

## **REVISED AGENDA MATERIAL for Supplemental Packet 3**

**Meeting Date: March 24, 2026**

**Item Number: 26**

**Item Description: Public Safety Technology: Surveillance Technology Ordinance and Police Equipment Ordinance Approvals, Policy Updates, and Contract Authority**

**Submitted by: Councilmember Ben Bartlett**  
**“Good of the City” Analysis:**

The purpose of this supplemental material is to clearly define the legal boundaries within which the City may utilize Automated License Plate Reader (ALPR) Technology and other Surveillance Services. The supplemental will ensure that any vendors who are contracted to provide ALPR and Surveillance technology services operate within specific parameters that will safeguard residents’ privacy, civil rights, and Berkeley’s Sanctuary City Ordinance, while maintaining City control of access and usage of data generated from the technology. The supplemental will incorporate “Good of the City” provisions to ensure full transparency, control, and accountability in the deployment and operation of the technology. These provisions will include strict mutuality of contractual obligations, materially increased penalties for any unauthorized data access or disclosure, and a clear private right of action for affected individuals, including statutory damages and injunctive relief.

***Consideration of supplemental or revised agenda material is subject to approval by a two-thirds vote of the City Council. (BMC 2.06.070)***

A minimum of 42 copies must be submitted to the City Clerk for distribution at the Council meeting. This completed cover page must accompany every copy.

Copies of the supplemental/revised agenda material may be delivered to the City Clerk Department by 12:00 p.m. the day of the meeting. Copies that are ready after 12:00 p.m. must be delivered directly to the City Clerk at Council Chambers prior to the start of the meeting.

Supplements or Revisions submitted pursuant to BMC § 2.06.070 may only be revisions of the original report included in the Agenda Packet.

To: Honorable Mayor and Members of the City Council

From: Councilmember Ben Bartlett

Subject: Public Safety Technology: Surveillance Technology Ordinance and Police Equipment Ordinance Approvals, Policy Updates, and Contract Authority

### RECOMMENDATION

Adopt revisions to the Flock Safety Master Services Agreement (MSA) to strengthen City control, protect data ownership, prohibit unauthorized sharing, remove perpetual licensing rights, enhance privacy safeguards, authorize termination for convenience, require Council approval for key changes, establish enforceable remedies, create a private right of action, include a mutual morality clause, and mandate data deletion upon termination.

### CURRENT SITUATION AND ITS EFFECTS

Proposed revisions and recommendations should be added to the Flock Safety Master Services Agreement (MSA) before executing the Flock Safety MSA:

1. **§2.4 CITY CONTROL OF PLATFORM CHANGES**

**Replace with:**

**2.4 Platform Changes.** Flock shall not implement, activate, or deploy any modification, enhancement, or new functionality that affects data collection, analysis, sharing, access, or retention without the Customer's prior written approval, which shall require approval by the Berkeley City Council.

This includes, without limitation, features involving predictive analytics, pattern recognition, vehicle tracking, network sharing, or integration with third-party systems.

All data sharing settings shall be disabled by default. Any deviation must be expressly approved in writing by Customer and publicly disclosed.

2. **§4.1 (Customer Data License) REMOVING IRREVOCABLE**

**Replace with:**

**4.1 Customer Data.** As between Flock and Customer, all right, title, and interest in and to Customer Data shall remain exclusively with Customer. Customer grants to Flock a limited, non-exclusive, royalty-free, non-transferable license to use Customer Data solely to provide the Flock Services to Customer during the Term.

This license shall automatically terminate upon expiration or termination of this Agreement. Flock shall have no right to retain, use, or access Customer Data thereafter except as expressly required by law and only for the minimum period required.

3. **§4.2 Customer Generated Data CLOSSES THE LOOPHOLE**

**Add at the end:**

Notwithstanding anything to the contrary, Customer Generated Data shall not be used, shared, or accessed for any purpose other than providing Services to Customer, and shall not be subject to any broader rights under Section 4.3 or elsewhere in this Agreement.

4. **§4.3 REMOVING PERPETUAL RIGHTS**

**Replace with:**

**4.3 Anonymized Data.** Flock may create Anonymized Data solely for the purpose of providing Services to Customer during the Term.

Flock shall have no right to use Anonymized Data for product development, commercialization, or any purpose unrelated to Services provided to Customer.

All rights granted under this Section shall terminate upon expiration or termination of this Agreement. Flock shall delete all Anonymized Data derived from Customer Data in accordance with Section [Data Deletion].

5. **New Section Data Sharing Restrictions**

**X. Data Access and Sharing Restrictions.**

- a. Flock shall not disclose, provide access to, or enable access to Customer Data to any third party, including any federal agency, except pursuant to a specific, written authorization issued by Customer for each individual request.
- b. Access by federal personnel embedded within or assigned to any state or local agency shall be prohibited unless expressly authorized in writing by Customer for each instance of access.
- c. Use of any shared lookup, query, or network-based access tool that permits third-party querying of Customer Data is prohibited unless explicitly approved in writing by Customer.
- d. Indirect access, including access facilitated through another agency, shall be deemed a violation of this Agreement.

6. **ADD: TERMINATION FOR CONVENIENCE**

**X Termination for Convenience.** Customer may terminate this Agreement at any time, with or without cause, upon thirty (30) days' written notice. Customer shall not be obligated to pay for any Services not rendered after the effective date of termination.

7. **§11.3 (Assignment) COB CONTROLS**

**Replace the second sentence with:**

Notwithstanding the foregoing, Flock may not assign this Agreement to any affiliate, successor, or acquirer without the prior written consent of Customer, which shall not be unreasonably withheld and shall require City Council approval.

8. **§11.15 Morality Mutual Morality / Misconduct Clause**

Customer shall have the right to terminate this Agreement immediately upon written notice if Flock, its officers, or affiliates are indicted, found liable for violations of law, or determined by Customer to have engaged in unauthorized data access, sharing, or misuse.

9. **Replace the Amendment "Unauthorized Sharing" section entirely:**

**Unauthorized Access; Remedies.**

- a. Any unauthorized access, disclosure, sharing, or use of Customer Data ("Unauthorized Access") shall constitute a material breach of this Agreement.
- b. For each Unauthorized Access event, Flock shall pay Customer liquidated damages in the amount of **One Million Dollars (\$1,000,000)** per violation, or **Ten Thousand Dollars (\$10,000) per affected record**, whichever is greater.
- c. Each individual query, access event, or data retrieval shall constitute a separate violation.
- d. The remedies set forth herein are cumulative and shall not be deemed the sole or exclusive remedy. Customer retains all rights at law and in equity, including the right to seek injunctive relief.
- e. Flock acknowledges that unauthorized access to surveillance data creates irreparable harm. Customer shall be entitled to immediate injunctive relief without the requirement to post bond.

## 10. **ADD: PRIVATE RIGHT OF ACTION**

### **Private Right of Action.**

Any individual whose data, image, likeness, or identifying information is accessed, disclosed, or used in violation of this Agreement shall have a direct right of action against Flock.

Flock agrees that such individuals may bring claims for statutory damages of not less than **\$5,000 per violation**, actual damages, punitive damages where permitted, and reasonable attorneys' fees and costs.

Flock expressly waives any argument that it is not a data controller or that such individuals lack privity under this Agreement.

## 11. **ADD: Mandatory Data Deletion**

### **Data Deletion.**

Within thirty (30) days of termination or expiration of this Agreement, Flock shall permanently delete all Customer Data, Customer Generated Data, and any derivatives thereof, including Anonymized Data.

Flock shall certify such deletion in writing, signed by an officer of the company.

No data may be retained for product development, machine learning, or any other purpose.