

POLICE ACCOUNTABILITY BOARD

Police Accountability Board's Surveillance Technology Recommendations for Item 26

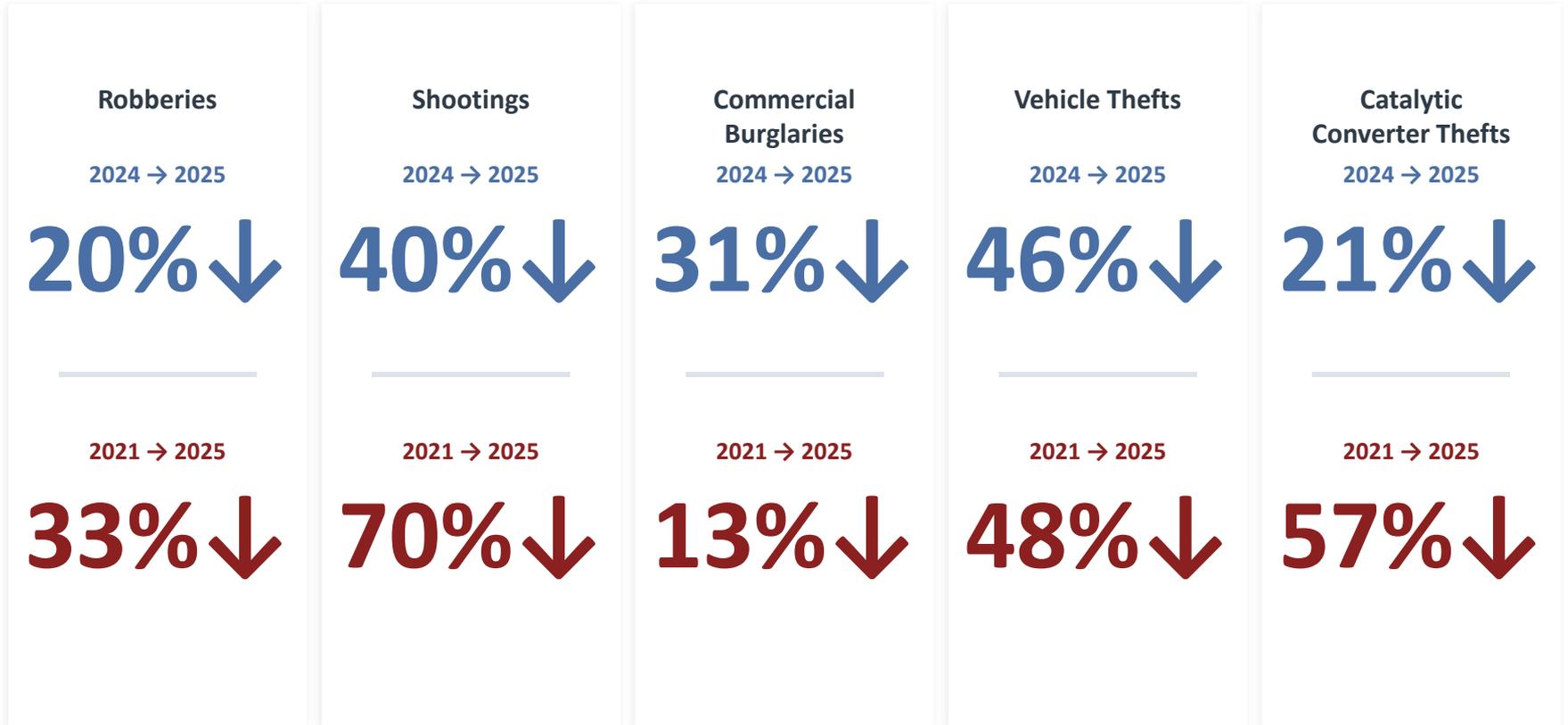
Berkeley City Council · March 24, 2026

Defer final action on the three surveillance items.

BPD's proposal to (1) authorize a drone-as-first-responder program, (2) integrate Community Video Streams, and (3) combine license plate readers, fixed cameras, community video feeds, and aerial drones on a single integrated platform under a single vendor *represents the largest expansion of BPD's surveillance capacity in Berkeley's history.*

A decision of this magnitude demands thoughtful deliberation and review. This burden has not yet been satisfied.

The case for urgency has not been made.



Four reasons action is premature.

01 **Concerns with Flock Safety and the lack of a documented vendor selection process.**

The record contains no criteria used to evaluate Flock Safety against alternatives and no justification for choosing a single-vendor approach for Berkeley's entire surveillance infrastructure.

02 **Inadequate review time**

BPD submitted the full MSA to the PAB a day before the March 11 meeting. CVS policies had only a single PAB meeting for consideration. The public has had no more time than the PAB to review these policies or the proposed overall surveillance architecture.

03 **No combined system assessment**

Each of the four programs was evaluated individually. The integrated ecosystem - ALPR, fixed cameras, CVS, and drones - has never been assessed as a whole.

04 **Too many unresolved issues including actions needed for regulatory compliance**

The PAB identified ~30 material issues: MSA provisions undisclosed in any acquisition report, policy non-compliance with regulatory requirements across all three program areas, inadequate notification standards, insufficient vendor sanctions, and a liability framework that would leave Berkeley without appropriate remedy in a major data breach.

Why Flock Safety?

BPD proposes Flock Safety as the sole vendor for Berkeley's integrated surveillance platform.

Flock Safety: BPD Justifications and PAB Concerns

BPD Justifications

- **Fully integrated, centralized surveillance system**
ALPR, cameras, CVS, and drones on one platform under one vendor.
- **More advanced drone technology**
Flock's drone-as-first-responder (DFR) platform claimed to offer superior capabilities for BPD.

PAB Concerns

- **Concentration risks**
Operational dependency, vendor lock-in, and magnified privacy impact from a single integrated platform.
- **Experience of other jurisdictions**
Over 50 jurisdictions have walked away from Flock over privacy and data-sharing failures.
- **Flaws in the Master Services Agreement**
Perpetual data licenses, no exit rights, and no consent required for new features.
- **Conflict with Sanctuary City commitments**
Flock's network model creates structural risk of federal immigration agency access.
- **Lack of documented vendor selection process**

Complete a consolidated BMC 2.99 assessment for the full ecosystem.

A single operator could identify a vehicle by plate, pull fixed and community camera footage, and dispatch a drone in real time. When ALPR, cameras, CVS, and drones integrate on one platform, the combined tracking capability far exceeds what any individual program authorization contemplated.

CONCENTRATION RISKS THE REPORT MUST ADDRESS

Operational Dependency

One vendor controlling hardware, software, and data storage across multiple critical systems means any outage, security incident, or policy change can impair several core capabilities simultaneously.

Weakened Governance Leverage

Consolidation makes it significantly harder to negotiate privacy terms, conduct independent audits, or manage data parameters. The city's leverage diminishes once multiple systems depend on the same vendor.

Cost Lock-In Over Time

Initial bundled pricing shifts bargaining power to the vendor. Subscription increases, hardware costs, license fees, and add-on charges become difficult to resist once switching is operationally disruptive and expensive.

Integration Magnifies Privacy Impact

Combined ALPR, camera, and drone data on one platform creates tracking capability that significantly exceeds what any individual program authorization contemplated and what no single BMC 2.99 review has evaluated.

Additional factors to be considered in consolidated assessment:

- Combined data access capabilities and cross-program data rights
- Adequacy of audit mechanisms to detect platform-wide unauthorized access
- Corrected "experience of other entities" documentation, including adverse findings from comparable jurisdictions
- BPD's need for dedicated technology staffing to competently manage the ecosystem

If Council Chooses to Contract With Flock Safety, Renegotiate the Flock Master Services Agreement.

The MSA contains provisions that leave Berkeley without basic protections:

- An irrevocable service license and perpetual anonymized data license that survive contract termination
- No city consent required before Flock activates new platform features including convoy tracking, predict-a-path, and Flock Nova
- No termination-for-convenience right. Berkeley cannot exit without proving material breach
- No post-termination data deletion requirement for city-associated data
- No city consent required before Flock assigns the agreement to an affiliate or acquirer

Strengthen the MSA penalty amendment.

As Submitted

- \$75,000 penalty per violation is sole and exclusive remedy, eliminating legal recourse
- Lookup tool carve-out exempts the exact mechanism behind the Mountain View, Ventura, and other similar incidents
- Federal task force carve-out creates proxy-access loophole

What's Needed

- \$200,000–\$290,000 per violation. Flock accepted this range in Oakland and Richmond
- Delete the lookup tool carve-out entirely
- Preserve full legal remedies where actual harm exceeds penalty amount
- Require individual written authorization by Berkeley for any federal access

There is no basis for Berkeley accepting a lower standard than peer cities have already negotiated.

CVS, UAS, and Fixed Camera Use Policies

BPD Policies 351, 355, 611, 709, 1303, and 1306

SURVEILLANCE TECHNOLOGY RECOMMENDATIONS

Surveillance programs under review: policies and governing law

Type of Surveillance Tool	Applicable BPD Policies	Relevant Laws
Community Video Streams	Policy 355, Policy 1306, and Acquisition Report	BMC 2.99 (STO) & Berkeley's Sanctuary City Commitments
External Fixed Video Surveillance Cameras	Policy 351	BMC 2.99 & Berkeley's Sanctuary City Commitments
Unmanned Aerial System (UAS)	Policy 611, Policy 709, Policy 1303, and Acquisition Report	BMC 2.99 (STO), BMC 2.100 (Military Equipment), AB 481 (Military Equipment), and Berkeley's Sanctuary City Commitments

Correct policy deficiencies across all programs.

Policies 351, 355, 611, 709, 1303, and 1306 share common deficiencies:

No First Amendment protections

Only UAS Use Policy prohibits using Flock technology to monitor protests, political assemblies, or protected activity.

Inconsistent notification standards

Triggering criteria for notifying of non-California and federal agency access vary across programs and must be standardized at 72 hours.

Insufficient auditing requirements

Audit requirements are inconsistent, and insufficient, across all programs.

No enforceable vendor sanctions

Policies do not include legally enforceable penalties against Flock for unauthorized access, unauthorized feature activation, or data security violations.

Drone policies carry additional concerns: inadequate use restrictions, fiscal discrepancies, and unresolved FCC Covered List issues for the proposed foreign-produced fleet.

Surveillance Use Policy - Unmanned Aerial System (UAS)

BPD proposes Flock Safety as the sole vendor for Berkeley's integrated surveillance platform.

Eight critical deficiencies must be addressed before any drone program can advance.

Authorized Uses Too Broad

UAS Use Policy lists permitted uses (e.g., active pursuits, missing persons) but does not limit DFR to those uses. PAB recommends explicit permitted uses and limiting DFR to a closed list for a pilot period. The permissive language allows deployment for any purpose not expressly prohibited, creating broad operational discretion with no warrant or exigency requirement for most deployments.

Data Retention Too Broad

UAS Use Policy sets a uniform 60-day retention period for all footage regardless of evidentiary value. PAB recommends tailoring retention periods to achieve the specific permitted purpose, most of which are serviced by immediate video confirmation. Long data retention periods raises privacy concerns, constitutional policing issues, and exposure to federal immigration enforcement.

Oversight & Accountability Gaps

Require supervisory approval before each deployment. Mandate logging of reason for deployment and recording times.

No Performance Baseline

No framework to evaluate program effectiveness. Require metrics before authorization: CFS response time, crime clearance rates, use-of-force rates, and demographic distribution.

No Clear Decertification Procedure & Complaint Intake Process

UAS Use Policy contains no process for revoking officer certification. Repeat violations carry no defined consequence. Also no mechanism exists for community members to report concerns about drone deployments or request review of incidents. Accountability requires an accessible intake channel.

First Amendment Concerns

UAS Policy would authorize use to respond to “active criminal activity at mass gatherings or special events.” PAB is concerned that this offers broad discretion in light of expansive definition of what could constitute “criminal activity” (i.e. refusing to follow unlawful dispersal order) and could chill protected First Amendment speech.

FCC Covered List Risk

December 2025 FCC action designates foreign-produced drones as national security risks. BPD’s proposed fleet is affected. Equipment authorization status must be confirmed before procurement.

Three-Policy Structure Creates Gaps

Policies 709, 611, and 1303 are interlocked through circular cross-references, creating confusion and version-control and accountability risks. Policy 709 must be self-contained for AB 481 purposes.

The PAB is ready to support this work and to expedite review once conditions are met.

- 1 Complete and publish the consolidated BMC 2.99 ecosystem assessment.
 - 2 If Council decides to contract with Flock, renegotiate the MSA.
 - 3 Correct deficiencies across all six submitted policies.
 - 4 If Council to authorize drone program, approve PAB's recommendations for Drone Use Policy
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