



Berkeley City Councilmember
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SUPPLEMENTAL AGENDA MATERIAL

for Supplemental Packet 2

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 Humbert;
Councilmember O’Keefe;
Councilmember Taplin;
Councilmember Kesarwani**

Directs the City Manager and City Attorney to add requirements for the Flock Safety Master Services Agreement (MSA) that accomplish the following: (1) increase the financial penalty for unauthorized data sharing from \$75,000 to \$150,000 per violation; (2) establish a termination for convenience right under which the City is not refunded for payments already made but is not obligated for the remaining contract value; (3) limit Flock’s license to use anonymized data to the term of the Agreement rather than in perpetuity; (4) require Flock to obtain the City’s prior written consent before making any changes to the City’s data-sharing settings or configurations; (5) make revisions to the Special Terms section to clarify the MSA may not be modified without City Council approval; and (6) remove the Amendment and incorporate provisions on restrictions on data sharing into the MSA and stipulate such provisions shall not be modified by subsequent Flock amendment or attachments without further City Council approval.



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ACTION CALENDAR
March 24, 2026

To: Members of the Berkeley City Council

From: Councilmember Mark Humbert (Author);
Councilmember Shoshana O’Keefe (Co-Author);
Councilmember Terry Taplin (Co-Author);
Councilmember Rashi Kesarwani (Co-Author)

Subject: Item 26. Public Safety Technology: Surveillance Technology Ordinance and Police Equipment Ordinance Approvals, Policy Updates, and Contract Authority

RECOMMENDATION

Adopt the following additional requirements for the Flock Safety Master Services Agreement (MSA). The City Manager and City Attorney shall ensure, prior to execution of the MSA, that the Agreement incorporates provisions that accomplish the following: (1) increase the financial penalty for unauthorized data sharing from \$75,000 to \$150,000 per violation; (2) establish a termination for convenience right under which the City is not refunded for payments already made but is not obligated for the remaining contract value; (3) limit Flock’s license to use anonymized data to the term of the Agreement rather than in perpetuity; (4) require Flock to obtain the City’s prior written consent before making any changes to the City’s data-sharing settings or configurations; (5) revise the Special Terms section to clarify the MSA may not be modified without City Council approval; and (6) remove the Amendment and incorporate provisions on restrictions on data sharing into the MSA and stipulate such provisions shall not be modified by subsequent Flock amendment or attachments without further City Council approval. (See additional detail below.)

FINANCIAL IMPLICATIONS

None. The proposed amendments do not alter the contract price. The termination for convenience provision would limit the City’s financial exposure in the event of early termination by ensuring no further payments are owed beyond those already made.

CURRENT SITUATION AND ITS EFFECTS

On March 11, 2026, the Police Accountability Board (PAB) forwarded a letter to the City Council raising concerns about the proposed Flock Safety contract, including the vendor’s data-sharing practices, its relationships with federal agencies, and the adequacy of existing contractual safeguards. On March 18, 2026, Mayor Ishii convened a community meeting at which residents voiced similar concerns regarding data privacy, the scope of Flock’s license to use City data, and the City’s ability to exit the contract if circumstances change.

In light of the PAB's recommendations and the concerns raised by community members, this supplemental proposes the following six targeted amendments to the MSA to materially strengthen the City's position.

The City Manager should work with the City Attorney and Flock to incorporate language substantially similar to the following into the Agreement:

1. The current draft MSA includes a \$75,000 per-violation penalty for unauthorized sharing of Customer Data. Increasing this amount to \$150,000 per violation serves as a more meaningful deterrent and better reflects the City's expectations around data stewardship.
2. Adding a provision allowing the City to terminate the Agreement for convenience upon thirty (30) days' written notice. Under this provision, fees already paid to Flock would be non-refundable (excepting any penalties), but the City would not be liable for any remaining payments that would otherwise come due under the contract. This structure gives the City a clear exit path if it determines the services are no longer in the City's interest.
3. The current draft grants Flock a license to use anonymized data derived from Customer Data and Customer Generated Data. This license should be expressly limited to the Term of the Agreement, rather than extending in perpetuity. Restricting the duration of this license ensures that Flock's right to use anonymized data ends when the contractual relationship ends, consistent with the City's interest in maintaining long-term control over information derived from its operations.
4. Specify that Flock shall not make any hardware/software modifications that change the scope of data access or sharing without obtaining the City's prior written consent. Routine maintenance, bug fixes, and security patches that do not affect the scope of data access or sharing would not require prior consent. This safeguard addresses community concerns that platform-level configuration changes could inadvertently expand data access without the City's knowledge or approval.
5. Revise the Special Terms section to require that any changes to the MSA subsequent to its final execution by City staff will require action by the City Council.
6. Remove the Amendment at the end of the MSA and integrate provisions regarding data access, sharing, and security into the main body of the MSA, and prohibit any subsequent changes to these provisions by way of amendments, addenda, "customer agreements," or attachments, unless approved by additional Council action. These integrated provisions should ensure that Flock is prohibited from providing any City data in response to a legal request or demand without notifying the City and obtaining the City's written consent to disclosure. This prohibition shall not apply if and only if Flock is both required by law to produce the data in response to the request or demand and prohibited by law from informing the City about the request or demand.

BACKGROUND

The six amendments recommended above are responsive to community concerns and are consistent with the City's obligations under Berkeley Municipal Code Chapter 2.99 and the City's Sanctuary City policies. Staff believes these provisions are achievable and, based on discussions with Flock to date, expects the vendor to accept them. Adopting these requirements would allow Council to act on the MSA without a return to Council for further approval.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None (relative to original item).

CONTACT PERSON

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