



## Comparison of License Plate Reader Policies

8/19/2021

The Following table compares three different policy scenarios regarding license plate readers (LPRs) in Nashville. The first is the current laws regarding LPR usage for law enforcement. The current laws would continue if neither bill passes the Metro Council. The second is BL2020-582, a proposed ordinance sponsored by Council Members Johnston, Pulley, Nash, Rutherford, Murphy, Styles, Toombs, Gamble, Young, Hancock, Druffel, Hall, Withers, Hausser, and Cash. The third is BL2021-841, a proposed ordinance sponsored by Council Members Rosenburg, Mendes, Suara, Sepulveda, O’Connell, Benedict, Welsch, Parker, Roberts, and Porterfield.

BL2020-582 and BL2021-841 are both on second reading at the September 7<sup>th</sup> Metro Council meeting. This table focuses on law enforcement use. Text in quotes comes directly from the bills. Full text for both bills is included after the table.

Policy area	No Bill Passes	BL2020-582	BL2021-841
<b>LPR types allowed</b>	Metro agencies cannot install fixed LPRs in public right of way but may use mobile LPRs.	Removes all restrictions on LPR type (i.e. fixed or mobile would be allowed.)	LPR must be "within or on a law enforcement vehicle." The term "vehicle" in the Municipal Code (§12.04.435) includes trailers.

Policy area	No Bill Passes	BL2020-582	BL2021-841
<b>Allowed Uses</b>	No Restrictions	<p>Can be used for investigating and prosecuting ANY crime:</p> <p>"(1) investigating and prosecuting criminal offenses including, but not limited to, reckless driving, including but not limited to, persons engaged in illegal drag racing activity at speeds in excess of 70 miles per hour;</p> <p>(2) investigating and prosecuting violent crime, including but not limited to homicide and assault,;</p> <p>(3) identification and recovery of stolen vehicles and stolen license plates;</p> <p>(4) detecting and parking civil traffic or parking offenses,;</p> <p>(5) operating a smart parking or curb management program,; and</p> <p>(6) assisting in missing persons cases including Amber and Silver Alerts."</p>	<p>May be used only for the following:</p> <p>"a. Stolen vehicles.</p> <p>b. Vehicles associated with missing or endangered persons.</p> <p>c. Vehicles registered to a person against whom there is an outstanding felony arrest warrant.</p> <p>d. Vehicles for which a probable cause search warrant for a felony offense has been obtained."</p> <p>Proposed amendment would add:</p> <p>"e. Suspects for whom probable cause exists for an arrest for a felony offense."</p>

Policy area	No Bill Passes	BL2020-582	BL2021-841
<b>Prohibited Uses</b>	None	<p>“(1) the use of LPR for the following: the general surveillance of any individual;</p> <p>(2) the identification of a vehicle for the purposes of repossession of the vehicle;</p> <p>(3) the determination of whether a vehicle’s license plate is expired;</p> <p>(4) the determination of whether a motorist has a valid driver’s license; or</p> <p>(5) the determination of whether a motorist is insured.</p> <p>iii. An LPR system authorized under this section shall not be capable of facial recognition.”</p>	<p>Use limited to the allowed uses, above.</p> <p>“An LPR shall be used for the sole purpose of recording and checking license plates and shall not be capable of photographing, recording, or producing images of the occupants of a motor vehicle.”</p>
<b>Data Retention Period</b>	90 days unless part of criminal investigation according to state law	"10 days unless it is evidence in a criminal offense or civil traffic or parking offense, subject to a properly issued warrant, subpoena, public records request or court order, or where the department has been instructed to preserve such data by the Metropolitan Department of Law in relation to pending litigation or anticipated litigation."	24 hours unless related to a criminal investigation for an allowed use.
<b>Location of LPRs</b>	Metro agencies cannot install fixed LPRs in the public right of way	"An LPR technology deployment policy shall be developed and implemented by the MNPd to help prevent misuse of LPR technology to track and unfairly target vulnerable communities. Placement of fixed LPR technology in the public right-of-way shall be limited to major and collector streets as defined in the Nashville Next Major and Collector Street Plan, and the location of cameras shall be distributed equitably across the north, south, east, and west quadrants of the county."	<p>"Deployment of LPRs shall be executed in a manner that distributes their use equitably among MNPd precincts."</p> <p>Proposed Amendment: "Deployment of LPRs shall be executed such that their use is distributed in a generally equitable manner among MNPd precincts."</p>

Policy area	No Bill Passes	BL2020-582	BL2021-841
<b>Accountability/ Oversight</b>	None required	<p>Requires a usage and privacy policy from MNPd.</p> <p>Requires that the LPR program be managed by an LPR Custodian who will maintain security procedures, manage and train users, manage audits, ensure retention and destruction of data</p> <p>"the Metropolitan Nashville Police Department audit log shall be provided to two members of the Council, as selected by the Council, and to one member of the Community Oversight Board, as selected by the Community Oversight Board."</p> <p>"Users found to have used the LPR system without authorization, with improper credentials, or in a manner not authorized by these policies shall have their access immediately revoked and may face disciplinary action in accordance with applicable civil service policies, up to and including termination."</p> <p>"(f) To ensure compliance with the provisions of this section or to investigate complaints of misuse of an LPR or LPRs, the district attorney general, or a designee, or the public defender, or a designee, may examine and audit any LPR, any file used to store LPR data, and any records pertaining to the use of LPRs. If the district attorney general or the public defender believes that an LPR or LPRs have been used in violation of this section, either or both may send a letter to the Metro Council requesting suspension of the use of an LPR or LPRs for the purposes of investigation, to prevent ongoing violations, or to deter future violations. The Metro Council may grant such a request by resolution.</p>	<p>"5. Access to LPR records shall only be allowed on a case-by-case basis, for legitimate law enforcement investigative, prosecution, or audit verification purposes. All inquiries of LPR records shall be recorded for purposes of an audit trail and maintained by the law enforcement agency in the same manner as criminal history logs.</p> <p>6. To ensure compliance with the provisions of this section or to investigate complaints of misuse of an LPR or LPRs, a) the district attorney general, or a designee; b) the public defender, or a designee; c) the chair of the Community Oversight Board, or a designee; or d) two members of Council as selected by the Metropolitan Council may examine and audit any LPR, any server used to store LPR data, and any records pertaining to the use of LPRs. If the district attorney general, the public defender, or a majority of the Community Oversight Board believes that an LPR or LPRs have been used in violation of this section, either or both may send a letter to the Metropolitan Council requesting suspension of the use of an LPR or LPRs for the purposes of investigation, to prevent ongoing violations, or to deter future violations. The Metropolitan Council may grant such a request by resolution."</p> <p>Proposed amendment would remove the Council from compliance and auditing.</p>

Policy area	No Bill Passes	BL2020-582	BL2021-841
		<p>Nothing in this section shall be construed as limiting the authority of the district attorney general to prosecute any crime involving LPR. This includes, but is not limited to, tampering with evidence, which is a class C felony punishable under Tennessee law with a term of imprisonment of three to fifteen years and a fine not to exceed \$10,000."</p>	
<p><b>Transparency/ Reporting</b></p>	<p>None required</p>	<p>"7. To protect against racial and ethnic bias in the use of LPRs, any time a motor vehicle is stopped based on data analysis performed by an LPR:</p> <p>A. The law enforcement officer who effectuated the stop shall record and provide to their precinct for record keeping and reporting purposes:</p> <ul style="list-style-type: none"> <li>i. The date, time, and precise location of the stop;</li> <li>ii. Any investigative or enforcement actions that were taken subsequent to the stop, including without limitation: an arrest; a search of a vehicle, driver, or passenger; the issuance of a new ticket, fine, or fee; or the enforcement of an existing ticket, fine, or fee;</li> <li>iii. The self-identified race(s) and ethnicities of the driver of the stopped motor vehicle, if voluntarily provided by the driver following the law enforcement officer's request.</li> </ul> <p>a. The race and ethnicity identification categories provided to the driver for selection by the law enforcement officer shall be the same as those under present use by the United States Office of Management and Budget (OMB).</p> <p>B. No later than March 1 of each year, the police</p>	<p>"8. MNPDP shall report to the Metropolitan Council quarterly, beginning no more than three months from the date LPRs are deployed, the following information compiled since the end date of its most recent report:</p> <ul style="list-style-type: none"> <li>a. The number of LPRs in use in total and by precinct.</li> <li>b. The number of matches made by the LPR.</li> <li>c. The number of matches that identified vehicles and individuals sought by law enforcement and that resulted in stops of vehicles or individuals.</li> <li>d. The number of matches that resulted in searches of vehicles and individuals, releases, arrests, or other outcomes, and associated demographic information, including race and ethnicity.</li> <li>e. The number of matches where it was determined that all characters were read correctly, and the number of matches where it was determined that at least one character was misread.</li> <li>f. Other information requested by the Metropolitan Council by resolution." </li></ul>

Policy area	No Bill Passes	BL2020-582	BL2021-841
		<p>department shall report to the Metropolitan Council, and shall make publicly available upon the department's website, all of the data collected pursuant to this subsection Section G.7.A, by precinct, from the previous calendar year. The reported data shall include no other personally identifiable information.</p> <p>C. In addition to the reporting requirement in Subsection G.7.B, during the pilot program, the MNPd shall report to the Metropolitan Council the information required by this subsection G.7.C every two months. If a resolution is approved to fully implement the MNPd's use of LPR technology, the MNPd shall report such information to the Metropolitan Council every three months. Each report submitted by the MNPd shall contain the following information, compiled since the end date of its most recent report:</p> <ul style="list-style-type: none"> <li>a. The number of LPRs in use.</li> <li>b. The number of matches made by the LPR.</li> <li>c. The number of matches that identified vehicles and individuals sought by law enforcement and that resulted in stops of vehicles or individuals.</li> <li>d. The number of matches that resulted in searches of vehicles and individuals, releases, arrests, or other outcomes.</li> <li>e. Other information requested by the Metropolitan Council by resolution."</li> </ul>	

Policy area	No Bill Passes	BL2020-582	BL2021-841
<b>Pilot Phase</b>	None	<p>"14. Prior to the full implementation of a department's LPR system, there shall be a six-month pilot program beginning the first day that the LPR system is operational and in use by the department to determine whether the continued use of LPR technology is appropriate. At least two weeks prior to the conclusion of the pilot program period, the department shall submit a report to the Council on the efficacy of the program, compliance with the provisions of this section, and any policies implemented in order to carry out the use of the LPR system. This report shall be posted on the department's website. At the end of the six-month pilot program, the use of LPR technology by a department shall cease unless the Metropolitan Council approves the full implementation of the department's use of LPR technology upon adoption of a resolution."</p>	<p>"9. The Metropolitan Council shall hold a public hearing, set by resolution, regarding the use of LPRs by the Metropolitan government no more than six months from the date LPRs are deployed. The resolution setting the public hearing shall contain the date, time, and location of the public hearing. No more than three weeks after the public hearing, the Metropolitan Council shall vote by resolution on whether to continue use of LPRs. The resolution to continue the use of LPRs shall not be subject to deferral or a motion to reconsider, but amendments to remove certain uses allowed by this section shall be permitted. If the resolution to continue is adopted, the use of LPRs will continue. If the resolution to continue is not adopted, the use of LPRs will be discontinued."</p>
<b>Additional Provisions</b>	None	<p>"10. LPR data obtained from a privately owned or operated LPR system may be used for the purposes authorized in subsection G.1., provided the data is voluntarily provided by the owners or operators of said LPR systems. The Custodian shall develop policies and procedures for requesting, protecting, and retaining this data that are consistent with the intent of subsections G.2., G.3., and G.4."</p>	<p>State Preemption: "10. In the event that state legislation is enacted which requires LPR data to be retained for longer than this section authorizes and requires LPR data to be shared with any agency not authorized in this section, the Metropolitan Council shall vote by resolution whether to continue the use of LPRs. The resolution to continue the use of LPRs shall be voted on no more than five weeks following the effective date of the state legislation. The resolution shall not be subject to deferral or a motion to reconsider beyond that date. If the resolution to continue is adopted, the use of LPRs will continue. If the resolution to continue is not adopted, the use of LPRs will be discontinued."</p>

Policy area	No Bill Passes	BL2020-582	BL2021-841
<b>Cost/Purchasing</b>	Not Addressed	11. Any device or service necessary to effectuate the provisions of this subsection G shall be procured pursuant to the provisions of Title 4 of the Metropolitan Code of Laws, the Procurement Code.	Not Addressed





G. Except as provided in subsection I. of this section, any department of the Metropolitan Government, either directly or through contractors acting at the department's direction, wishing to acquire or enter into an agreement to acquire license plate scanner (LPR) technology and/or install or operate them onto or within the public rights-of-way, shall comply with the following requirements and restrictions:

1. A usage and privacy policy shall be implemented in order to ensure that the collection, use, maintenance, sharing, and dissemination of LPR information is consistent with respect for individuals' privacy and civil liberties. The usage and privacy policy shall be posted on the department's website, and shall include the following:
  - (a) The authorized purposes for using the LPR system and collecting LPR information, shall be limited to the following:
    - (1) investigating and prosecuting criminal offenses including, but not limited to, reckless driving, including but not limited to, persons engaged in illegal drag racing activity at speeds in excess of 70 miles per hour;
    - (2) investigating and prosecuting violent crime, including but not limited to homicide and assault,;
    - (3) identification and recovery of stolen vehicles and stolen license plates;
    - (4) detecting and parking civil traffic or parking offenses,;
    - (5) operating a smart parking or curb management program,; and
    - (6) assisting in missing persons cases including Amber and Silver Alerts.
  - ii. The use of an LPR system and collection of LPR information is not authorized and shall not be used for any purpose other than those listed in this section. This prohibition includes, but is not limited to:
    - (1) the use of LPR for the following: the general surveillance of any individual;
    - (2) the identification of a vehicle for the purposes of repossession of the vehicle;
    - (3) the determination of whether a vehicle's license plate is expired;
    - (4) the determination of whether a motorist has a valid driver's license; or
    - (5) the determination of whether a motorist is insured.
  - iii. An LPR system authorized under this section shall not be capable of facial recognition.
  - iv. Law Enforcement Agencies must have reasonable suspicion that a criminal offense, or a civil traffic or parking offenses, has occurred before examining collected license plate reader data that was collected more than one hour prior to the examination. Further, Law Enforcement Officers shall not examine license plate reader data that was collected more than one hour prior to the examination in order to generate reasonable suspicion. In an effort to deter the use of the LPR system by Metropolitan Nashville Police Department (MNPd) for purposes other than law enforcement, a two-step scanning process shall be developed and implemented by MNPd so that the first scan justifies the cause for a search and the second scan justifies the action of a search. The scanning process should be tailored so that the first scan through a database would yield the license plate number and verification of the number on a hot list. If that information is verified, a second scan would be allowed to recover the registered owner's name, address, and criminal record if applicable.

v. Whenever a license plate reader alerts on a plate, law enforcement, before taking any action, must confirm visually that a plate matches the number and state identified in the alert, confirm that the alert is still active by calling dispatch and, whether the alert pertains to the registrant of the car and not the car itself, and that the license plate is on the list for one of the authorized purposes listed in this section. Once confirmed, a query shall be initiated in the National Crime Information Center (NCIC) database by authorized individuals.

(b) A description of the employees or contractors who are authorized to use or access the LPR system or to collect LPR information.

(c) A description of the steps taken to restrict the information obtained through the LPR system to that which is strictly necessary to implement the purposes in subsection G.1(a) of this section and limited to the contents of only the license plate and, to the extent possible, excluding identifying information of the driver and passengers.

(d) A description of how the LPR system will be monitored to ensure the security of the information obtained.

(e) The purposes of, process for, and restrictions on the sharing of LPR information to other persons, which must be in accordance with the purposes identified in subsection G.1(a) of this section.

(f) A description of the measures used to ensure the accuracy of LPR information and to correct data errors.

(g) The length of time LPR information will be retained, limited to the terms outlined in subsection G.4 of this section.

2. The installation and maintenance of LPR hardware and software, as well as LPR data access, retention, and security, shall be managed by an LPR Custodian ("Custodian"), who will assign personnel under their command to administer the day-to-day operation of the LPR system as defined below. The Custodian's name shall be provided on the department's website. The Custodian shall be the administrator of the LPR system and shall be responsible for developing guidelines and procedures regarding the department's use of its LPR system, including, but not limited to:

(a) Establishing and maintaining reasonable security procedures and practices, including operational, administrative, technical, and physical safeguards, to protect LPR information from unauthorized access, destruction, use, modification, or disclosure;

(b) Maintaining a list of the name and job title of all users who are authorized to use or access the department's LPR system;

(c) Developing training requirements for and ensuring training of authorized users on the operations of, and usage and privacy policy for the department's LPR system;

(d) Developing procedures and a regular timetable for conducting audits of LPR system usage, including audits of user searches;

(e) Developing procedures for, and ensuring the proper retention and destruction of, the agency's LPR data;

(f) Ensuring that this policy and its related procedures are posted conspicuously on the department's public website; and

(g) Managing the relationship with the LPR provider, which shall include ensuring that:

(1) The provider meets all contractual obligations;

(2) The system is maintained as per Service Level Agreements;

(3) Log retention is adequate; and

(4) Data ownership is clearly understood.

3. Access and use of the department's LPR system is strictly restricted to the authorized users, as outlined below:

- (a) Authorized users must receive appropriate supervisory approval, as determined by the Custodian, prior to receiving LPR system access.
- (b) Access shall only be approved for designated personnel whose roles require them to use the LPR system, and LPR system access shall be further limited to those tasks within the employee's job responsibilities. Access shall be limited to no more than ten employees per department. In addition, access to review the Metropolitan Nashville Police Department audit log shall be provided to two members of the Council, as selected by the Council, and to one member of the Community Oversight Board, as selected by the Community Oversight Board.
- (c) Personnel authorized to use the department's LPR system as defined in subsection G.3.(b) of this section shall be specifically trained in the system, and the usage and privacy policy prior to receiving account access including, but not limited to:
  - i. Applicable local, state, and federal laws;
  - ii. Applicable policies, including the usage and privacy policy;
  - iii. Functionality of the equipment;
  - iv. Authorized and prohibited uses;
  - v. Accessing data;
  - vi. Safeguarding password information and data;
  - vii. Data sharing policies and procedures; and
  - viii. Reporting breaches, errors, and other issues.
- (d) Authorized user accounts which are inactive for a period of nine months will be disabled automatically. Authorized users with disabled accounts must be retrained in the LPR system, usage, and privacy policies prior to having their accounts reinstated.
- (e) Users found to have used the LPR system without authorization, with improper credentials, or in a manner not authorized by these policies shall have their access immediately revoked and may face disciplinary action in accordance with applicable civil service policies, up to and including termination.
- (f) To ensure compliance with the provisions of this section or to investigate complaints of misuse of an LPR or LPRs, the district attorney general, or a designee, or the public defender, or a designee, may examine and audit any LPR, any file used to store LPR data, and any records pertaining to the use of LPRs. If the district attorney general or the public defender believes that an LPR or LPRs have been used in violation of this section, either or both may send a letter to the Metro Council requesting suspension of the use of an LPR or LPRs for the purposes of investigation, to prevent ongoing violations, or to deter future violations. The Metro Council may grant such a request by resolution. Nothing in this section shall be construed as limiting the authority of the district attorney general to prosecute any crime involving LPR. This includes, but is not limited to, tampering with evidence, which is a class C felony punishable under Tennessee law with a term of imprisonment of three to fifteen years and a fine not to exceed \$10,000.

4. LPR data, including but not limited to license plate number, vehicle description, location and date/time stamp shall not be retained for more than 10 days unless it is evidence in a criminal offense or civil traffic or parking offense, subject to a properly issued warrant, subpoena, public records request

or court order, or where the department has been instructed to preserve such data by the Metropolitan Department of Law in relation to pending litigation or anticipated litigation.

(a) Any data unrelated to an ongoing investigation, or current or possible litigation shall be automatically deleted after 10 days.

(b) Users who wish to preserve LPR data for longer than 10 days shall make a written request to their supervisor including the investigation number and purpose for preservation and, upon approval, such LPR data will be preserved along with a note in the record stating the reason for preservation and related investigation number.

(c) LPR data retained by the Metropolitan Government shall not include any personally identifiable information.

(d) To the extent permitted by state law, the Metropolitan Government shall not sell LPR data for any purpose and shall not share any LPR data, except as provided in subsection G.6.

5. The LPR Custodian shall perform an audit of the LPR system and its access history on a regular basis, not less than one time per year. The department shall maintain an audit trail of access to the system for a period of not less than three years, which will include the following:

(a) The date and time the information is accessed.

(b) The license plate number or other data elements used to query the LPR system, if such data elements are not deleted per subsection G.4 of this section. Data exempt from deletion under subsection G.4., such as data that will be used as evidence in a criminal offense or civil traffic or parking offense, must be preserved for the audit trail pursuant to this subsection.

(c) The username of the person who accessed the information.

(d) The purpose for accessing the information.

6. To the extent consistent with state or federal law, the department's stored LPR data may only be shared with other law enforcement agencies using the following procedures:

(a) The agency making the request for the LPR data shall submit in writing:

i. The name of the agency;

ii. The name and title of the person requesting the information;

iii. The intended purpose of obtaining the information; and

iv. An agreement to adhere to the applicable provisions of this usage and privacy policy.

(b) The request shall be reviewed and approved by the Custodian before the requested access is granted.

(c) If the requested search generates results, the Custodian or his or her designee must verify that the results are relevant to the request made prior to sharing the LPR data.

(d) The department shall not share any data with any agency that uses that data in a manner broader than allowed by this policy. Data may only be shared for the purposes outlined in subsection G.1(a).

(e) Records of all approved requests, including a record of which account was used to provide the search results, must be maintained for a period not less than three years.

7. To protect against racial and ethnic bias in the use of LPRs, any time a motor vehicle is stopped based on data analysis performed by an LPR:

A. The law enforcement officer who effectuated the stop shall record and provide to their precinct

for record keeping and reporting purposes:

- i. The date, time, and precise location of the stop;
- ii. Any investigative or enforcement actions that were taken subsequent to the stop, including without limitation: an arrest; a search of a vehicle, driver, or passenger; the issuance of a new ticket, fine, or fee; or the enforcement of an existing ticket, fine, or fee;
- iii. The self-identified race(s) and ethnicities of the driver of the stopped motor vehicle, if voluntarily provided by the driver following the law enforcement officer's request.
  - a. The race and ethnicity identification categories provided to the driver for selection by the law enforcement officer shall be the same as those under present use by the United States Office of Management and Budget (OMB).

B. No later than March 1 of each year, the police department shall report to the Metropolitan Council, and shall make publicly available upon the department's website, all of the data collected pursuant to this subsection Section G.7.A, by precinct, from the previous calendar year. The reported data shall include no other personally identifiable information.

C. In addition to the reporting requirement in Subsection G.7.B, during the pilot program, the MNPDP shall report to the Metropolitan Council the information required by this subsection G.7.C every two months. If a resolution is approved to fully implement the MNPDP's use of LPR technology, the MNPDP shall report such information to the Metropolitan Council every three months. Each report submitted by the MNPDP shall contain the following information, compiled since the end date of its most recent report:

- a. The number of LPRs in use.
- b. The number of matches made by the LPR.
- c. The number of matches that identified vehicles and individuals sought by law enforcement and that resulted in stops of vehicles or individuals.
- d. The number of matches that resulted in searches of vehicles and individuals, releases, arrests, or other outcomes.
- e. Other information requested by the Metropolitan Council by resolution.

8. Failure of an employee to comply with the foregoing policies shall be grounds for disciplinary action in accordance with applicable civil service policies, up to and including termination.

9. LPR data shall only be disclosed in accordance with state and federal law.

10. LPR data obtained from a privately owned or operated LPR system may be used for the purposes authorized in subsection G.1., provided the data is voluntarily provided by the owners or operators of said LPR systems. The Custodian shall develop policies and procedures for requesting, protecting, and retaining this data that are consistent with the intent of subsections G.2., G.3., and G.4.

11. Any device or service necessary to effectuate the provisions of this subsection G shall be procured pursuant to the provisions of Title 4 of the Metropolitan Code of Laws, the Procurement Code.

12. An LPR technology deployment policy shall be developed and implemented by the MNPD to help prevent misuse of LPR technology to track and unfairly target vulnerable communities. Placement of fixed LPR technology in the public right-of-way shall be limited to major and collector streets as defined in the Nashville Next Major and Collector Street Plan, and the location of cameras shall be distributed equitably across the north, south, east, and west quadrants of the county.
13. A data verification policy shall be developed and implemented by MNPD to help prevent erroneous and potentially dangerous stops based upon incorrect or outdated information. The policy shall require independent verification of the information yielded from a hot list and real-time updating of hot list data, as well as a comparison of the accuracy of the hot list data with the accuracy of optical character recognition (OCR) output from LPR images. Hot lists shall be transferred daily and be capable of updating by an operator/officer in the field. The LPR system, both for fixed and mobile LPR units, shall function in such a manner so as to notify an officer when a license plate on the hot list is observed in real time. Historical LPR data shall be searched to determine the date and time a license plate number contained on a hot list passed a certain camera. For purposes of this subsection G., "hot list" means the list of license plate numbers law enforcement agencies have identified as being relevant for the investigation and/or prosecution of a criminal offense.
14. Prior to the full implementation of a department's LPR system, there shall be a six-month pilot program beginning the first day that the LPR system is operational and in use by the department to determine whether the continued use of LPR technology is appropriate. At least two weeks prior to the conclusion of the pilot program period, the department shall submit a report to the Council on the efficacy of the program, compliance with the provisions of this section, and any policies implemented in order to carry out the use of the LPR system. This report shall be posted on the department's website. At the end of the six-month pilot program, the use of LPR technology by a department shall cease unless the Metropolitan Council approves the full implementation of the department's use of LPR technology upon adoption of a resolution.

Section 2. That Section 13.08.080 of the Metropolitan Code is hereby amended by adding the following new subsection I.:

- I. In addition to the provisions of subsection G. of this section, license plate scanner technology shall be allowed if all of the follow requirements are met:
- (a) The license plate scanner is used solely and exclusively in conjunction with a vehicle emissions sensor as part of an emissions inspection program authorized under local, state or federal law;
  - (b) The data from the license plate scanner and vehicle emissions sensor is used solely and exclusively for purposes of determining compliance with vehicle emissions standards;
  - (c) A determination by the vehicle emissions sensor that a vehicle identified by the license plate scanner is not in compliance with applicable emissions standards shall not lead to any penalty or punitive action against the registered vehicle owner;
  - (d) No fewer than two such license plate scanners shall be in operation within Davidson County at any given time; and
  - (e) Data that can be used to pair a specific vehicle's license plate number, VIN, or other unique identifier with a specific geographic location shall not be recorded.

Section 3. This ordinance shall take effect from and after its enactment, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

## Analysis

This ordinance, as amended, amends Section 13.08.080 of the Metropolitan Code to provide for and regulate the usage of LPR technology. The Code currently prohibits the operation of LPRs installed onto or within the public right-of-way except for use in conjunction with a vehicle emissions sensor as part of an emissions inspection program authorized under local, state or federal law. This ordinance would replace the provisions of subsection G. of Section 13.08.080 entirely. The ordinance preserves the existing emissions inspection program exception and adds a new comprehensive regulatory structure for other uses of LPR technology.

The ordinance would require departments, either directly or through contractors, who want to use LPRs to implement a usage and privacy policy that would be posted on the department's website. The policy must be designed "to ensure that the collection, use, maintenance, sharing, and dissemination of LPR information is consistent with respect for individuals' privacy and civil liberties." The data collected could only be used for the following purposes:

- investigating and prosecuting criminal offenses
- investigating and prosecuting violent crim
- identification and recovery of stolen vehicles and stolen license plates
- detecting civil traffic or parking offenses
- operating a smart parking or curb management program
- assisting in missing persons cases including Amber and Silver Alerts

The use of LPR would be explicitly prohibited for the following purposes:

- general surveillance of any individual
- identification of a vehicle for the purposes of repossession
- determination of whether the license plate is expired
- determination of whether a motorist has a valid driver's license
- determination of whether a motorist is insured

Law enforcement agencies must have reasonable suspicion that a criminal offense, or a civil traffic or parking offenses, has occurred before examining any LPR data that was collected more than one hour prior to the examination. MNPD would be required to use a two-step scanning process whereby the first step justifies the cause for the search and the second scan justifies the action of a search. Prior to taking any action, law enforcement officers must also confirm visually that a plate matches the number and state identified in the alert, confirm that the alert is still active by calling dispatch, and determine whether the alert pertains to the registrant of the car and not the car itself, and that the license plate it on the list for one of the authorized purposes listed above.

The usage policy must also provide a description of the employees or contractors who are authorized to use or access the LPR system or to collect LPR information, and the steps that will be taken to ensure the security of the information and exclude identifying information of the driver and passengers to the extent possible. The policy must include the purposes of and restrictions on sharing LPR data, the measures used to ensure the accuracy of the data, and the length of time the data will be retained.



The installation and maintenance of LPR hardware and software, as well as LPR data access, retention, and security, would be managed by an LPR Custodian. The custodian would be responsible for assigning the personnel who will administer the day-to-day operation of the LPR system, and to develop guidelines and procedures for the further implementation of this ordinance. This will include establishing and maintaining security procedures and practices, maintaining a list of the name and job title of all authorized users, training requirements, audit procedures, and a data retention policy. This policy and its related procedures must be posted conspicuously on the department's public website.

The ordinance also includes specific restrictions on the access and use of the department's LPR system, such as supervisor approval and limiting access to those tasks that fall within the specific user's job responsibilities. All users must be specifically trained regarding the LPR system and the usage/privacy policy prior to receiving account access. Users found to have used the LPR system without authorization would have their access immediately revoked and may face disciplinary action in accordance with applicable civil service policies, up to and including termination.

LPR data could not be retained for more than 30 days unless it is evidence in a criminal offense or civil traffic or parking offense, subject to a properly issued warrant, subpoena, public records request or court order, or where a litigation hold has been placed by the Department of Law. T.C.A. § 55-10-302 provides that any LPR data collected by any governmental entity may not be stored "for more than 90 days" unless the data is retained or stored as part of an ongoing investigation, and in that case, the data must be destroyed at the conclusion of the investigation or criminal action. Thus, the state law does not prevent local governments from having a shorter retention period.

The ordinance requires the LPR custodian to perform an audit at least once per year of the LPR system and the access history. The ordinance also provides some limitations on the sharing of LPR data with other law enforcement agencies. The ordinance further provides that LPR data obtained by Metro from a privately owned or operated LPR system could only be used for the purposes outlined above.

Law enforcement officers who stop vehicles based upon LPR data must complete a written record that includes the following:

- The date, time, and precise location of the stop;
- Any investigative or enforcement actions that were taken as a result of the stop; and
- The self-identified race(s) and ethnicities of the driver of the stopped motor vehicle if voluntarily provided by the driver at the request of the officer.

The ordinance further requires that an LPR technology deployment policy be developed and implemented by MNPD to help prevent the misuse of LPR technology to track and unfairly target vulnerable communities. Placement of LPRs in the public right of way would be limited to major and collector streets and must be distributed equitably across the north, south, east, and west quadrants of the county.

A data verification policy would be required to be developed to prevent erroneous and potentially dangerous stops based on incorrect and outdated information.

The LPR program would be subject to a six month pilot program beginning the first day that the LPR system is operation and in use by the department. At least two weeks prior to the conclusion of the pilot program period, the department would be required to submit a report to Council on the efficacy of the program, compliance with

the provision, and any policies implemented in order to carry out the use of the LPR system. This report would be required to be posted on the department's website. At the end of the department's pilot program, the use of LPR technology would cease unless the Council approves the full implementation by adoption of a resolution.

This ordinance will be deferred one meeting pursuant to Rule 43.



# Metropolitan Nashville and Davidson County, TN

## Legislation Details (With Text)

**File #:** BL2021-841      **Name:**

**Type:** Bill (Ordinance)      **Status:** Second Reading

**File created:** 7/27/2021      **In control:** Metropolitan Council

**On agenda:** 9/7/2021      **Final action:**

**Title:** An ordinance amending Section 13.08.080 of the Metropolitan Code of Laws to pertaining to the use of License Plate Scanner (LPR) Technology in the public rights-of-way.

**Sponsors:** Dave Rosenberg, Bob Mendes, Zulfat Suara, Sandra Sepulveda, Freddie OConnell, Emily Benedict, Ginny Welsch, Sean Parker, Mary Carolyn Roberts, Delishia Porterfield

**Indexes:**

**Code sections:**

**Attachments:** 1. BL2021-841, 2. Proposed Amendment BL2021-841

Date	Ver.	Action By	Action	Result
8/3/2021	1	Metropolitan Council	referred	
8/3/2021	1	Metropolitan Council	referred	
8/3/2021	1	Metropolitan Council	passed on first reading	
7/27/2021	1	Metropolitan Council	filed	

An ordinance amending Section 13.08.080 of the Metropolitan Code of Laws to pertaining to the use of License Plate Scanner (LPR) Technology in the public rights-of-way.

WHEREAS, the use of LPRs in Davidson County represents a significant intensification of resident surveillance; and

WHEREAS, and use of LPRs should be done in a measured manner that permits the Council maximum flexibility to reevaluate the way the technology is used; and

WHEREAS, a recent study published by the United States Department of Justice found “significantly lower levels of trust in police” among test subjects who encountered mentions of law enforcement using LPRs as compared to a control group; and

WHEREAS, the Vallejo (California) Police Department found that 37 percent of “hits” from fixed LPRs were, in fact, misreads, some of which led to unwarranted stops and traumatic encounters; and

WHEREAS, data from LPRs is scheduled to become subject to Tennessee’s Public Records Act; and

WHEREAS, U.S. Immigration and Customs Enforcement (ICE) contracts with LPR operators to target deportations; and

WHEREAS, there are recorded instances of law enforcement using LPRs to surveil Muslim communities and target suspected gang members despite such lists being notoriously far-reaching and unreliable; and

WHEREAS, license plate readers can lead criminals to modify their behavior, such as stealing plates with greater frequency or obscuring their license plates, to thwart any benefit of these devices; and

WHEREAS, the abuse of license plate reader data can be mitigated by limiting reader use to those that are

mobile in nature and by implementing policies that regulate the use of mobile readers.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That Section 13.08.080 of the Metropolitan Code is hereby amended by deleting Subsection G in its entirety and replacing it with the following:

1. It is lawful for the Metropolitan Government, or any official, agent, contractor, or employee of the Metropolitan Government acting in their official capacity on behalf of the Metropolitan Government, to operate any license plate scanner (LPR) located a) within or on a law enforcement vehicle and b) employed for uses specifically permitted by this subsection. The use of a LPR is otherwise prohibited within the public rights-of-way unless explicitly permitted in this section.

2. It is lawful to operate a LPR installed onto or within the public right-of-way that meets each of the following conditions:

- a. The LPR is used solely and exclusively in conjunction with a vehicle emissions sensor as part of an emissions inspection program authorized under local, state or federal law;
- b. The data from the LPR and vehicle emissions sensor is used solely and exclusively for purposes of determining compliance with vehicle emissions standards;
- c. A determination by the vehicle emissions sensor that a vehicle identified by the LPR is not in compliance with applicable emissions standards shall not lead to any penalty or punitive action against the registered vehicle owner;
- d. No fewer than two such LPRs shall be in operation within Davidson County at any given time unless no such LPRs are in operation; and
- e. Data that can be used to pair a specific vehicle's license plate number, VIN, or other unique identifier with a specific geographic location shall not be recorded.

3. It is lawful to operate a LPR installed onto or within the public right-of-way that meets each of the following conditions:

- a. The LPR is used solely and exclusively for determining whether a vehicle is currently and actively violating parking restrictions; and
- b. A specific vehicle's license plate number shall be deleted within thirty minutes of its exit from a monitored parking space, unless that vehicle is suspected of violating parking restrictions for which enforcement action would be appropriate.

Section 2. That Section 13.08.080 of the Metropolitan Code is hereby amended by adding the following new Subsection H and by renumbering the existing Subsection H to Subsection I:

H. An LPR used by law enforcement shall meet each of the following conditions:

1. An LPR shall be used for the sole purpose of recording and checking license plates and shall not be capable of photographing, recording, or producing images of the occupants of a motor vehicle.
2. LPR operation and access to LPR collected data shall be for official law enforcement purposes only. LPRs shall only be used to scan, detect, and identify license plate numbers for the purpose of identifying:
  - a. Stolen vehicles.

- b. Vehicles associated with missing or endangered persons.
  - c. Vehicles registered to a person against whom there is an outstanding felony arrest warrant.
  - d. Vehicles for which a probable cause search warrant for a felony offense has been obtained.
3. Prior to stopping a vehicle based on an LPR hit, the officer shall visually verify that the license plate on the list matches the digital image displayed on the LPR.
4. Records of license plates read by each LPR shall not be recorded or transmitted outside the LPR system and shall be purged from the LPR system within 24 hours of their capture in such a manner that they are destroyed and are not recoverable, unless it results in a match with a vehicle falling within paragraph 2 above. Unless otherwise required by law, records of license plates that are matched by an LPR shall be purged from the LPR system within 24 hours of their capture in such a manner that they are destroyed and are not recoverable, unless the match results in an arrest, a citation, or protective custody, or identified a vehicle that was the subject of a missing or endangered person broadcast, in which case the data on the particular license plate shall be destroyed at the conclusion of either (1) an investigation that does not result in any criminal charges being filed; or (2) any criminal action undertaken in the matter involving the captured plate data. Captured license plate data obtained for the purposes described in paragraph 2 above shall not be used or shared for any other purpose.
5. Access to LPR records shall only be allowed on a case-by-case basis, for legitimate law enforcement investigative, prosecution, or audit verification purposes. All inquiries of LPR records shall be recorded for purposes of an audit trail and maintained by the law enforcement agency in the same manner as criminal history logs.
6. To ensure compliance with the provisions of this section or to investigate complaints of misuse of an LPR or LPRs, a) the district attorney general, or a designee; b) the public defender, or a designee; c) the chair of the Community Oversight Board, or a designee; or d) two members of Council as selected by the Metropolitan Council may examine and audit any LPR, any server used to store LPR data, and any records pertaining to the use of LPRs. If the district attorney general, the public defender, or a majority of the Community Oversight Board believes that an LPR or LPRs have been used in violation of this section, either or both may send a letter to the Metropolitan Council requesting suspension of the use of an LPR or LPRs for the purposes of investigation, to prevent ongoing violations, or to deter future violations. The Metropolitan Council may grant such a request by resolution.
7. Deployment of LPRs shall be executed in a manner that distributes their use equitably among MNPD precincts.
8. MNPD shall report to the Metropolitan Council quarterly, beginning no more than three months from the date LPRs are deployed, the following information compiled since the end date of its most recent report:
  - a. The number of LPRs in use in total and by precinct.
  - b. The number of matches made by the LPR.
  - c. The number of matches that identified vehicles and individuals sought by law enforcement and that resulted in stops of vehicles or individuals.
  - d. The number of matches that resulted in searches of vehicles and individuals, releases, arrests, or other outcomes, and associated demographic information, including race and ethnicity.
  - e. The number of matches where it was determined that all characters were read correctly, and the number of matches where it was determined that at least one character was misread.

- f. Other information requested by the Metropolitan Council by resolution.
9. The Metropolitan Council shall hold a public hearing, set by resolution, regarding the use of LPRs by the Metropolitan government no more than six months from the date LPRs are deployed. The resolution setting the public hearing shall contain the date, time, and location of the public hearing. No more than three weeks after the public hearing, the Metropolitan Council shall vote by resolution on whether to continue use of LPRs. The resolution to continue the use of LPRs shall not be subject to deferral or a motion to reconsider, but amendments to remove certain uses allowed by this section shall be permitted. If the resolution to continue is adopted, the use of LPRs will continue. If the resolution to continue is not adopted, the use of LPRs will be discontinued.
10. In the event that state legislation is enacted which requires LPR data to be retained for longer than this section authorizes and requires LPR data to be shared with any agency not authorized in this section, the Metropolitan Council shall vote by resolution whether to continue the use of LPRs. The resolution to continue the use of LPRs shall be voted on no more than five weeks following the effective date of the state legislation. The resolution shall not be subject to deferral or a motion to reconsider beyond that date. If the resolution to continue is adopted, the use of LPRs will continue. If the resolution to continue is not adopted, the use of LPRs will be discontinued.

Section 3. That this ordinance shall take effect from and after its enactment, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

#### Analysis

This ordinance amends Section 13.08.080 of the Metropolitan Code pertaining to the use of LPR in the public rights-of-way. This ordinance generally prohibits LPR usage by Metro for scanning plates in the right-of-way, except as specifically allowed in the ordinance. This limitation would only apply to Metro and LPR could still be used by the public.

Metro would be authorized to use LPR in law enforcement vehicles, emissions testing, and parking enforcement. LPR be used by law enforcement to scan, detect, and identify license plate numbers for the purposes of identifying:

- Stolen vehicles
- Vehicles associated with missing or endangered persons
- Vehicles registered to a person with an outstanding felony arrest warrant
- Vehicles for which a probable cause search warrant for a felony offense has been obtained

LPR could not be used to photograph, record, or produce images of the occupants of a motor vehicle.

Prior to stopping a vehicle based on LPR, visual verification of LPR information by the officer would be required. LPR data could not be retained for longer than 24 hours, unless it results in a match for one of the permitted use of LPR. Records resulting in a match would be required to be purged within 24 hours, unless use results in an arrest, citation, or protective custody, or an identified vehicle related to a missing or endangered person. All records would be required to be destroyed at conclusion of (1) investigation with no charges filed or (2) conclusion of a criminal action. Data could not be be shared for other purposes.

Access to LPR records would be allowed only on a case-by-case basis and inquiries must be recorded for

purposes of an audit trail.

To insure compliance with the LPR regulations, the District Attorney, Public Defender, Chair of the Community Oversight Board, and two members of the Council selected by the Council could examine and audit any LPR, any server used for LPR data, and any records pertaining to the use of LPR. If there is belief LPR is being misused, the District Attorney, Public Defender, or a majority of the COB could send a letter to Council requesting suspension of the LPR program. The Council would be authorized to grant the request by resolution.

Deployment of LPR would be required to be equitable among MNPB precincts.

Quarterly reports to the Council from the MNPB would be required. The reports would pertain to number of LPRs in use, number of matches, number of stops, number of searches, number of correct/incorrect matches and associated demographic information like race and ethnicity, and other information requested by Council by resolution.

The Council would be required to hold a public hearing on the use of LPR no more than six months from the date LPRs are deployed. Within three weeks of public hearing, the Council must vote by resolution on whether LPR use would continue. If the resolution is adopted, the use of LPR would continue. If the resolution is not adopted, the use of LPR would be discontinued.

If state legislation is enacted in the future which requires LPR data to be retained for longer than authorized by this ordinance and shared with any agency not authorized by this ordinance, the Council would vote by resolution on whether to continue the use of LPR. If the resolution is adopted, the use of LPR would continue. If the resolution is not adopted, the use of LPR would be discontinued.