

13.08.080 - Deployment of surveillance or electronic data gathering devices onto public rights-of-way requires metropolitan council approval.

A. For the purposes of this section, the following terms shall be defined as follows:

- (1) "Public right-of-way" shall mean any street, avenue, boulevard, highway, sidewalk, alley or public outdoor space which is within the Metropolitan Government of Nashville and Davidson County besides highways that comprise the Dwight D. Eisenhower National System of Interstate and Defense Highways.
- (2) "Surveillance technology" shall mean any electronic surveillance device, hardware, or software that is capable of collecting, capturing, recording, retaining, processing, intercepting, analyzing, monitoring, or sharing audio, visual, digital, location, thermal, biometric, or similar information or communications specifically associated with, or capable of being associated with, any specific individual or group; or any system, device, or vehicle that is equipped with an electronic surveillance device, hardware, or software.
 - (a) "Surveillance technology" includes, but is not limited to: (i) international mobile subscriber identity (IMSI) catchers and other cell site simulators; (ii) automatic license plate readers; (iii) closed-circuit television cameras; (iv) biometric surveillance technology, including facial, voice, iris, and gait-recognition software and databases; (v) mobile DNA capture technology; (vi) x-ray vans; (vii) video and audio monitoring and/or recording technology, such as surveillance cameras and wide-angle cameras; (viii) surveillance enabled or capable lightbulbs or light fixtures; (ix) tools, including software and hardware, used to gain unauthorized access to a computer, computer service, or computer network; (x) social media monitoring software; (xi) through-the-wall radar or similar imaging technology; (xii) passive scanners of radio networks; (xiii) long-range Bluetooth and other wireless-scanning devices; and (xiv) radio-frequency I.D. (RFID) scanners. The enumeration of surveillance technology examples in this subsection shall not be interpreted as an endorsement or approval of their use.
 - (b) "Surveillance technology" does not include the following devices or hardware, unless they have been equipped with, or are modified to become or include, a surveillance technology as defined in Section 13.08.080(A)(2)(a): (i) routine office hardware, such as televisions, computers and printers, that is in widespread public use and will not be used for any surveillance or law enforcement functions; (ii) Parking Ticket Devices (PTDs); (iii) manually operated

non-wearable handheld digital cameras, audio recorders, and video recorders that are not designed to be used surreptitiously and whose functionality is limited to manually capturing and manually downloading video and/or audio recordings; (iv) surveillance devices that cannot record or transmit audio or video or be remotely accessed, such as image stabilizing binoculars or night vision goggles; (v) manually operated technological devices used primarily for internal communications among metropolitan government entities and are not designed to surreptitiously collect surveillance data, such as radios and email systems; (vi) wayfinding technological devices which enable the user to determine global positioning, location within a built environment, or orientation; and (vii) metropolitan government wireless local area networking and metropolitan government databases that do not contain any data or other information collected, captured, recorded, retained, processed, intercepted, or analyzed by surveillance technology.

- (c) "Surveillance technology" does not include technology or equipment that collects data in anonymized form or that immediately deletes or destroys non-anonymized collected data.
- (3) "Install" or "Installing" shall mean attaching to an existing building, pole, overpass, roadway, sidewalk, natural area, or other structure in a manner that facilitates the permanent or semi-permanent presence of the applicable device. "Install" or "Installing" shall not mean operating a mobile or portable device intended to be present for a time of limited and discernable length.
- B. "License plate scanner" shall mean one or more fixed high-speed cameras combined with computer algorithms to convert images of license plates into computer-readable data.
- C. Beginning July 1, 2017, approval by the metropolitan council, by a resolution adopted after a public hearing, shall be required prior to any of the following actions by the Metropolitan Government of Nashville or Davidson County, the departments, boards or commissions thereof, or any individual or entity acting upon its behalf:
 - (1) Installing surveillance technology onto or within the public right-of-way, unless:
 - (a) the same type of surveillance technology is already in use by the entity; and
 - (b) the number of new devices does not represent more than a fifty percent increase in the total number of devices of the same type already in use by the department, board, or commission seeking installation, as compared to the number of devices in use at the time of this ordinance's implementation or at the time of the last such approval by the metropolitan council, whichever is

more recent.

- (2) Entering into an agreement with a private entity to acquire, share or otherwise use surveillance technology or the information it provides if such agreement includes exchange of any monetary or any other form of consideration from any source, including the assessment of any additional fees, interest, or surcharges on unpaid fines or debts absent approval by the metropolitan council;
 - (3) Accepting state or federal funds or in-kind or other donations for surveillance technology;
 - (4) Acquiring new surveillance technology, including but not limited to procuring such technology without the exchange of monies or consideration; or
 - (5) Entering into an intergovernmental agreement regarding the installation of surveillance technology or use of the information it provides within the Dwight D. Eisenhower National System of Interstate and Defense Highways.
- D. The approval by the metropolitan council for any action set forth in subsection 13.08.080(C) above shall be granted only upon the determination that the benefits to the citizens and residents of Nashville and Davidson County outweigh the costs; that the proposal will safeguard civil liberties and civil rights; and that, in the judgment of the metropolitan council, no alternative with a lesser economic cost or impact upon civil rights or civil liberties would be as effective.
- E. This section shall not apply to acquisition or use of surveillance technology by or on behalf of law enforcement that is used on a temporary basis for the purpose of a criminal investigation supported by reasonable suspicion, or pursuant to a lawfully issued search warrant, or under exigent circumstances as defined in case law.
- F. This section shall not apply to surveillance technology installed for the purpose of securing a building or facility from unlawful entry or unauthorized access.
- G. It is unlawful to operate any license plate scanner installed onto or within the public right-of-way, with the exception of uses that meet each of the following requirements:
- (1) 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;
 - (2) 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 and aggregating data in a manner which does not allow the identification of a person or persons;
 - (3) 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;

- (4) No fewer than two such license plate scanners shall be in operation within Davidson County at any given time; and
- (5) 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 retained for more than one week.

H. Notwithstanding the foregoing, the provisions of this section shall not apply to the Nashville Electric Service, the Metropolitan Nashville Airport Authority, the Metropolitan Development and Housing Agency, and the Metropolitan Transit Authority.

(Amdt. 2 to Ord. BL2017-646 § 1, 2017; Amdt. 1 to Ord. BL2017-646 § 1, 2017; Ord. BL2017-646 § 1, 2017)