

## Section 1. Definitions

- (1) “Access” means the ability to view, query, search, retrieve, analyze, export, copy, transmit, or otherwise interact with an automatic license plate reader system or captured plate data, whether directly or indirectly, including through credentials, portals, dashboards, automated queries, or application programming interfaces (APIs).
- (2) “Automatic License Plate Reader (ALPR) system” shall mean a system, software, or computer algorithm, whether used independently or in combination with one or more mobile or fixed automated cameras, that is used to convert images of license plates, vehicle characteristics, vehicle occupants, or any peripheral images into computer-readable data.
- (3) “Captured plate data” shall mean the GPS coordinates, date and time, photograph, license plate number, and any other data captured by, derived, or inferred from any automatic license plate reader system, including but not limited to make, model, color, other vehicle-related characteristics,
- (4) “City government entity” shall mean a department or agency of the City of Durango, or an individual acting for or on behalf of the City.
- (5) “Derived data” means any information, record, analysis, alert, inference, pattern, profile, or dataset that is generated from or based in whole or in part on captured plate data, whether generated by human review, automated processing, or algorithmic analysis.
- (6) “Future technological capability” means any upgrade, add-on, software update, feature, or integration not in use by the City as of the effective date of this Act that expands the scope, scale, duration, or analytical use of captured plate data.
- (7) “Hot list” shall mean a database of compiled license plate and other vehicle identifying information, which is maintained in a manner that ensures it is and remains accurate, relevant, timely, and complete, that reflects a law enforcement-related, government entity’s determination that a vehicle or an individual associated with a vehicle is relevant and material to an ongoing criminal or missing persons enforcement effort or investigation.
- (8) Non City government entity: means any state, federal, county agency, including but not limited to a law enforcement entity or any other investigative entity, agency, department, division, bureau, board, or commission, or an individual acting or purporting to act for or on behalf of a state, federal or local agency.
- (9) “Retention” means the storage, preservation, caching, backup, archiving, or continued accessibility of captured plate data or derived data, regardless of format or storage medium.
- (10) “Third party” means any nongovernment person or entity including but not limited to vendors, contractors, consultants, task forces, data exchanges, or cooperative purchasing participants.

- (11) “Sharing” means any disclosure, transfer, granting of access, or making available of captured plate data or derived data to another person or entity, whether actively or passively, intentionally or negligently.

## **Section 2. Restrictions on Use**

- (1) A City government entity shall not access an automatic license plate reader (“ALPR”) system or its captured plate data except:
- (a) When the City government entity has obtained a valid judicial warrant to access captured plate data for the specified reason in the warrant;
  - (b) When an individual gives express consent to their specific ALPR system captured plate data being revealed to a specific City government entity;
  - (c) When exigent circumstances make obtaining a warrant impractical before the exigency expires or;
  - (d) For the comparison of captured plate data with hotlist data to determine if a vehicle scanned by an ALPR system is relevant to an investigation of a vehicle that is:
    - (i) Lost or stolen;
    - (ii) Associated with a missing person
    - (iii) Related or involved in a felony.
- (2) A City government entity is prohibited from accessing any data outside the specific scope of the defined search.
- (3) For the allowed uses under Section 2(1), it shall be unlawful to intentionally target enforcement towards a population based on race, ethnicity, or income level in a manner that exceeds that group’s proportion of the overall population within the City of Durango.
- (4) It shall be unlawful to operate or utilize any ALPR system whose operation is not fully compliant with the provisions of this Act.
- (5) A positive match by an ALPR device alone shall not constitute reasonable suspicion as grounds for a law enforcement officer to stop the vehicle. The officer shall develop independent reasonable suspicion for the stop or immediately confirm visually that the license plate on the vehicle matches the image of the license plate displayed on the ALPR and confirm by other means that the license plate number is on one of the hot lists.

## **Section 3. Protections**

- (1) Captured plate data collected by or on behalf of a City government entity, as authorized pursuant to Section 2(1), shall not be used, shared, or accessed for any other purpose and shall be deleted after 72 hours, except that the data may be retained:
- (a) Pursuant to a valid, court issued probable cause warrant or other valid court order;
  - (b) For as long as the specified captured plate data is needed as evidence of specific unlawful conduct enumerated in Section 2(1);

- (c) Pursuant to express consent of an individual;
  - (d) Pursuant to a Section 4(1) preservation request;
  - (e) Pursuant to a disclosure order sought pursuant to Section 4(2).
- (2) A non City government entity or third party may not purchase, access, obtain, receive, or use privately captured plate data without a valid, court issued probable cause warrant or other court order.
- (3) Any City government entity that uses an ALPR system pursuant to Section 2(1) must update those systems from the hot lists enumerated Section 2(1)(d) in real-time, at the beginning of each shift, or whenever such updates are available and no less frequently than once per 24 hour period.
- (4) No City government entity shall deploy, enable, activate, test, integrate, or use any analytical feature or future technological capability, as defined in Section 1, in connection with an ALPR system or captured plate data unless such feature or capability has been voted on in a publicly noticed open session of Durango City Council, with an opportunity for public comment and a recorded vote.
- (a) Such approval shall not be delegated to any administrative officer, department or contractor and shall not be accomplished through policy revision, contract modification, memorandum of understanding, or cooperative purchasing agreement.
- (5) A City government entity that operates an ALPR system shall provide an opportunity for public comment and discussion at a regularly scheduled public meeting of Durango City Council prior to entering into or renewing a contract with a vendor of ALPR systems, or installing, moving or removing any ALPR system.
- (6) Any software update, feature flag, add-on, integration, analytical feature, or system modification that expands the scope, scale, duration, retention, sharing, or analytical use of captured plate data shall be deemed a future technological capability, regardless of whether the capability is described as optional, experimental, beta, or vendor-controlled. The absence of affirmative City use shall not exempt a City government entity from this subsection where such capability is enabled, accessible, or available through the ALPR system.

#### **Section 4. Preservation Request**

- (1) A City government entity that operates or uses an ALPR system, upon written and notarized request of a City government entity, non City government entity, a defendant in a criminal case, or party to a civil case, shall take all necessary steps to preserve specified captured plate data in its possession pending the issuance of a court order sought pursuant to Section 4(2), if:
- (a) The requesting entity or party in a criminal or civil case requests such retention and specifies in a written, sworn statement:
    - (i) The particular camera or cameras for which captured plate data must be preserved or the particular license plate for which captured plate data must be preserved;

- (ii) The date or dates and timeframes for which captured plate data must be preserved; and
  - (iii) That a court order for the retention and disclosure of captured plate data will be sought, pursuant to Section 4(2), in a court of competent jurisdiction within seven calendar days of the transmission of the preservation request.
- (2) An entity or party in a criminal or civil case may apply for a court order for the extended retention and disclosure of captured plate data, which shall be issued by any court of competent jurisdiction:
- (a) If the government entity in a criminal case offers specific and articulable facts showing there is probable cause to believe the captured plate data is relevant and material to an ongoing felony, criminal or missing person's investigation, prosecution, or defense.
  - (b) If the defendant in a criminal case demonstrates that his request is reasonable and material to the preparation of his case.
  - (c) If a party in a civil case obtains a court order.
  - (d) Captured plate data retained by a government entity for more than 72 hours pursuant to Section 4(1) preservation request shall be immediately destroyed if:
  - (e) An application for a court order, pursuant to Section 4(2) preservation request is not made within seven days of the preservation request, or
  - (f) The application for the court order, made pursuant to Section 4(2) is denied.
- (3) Notice of a data deletion-triggering event, as enumerated in Section 4(2)(e) or 4(2)(f), shall be provided within 24 hours of its occurrence by the person or entity who made the Section 4(1) preservation request.

### **Section 5. Data Sharing and ALPR Access**

- (1) Notwithstanding the provisions of Section 3(1), captured plate data collected by or on behalf of a City government entity, as authorized pursuant to Section 2(1), may only be used shared, or accessed by a non City government entity or third party pursuant to a valid, court issued probable cause warrant or other valid court order. A non City government entity or third party shall not have direct access to or use of the ALPR system or system data. All captured plate data requests must be obtained through a City government entity.

### **Section 6. Reporting**

- (1) Any government entity that uses ALPR systems pursuant to Section 2(1) shall:
- (a) Consistent with the provisions of this Act, adopt a policy governing the use, access and sharing of the captured plate data and the ALPR system. The policy shall be conspicuously posted on the City government website.

- (b) Upon adoption of this Act and for the ensuing one-year period, the government entities operating ALPR systems shall file a quarterly report beginning 30 days following the Act's passage. For all ensuing years, government entities shall file annual reports by March 1 of each fiscal year.
- (i) All reports will be delivered to the City Council and discussed within 30 days of delivery in a publicly noticed open session of City Council, with an opportunity for public comment. The reports must also be conspicuously posted on the City government website. The report shall include:
    - (ii) The total number of cameras owned or leased, categorized by mobile or stationary placement;
    - (iii) The number of license plates scanned for the year at issue;
    - (iv) The names of the hot lists against which captured plate data were checked, and the number of matches generated by each hot list;
    - (v) The number of matches, by hot list, that resulted in arrest and prosecution;
    - (vi) The number of preservation requests received under Section 4(1);
    - (vii) The number of preservation requests issued under Section 4(1);
    - (viii) The number of preservation requests issued to private ALPR systems;
    - (ix) The number of disclosure orders received under Section 4(2);
    - (x) The number of times ALPR data was shared or accessed pursuant to a judicial warrant; and
    - (xi) Any changes in policy relating to and including, but not limited to: procurement, use, access or anything affecting captured plate data.

### **Section 7. Recording**

- (1) A record is created and maintained each time data is accessed by a City government entity. The record must include:
- (a) The identity of the government official and entity seeking access;
  - (b) The specific purpose for which access is sought;
  - (c) The date and time;
  - (d) The case number.

### **Section 8. Evidentiary Use**

Captured plate data accessed in violation of the Act is not admissible as evidence in any criminal, or civil proceeding or any other judicial, quasi-judicial, or administrative hearing or proceeding, unless such evidence is exculpatory in a criminal trial or proceeding.

### **Section 9. Penalties**

- (1) Any City government entity, non City government entity or third party who violates the provisions of this Act shall be subject to legal action in a court of competent jurisdiction for damages, to be brought by any other individual claiming that a violation of the Act has injured his business, his person, or his reputation. A person so injured shall be entitled to actual damages on account of a violation of the provisions of the Act, or liquidated damages, neither of which may exceed the amount as set forth in C.R.S § 13-10-113(1)(a).
- (2) A City government entity that uses ALPR systems pursuant to Section 2.1 shall have a written disciplinary policy that includes provisions for suspending or revoking a government official's access to captured ALPR plate data when the government official violates any provision of this Act.
- (3) If the Oversight and Accountability Committee determines that multiple violations of this Act have occurred within a one year period, the use of the ALPR system shall be suspended for six months for the first occurrence; suspended one year for the second occurrence; suspended five years for the third occurrence.

#### **Section 10. Privacy**

- (1) Records related to captured plate data shall be treated in compliance with Colorado Open Records Act, C.R.S § 24-72-201 et seq. and Colorado Criminal Justice Records Act, C.R.S. § 24-72-301 et seq.
- (2) Audit Logs and System Accountability. All ALPR audit logs, access logs, query logs, sharing logs, policies, procedures, vendor contracts, agreements, memoranda of understanding, and Annual ALPR Use Reports required under Section 6(2) shall be public records and shall not be withheld except as expressly permitted by law.
- (3) Individual Access. A natural person may request disclosure of captured plate data relating to a vehicle personally owned, leased, or lawfully possessed by the person during a specified time period, upon submission of a sworn statement affirming lawful possession during the dates requested.

#### **Section 12. Severability**

The provisions in this Act are severable. If any part or provision of this Act, or the application of this Act to any person, entity, or circumstance, is held invalid, the remainder of this Act, including the application of such part or provision to the other persons, entities, or circumstances, shall not be affected by such holding and shall continue to have force and effect.

#### **Section 13. Effective Date**

This Act shall take effect upon passage.

- (1) Establishment of oversight Committee.
  - (a) There is hereby established a Civilian Oversight and Accountability Committee (“Oversight Committee”) to provide independent oversight of the City’s use of APLR systems and compliance with this Act.
- (2) Composition and Appointment.
  - (a) The Oversight Committee shall consist of Durango City Residents drawn from the community.
  - (b) All appointments shall be made by Durango City Council in an open meeting with an opportunity for public comment and discussion at a regularly scheduled public meeting.
    - (i) The City Council shall appoint the inaugural members of the Oversight Committee within 30 days of passage of this Act.
  - (c) The Oversight Committee shall be composed of seven members for four-year terms. Such terms shall be staggered in the following manner:
    - (i) Upon passage of this Act, the membership shall be divided into 2 classes. The seats of the members in the first class shall be vacated at the expiration of the second year, and the seats of the members of the second class shall be vacated at the expiration of the fourth year. The City Council may make temporary appointments if vacancies occur.
    - (ii) There shall be no term limitation upon members of the Oversight Committee.
    - (iii) No Oversight Committee member or their immediate family members or romantic partners shall be employed part time, full time or be contract employees in the law enforcement community.
    - (iv) No Oversight Committee member or their immediate family members or romantic partners shall be employed part time, full time or be contract employees to any vendor of ALPR systems.
    - (v) The Oversight Committee shall consist of no more than one individual in any given four-year period who has retired from law enforcement.
  - (d) The Oversight Committee shall select one member as Committee Chair whose responsibilities include, but are not limited to:
    - (i) Scheduling meetings;
    - (ii) Coordinating with government entities;
    - (iii) Reporting to the City Council.
- (3) Founding members.
  - (a) In the inaugural four-year period, City Council shall appoint three individuals who actively participated in the drafting, advocacy or sponsorship of this Act.

(4) Balanced Representation.

- (a) The Oversight Committee shall, to the extent practicable, include members with express experience or demonstrated knowledge of:
  - (i) Civil liberties and/or other constitutional rights; and/or
  - (ii) Data privacy and/or technological policy; and/or
  - (iii) Community advocacy and/or public accountability.

(5) Powers and Duties.

- (a) The Oversight Committee shall:
  - (i) Request and receive from government entities operating ALPR systems or system data any information reasonably necessary to assess compliance, subject to lawful confidentiality protections.
  - (ii) Review each ALPR report as described in Section 6 of this Act for completeness and compliance and shall issue, within 30 days of receiving the report, written findings, requests for clarification, or recommendations for corrective action pursuant to Section 9(3) of this Act.
- (b) The Oversight Committee further shall have the authority to:
  - (i) Review policies, procedures, contracts, and practices relating to ALPR use;
  - (ii) Review audit logs, access logs, data retention practices, deletion compliance and vendor correspondence related to ALPR use;
  - (iii) Receive complaints or concerns from the public regarding alleged violations of this Act;
  - (iv) Receive explanations or clarifications regarding ALPR operations or data handling;
  - (v) Review warrant requests, retention requests and preservation requests, as deemed necessary by the Oversight Committee;
  - (vi) Interface directly with government entities operating ALPR systems or system data.