

ORDINANCE NO. BL2017-646**An ordinance amending Chapter 13.08 of the Metropolitan Code of Laws to add a new section regulating installation and operation of unmanned surveillance devices within the public right of way without prior Metropolitan Council approval.**

WHEREAS, the Metropolitan Council finds that surveillance technology and electronic data gathering can be useful tools for advancing public safety and security, as well as assisting the investigation, apprehension and prosecution of criminal offenders; and

WHEREAS, the Metropolitan Council further finds, however, that the misuse of, or overreliance upon, surveillance technology and electronic data gathering poses substantial and significant dangers to the privacy rights of citizens and to the fundamental values, civil rights and civil liberties of citizens, including rights guaranteed by the First, Fourth and Fourteenth Amendments to the United States Constitution; and

WHEREAS, before deploying equipment that is intended, by its design, to conduct surreptitious surveillance upon the public in the name of protecting the public, it is fitting that the public be informed of the intended deployment of such equipment and be given the opportunity, through its elected representatives, to review and deliberate the propriety of such deployment; and

WHEREAS, no decision relating to surveillance technology should occur without strong consideration being given to the impact of such technologies and without ensuring robust transparency, oversight, and accountability measures for the protection of civil rights and civil liberties; and

WHEREAS, the Tennessee General Assembly has already begun taking measures to curb the use and reliance upon surveillance devices, prohibiting the use of unmanned traffic enforcement cameras for issuance of speeding citations (Tenn. Code Ann. §55-8-198(I)); prohibiting employees of private traffic camera companies from reviewing video footage from unmanned traffic cameras and determining whether there is a traffic violation (Tenn. Code Ann. §55-8-198(b), and Tenn. Atty. Gen. Op. No. 16-24); and limiting the allowed storage of data from automated license plate recognition systems. (Tenn. Code Ann §55-10-302).

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

Section 1. That Chapter 13.08 of the Metropolitan Code of Laws be amended by adding a new section 13.08.080 as follows:

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 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: (a) international mobile subscriber identity (IMSI) catchers and other cell site simulators; (b) automatic license plate readers; (c) electronic toll readers; (d) closed-circuit television cameras; (e) biometric surveillance technology, including facial, voice, iris, and gait-recognition software and databases; (f) mobile DNA capture technology; (g) gunshot detection and location hardware and services; (h) x-ray vans; (i) video and audio monitoring and/or recording technology, such as surveillance cameras and wide-angle cameras; (j) surveillance enabled or capable lightbulbs or light fixtures; (k) tools, including software and hardware, used to gain unauthorized access to a computer, computer service, or computer network; (l) social media monitoring software; (m) through-the-wall radar or similar imaging technology, (n) passive scanners of radio networks, (o) long-range Bluetooth and other wireless-scanning devices, (p) radio-frequency I.D. (RFID) scanners, and (q) software designed to integrate or analyze data from Surveillance Technology, including surveillance target tracking and predictive policing software. 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) 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; (b) Parking Ticket Devices (PTDs); (c) 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; (d) surveillance devices that cannot record or transmit audio or video or be remotely accessed, such as image stabilizing binoculars or night vision goggles; (e) 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; and (f) Metropolitan Government databases that do not contain any data or other information collected, captured, recorded, retained, processed, intercepted, or analyzed by surveillance technology.

B. "License plate scanner" shall mean any device principally designed and primarily used for determining the ownership of a motor vehicle, the mileage or route traveled by a motor vehicle, the location or identity of a motor vehicle, or the identity of a motor vehicle's occupants.

C. Beginning July 1, 2017, approval by the Metropolitan Council 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 unmanned surveillance technology onto or within the public right of way;
- 2) Entering into an agreement with a private entity to acquire, share or otherwise use surveillance technology or the information it provides;
- 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

D. The approval by the Metropolitan Council for any action set forth in subsection 13.08.080(B)

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. Beginning July 1, 2017, no department of the Metropolitan Government, nor any board, commission or agency thereof, nor any individual or entity acting on its behalf may enter into any contract or other agreement that facilitates the receipt of surveillance data from, or provision of surveillance data to any non-governmental entity in exchange for 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. Any contracts or agreements signed prior to the enactment of this Act that violate this section shall be terminated as soon as is legally permissible.

F. It is unlawful to operate any license plate scanner installed onto or within the public right of way. Section 2. This ordinance shall take effect from and after its passage, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

Sponsored by: Dave Rosenberg, Colby Sledge, Fabian Bedne

AMENDMENT NO. 1
TO
ORDINANCE NO. BL2017-646

Mr. President –

I move to amend Ordinance No. BL2017-646 as follows:

I. By amending Section 1 by deleting subsection 13.08.080.A in its entirety and substituting therefore the following:

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 space which is within the Metropolitan Government of Nashville and Davidson County besides facilities or areas of facilities not open to the general public andhighways 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: (~~a~~i) international mobile subscriber identity (IMSI) catchers and other cell site simulators; (~~b~~ii) automatic license plate readers; (~~e~~iii) ~~electronic toll readers~~; (~~d~~iv) closed-circuit television cameras; (~~e~~v) biometric surveillance technology, including

facial, voice, iris, and gait-recognition software and databases; ~~(fvi)~~ mobile DNA capture technology; ~~(gvii) gunshot detection and location hardware and services;~~ ~~(hvi) x-ray vans;~~ ~~(ix)~~ video and audio monitoring and/or recording technology, such as surveillance cameras and wide-angle cameras; ~~(jx)~~ surveillance enabled or capable lightbulbs or light fixtures; ~~(kxi)~~ tools, including software and hardware, used to gain unauthorized access to a computer, computer service, or computer network; ~~(lxii)~~ social media monitoring software; ~~(xxiii)~~ through-the-wall radar or similar imaging technology, ~~(xxiv)~~ passive scanners of radio networks, ~~(xxv)~~ long-range Bluetooth and other wireless-scanning devices, ~~and~~ ~~(xxvi)~~ radio-frequency I.D. (RFID) scanners, ~~and~~ ~~(q)~~ ~~software designed to integrate or analyze data from Surveillance Technology, including surveillance target tracking and predictive policing software.~~ 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)~~ 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; ~~(b)~~ Parking Ticket Devices (PTDs); ~~(c)~~ 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; ~~(d)~~ surveillance devices that cannot record or transmit audio or video or be remotely accessed, such as image stabilizing binoculars or night vision goggles; ~~(e)~~ 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; and ~~(f)~~ Metropolitan Government databases that do not contain any data or other information collected, captured, recorded, retained, processed, intercepted, or analyzed by surveillance technology.

(3) "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. "Installing" shall not mean operating a mobile device intended to be present for a time of limited and discernable length.

II. By further amending Section 1 by adding the following as new subsections E and F thereto, and renumbering the remaining sections as necessary:

E. This section shall not apply to activities conducted by or on behalf of law enforcement agencies which are part of an active investigation targeting a specific person or persons, provided that any data collected as part of the investigation that is not determined to be pertinent to the investigation be destroyed at the conclusion of the investigation.

F. This section shall not apply to surveillance equipment installed for the purpose of securing a building or facility from unlawful entry.

III. By further amending Section 1 by deleting subsection E (to be labeled subsection G pursuant to the other changes above) in its entirety and substituting the following in lieu thereof, renumbering the remaining subsection as necessary:

~~E. G.~~ Beginning July 1, 2017, no department of the Metropolitan Government, nor any board, commission or agency thereof, nor any individual or entity acting on its behalf may enter into any contract or other agreement that facilitates the receipt of surveillance data from, or provision of surveillance data to any non-governmental entity in exchange for 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. ~~Any contracts or agreements signed prior to the enactment of this Act that violate this section shall be terminated as soon as is legally permissible.~~

Sponsored by: Dave Rosenberg

AMENDMENT NO. 2
TO
ORDINANCE NO. BL2017-646

Mr. President –

I move to amend Ordinance No. BL2017-646 as follows:

I. By deleting all language after the enacting clause and substituting instead the following:

Section 1. That Chapter 13.08 of the Metropolitan Code of Laws be amended by adding a new section 13.08.080 as follows:

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 ~~facilities or areas of facilities not open to the general public and~~ 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 (1) or more fixed high-speed cameras combined with computer algorithms to convert images of license plates into computer-readable data. ~~shall mean any device principally designed and primarily used for determining the ownership of a motor vehicle, the mileage or route traveled by a motor vehicle, the location or identity of a motor vehicle, or the identity of a motor vehicle's occupants.~~

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 ~~unmanned~~ 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 (50%) 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 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 (2) 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.

Section 2. This ordinance shall take effect from and after its passage, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

Sponsored by: Dave Rosenberg, Jeremy Elrod, Mike Freeman

LEGISLATIVE HISTORY	
Introduced:	March 21, 2017
Passed First Reading:	March 21, 2017
Referred to:	Personnel, Public Information, Human Relati Housing Committee Public Safety, Beer, and Regulated Beverage Public Works Committee
Amended:	April 4, 2017
Deferred:	April 4, 2017
Deferred to May 16, 2017:	April 18, 2017
Amended:	May 16, 2017
Passed Second Reading:	May 16, 2017 - Roll Call Vote
Passed Third Reading:	June 6, 2017 - Roll Call Vote
Approved:	June 7, 2017

By:	
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Requests for ADA accommodation should be directed to the Metropolitan Clerk at 615/862-6770.