURTHER RESOLVED:**

246 The program's pilot will automatically cease at the end of fiscal year 2023,
247 unless further extended by Council. Four months prior to the cease of the pilot
248 program, the City Manager will present recommendations on the continuation of
249 the program to Council during a work session, with action to be taken at the
250 following Council meeting.

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

253 Myrna Rios
254 City Clerk
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