

Item 56
CM Vela

Proposed Motion V3 to CM Kelly's Resolution V3

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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

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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

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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 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.

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

58 **BE IT FURTHER RESOLVED:**

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59
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.

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

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64 **BE IT FURTHER RESOLVED:**

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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

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

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;

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

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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, to the extent it does not conflict with APD's retention policy for criminal cases, is destroyed at the conclusion of:

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- 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.

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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

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130 preservation, the data will be destroyed as soon as practicably possible and
131 by no later than the expiration of 7 days following the court's ruling or final
132 disposition of the case. One year from the passage of this Resolution, the

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

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

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

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

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such as attending political rallies, [organizational meetings](#), public demonstrations, and religious gatherings.

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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](#).

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9. [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.

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10. [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.](#)

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

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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

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.

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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 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 sharing requests resulting in arrest, prosecution, or the location of a missing or endangered person;

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- 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.

Deleted: <#>How, why, and by whom the devices were used;¶
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.¶

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.

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

Myrna Rios
City Clerk