



CONSENT CALENDAR

September 29, 2026

To: Honorable Mayor and Members of the City Council
From: Paul Buddenhagen, City Manager
Submitted by: Jen Louis, Chief of Police
Subject: Amendment to BMC Chapter 2.99 to Establish Surveillance Technology Vendor Accountability Requirements and to Revise the Annual Surveillance Technology Reporting Schedule

RECOMMENDATION

Adopt the first reading of an Ordinance amending Berkeley Municipal Code Chapter 2.99 to require enforceable violation, sanction, and termination provisions in agreements with surveillance technology vendors; to change the annual Surveillance Technology Report to a calendar-year reporting period due to the City Council at the first regular meeting in March, beginning with a report in March 2027 covering October 1, 2025 through December 31, 2026; and to conform references to the Police Accountability Board.

CURRENT SITUATION AND ITS EFFECTS

On May 7, 2026, the City Council considered the Public Safety Technology item (Item 1a), covering surveillance technology and police equipment approvals, policy updates, and contract authority. The Council adopted supplemental recommendations, including Recommendation 8, to amend Chapter 2.99 to include a violation/termination clause for surveillance technology vendors and to establish enforceable mechanisms to sanction vendors for misuse, unauthorized access, or data security failures. The proposed ordinance carries out that referral.

The proposed ordinance adds a new Section 2.99.085 establishing a baseline for every surveillance technology agreement entered into, renewed or amended after the effective date. Each agreement must define as a material breach any misuse of collected information; any access, use, sale, sharing, or disclosure of that information by the vendor, a subcontractor, or any third party, including any federal, state, or local agency, that the agreement and the applicable Surveillance Use Policy prohibit, including access enabled through a vendor's activation of any feature or setting without the City's prior written approval; and any failure to maintain safeguards protecting that information consistent with prevailing industry standards. Each agreement must further require the vendor to notify the City in writing within 72 hours of discovering a material breach, and

must authorize the City to suspend the vendor's data access and use of the technology pending investigation and cure, terminate for cause, require the return or certified destruction of collected information, recover damages, and pursue any other available remedy. The section also directs the City to investigate suspected violations, take interim protective measures, notify the Council of substantiated violations within 30 days, and report all vendor violations and sanctions in the annual Surveillance Technology Report; termination, cancellation, or non-interim suspension of an agreement requires Council approval.

In addition to the referral and as discussed during the same May 7 Council meeting, the proposed ordinance revisions also change the annual reporting schedule in Section 2.99.070. Chapter 2.99 was adopted in March 2018, and Section 2.99.050 required the City Manager to bring forward a Surveillance Acquisition Report and a proposed Surveillance Use Policy for every Surveillance Technology the City already possessed at the first regular Council meeting in November 2018. The recurring November submittal date in Section 2.99.070 was set to that same initial compliance milestone; it does not correspond to a defined reporting period, and the Chapter does not state what period each report must cover. The result is a reporting year that splits across two calendar years and is misaligned with the vendor usage, audit, and cost records underlying the report. The November date is also not ideal because there are only a few days between the close of the period covered and the agenda deadline in which to collect data from departments and vendors, verify it, and prepare the report. The amendment therefore establishes a calendar-year reporting period (January 1 through December 31) with the report due at the first regular Council meeting in March, providing approximately one month after the close of the reporting year for departments and vendors to produce year-end usage, audit, and cost data and for staff to prepare the report, and one month for agenda review and publication. To ensure continuous coverage through the transition, the first report under the new schedule will be submitted in March 2027 and will cover October 1, 2025 through December 31, 2026; no separate report will be due in November 2026.

Finally, the ordinance conforms references in Chapter 2.99 to the Police Accountability Board, which succeeded to the duties of the Police Review Commission in 2020.

BACKGROUND

The City Council adopted the Surveillance Technology Ordinance in 2018 (Ordinance No. 7,592–N.S.), establishing Council approval requirements, Surveillance Acquisition Reports, legally enforceable Surveillance Use Policies, and annual public reporting for all City surveillance technologies. Since the ordinance was adopted, the City's surveillance technologies have shifted toward vendor-hosted, cloud-based platforms in which the vendor stores and secures the collected data. As a Sanctuary City, Berkeley has a particular interest in preventing unauthorized access to locally collected information by federal immigration authorities and out-of-state agencies. Codifying mandatory vendor accountability terms in Chapter 2.99 ensures that these protections apply uniformly to every surveillance technology vendor and do not depend on the outcome of individual contract negotiations.

FISCAL IMPACTS

There are no direct financial implications associated with this item beyond existing staff time to negotiate the required contract terms at execution, renewal, amendment, or extension, and to prepare the annual Surveillance Technology Report. Enforceable remedies are expected to reduce the City's financial and legal exposure arising from vendor data incidents. The revised reporting schedule may also produce a modest reduction in costs. Preparing the report under the current schedule concentrates data collection, verification, and drafting into a short window, which has required overtime for sworn and professional staff compiling usage, audit, and cost data. A defined reporting period with a longer interval before the submittal deadline allows this work to be scheduled within regular hours and absorbed into existing workload.

ENVIRONMENTAL SUSTAINABILITY

No environmental impacts have been identified due to the adoption of this ordinance.

CONTACT INFORMATION

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ATTACHMENTS

1. Ordinance

ORDINANCE NO. ##-###N.S.

AMENDMENT TO BMC CHAPTER 2.99 TO ESTABLISH SURVEILLANCE
TECHNOLOGY VENDOR ACCOUNTABILITY REQUIREMENTS AND TO REVISE
THE ANNUAL SURVEILLANCE TECHNOLOGY REPORTING SCHEDULE

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. Findings

A. In 2018, the City Council adopted Ordinance No. 7,592–N.S., enacting Berkeley Municipal Code Chapter 2.99, which requires City Council approval of a Surveillance Acquisition Report and a legally enforceable Surveillance Use Policy prior to the funding, acquisition, or use of Surveillance Technology and requires an annual Surveillance Technology Report. In 2019, the City Council adopted Ordinance No. 7,676–N.S., prohibiting City use of Face Recognition Technology.

B. Chapter 2.99 does not currently require that agreements with Surveillance Technology vendors contain enforceable safeguards, sanctions, or termination rights addressing vendor misuse of collected information, unauthorized access or disclosure, or data security failures.

C. On May 7, 2026, in connection with the Public Safety Technology item (Item 1a), the City Council adopted a recommendation to amend Chapter 2.99 to include a violation/termination clause for surveillance technology vendors and to establish enforceable mechanisms to sanction vendors for misuse, unauthorized access, or data security failures (Recommendation 8).

D. Aligning the annual Surveillance Technology Report with the calendar year, with submission to the City Council at the first regular meeting in March, will define the reporting period in the Municipal Code, align reporting with the calendar-year cadence of vendor usage, audit, and cost data, and provide adequate time following the close of the reporting period for preparation of the report and completion of the agenda process. A transition provision ensures that no period is omitted from annual reporting.

E. In November 2020, the voters of Berkeley adopted Measure II, adding Section 125 to the City Charter and establishing the Police Accountability Board, which succeeded to the duties of the Police Review Commission. References in Chapter 2.99 are conformed accordingly.

Section 2. That Berkeley Municipal Code Section 2.99.020, subdivision 2, is amended to read as follows:

2. "Surveillance Technology Report" means an annual written report by the City Manager covering all of the City of Berkeley's Surveillance Technologies that includes all of the following information with regard to each type of Surveillance Technology:

- a. Description: A description of all non-privileged and non-confidential information about use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report shall include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing;
- b. Geographic Deployment: Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically;
- c. Complaints: A summary of each complaint, if any, received by the City about the Surveillance Technology;
- d. Audits and Violations: The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response;
- e. Data Breaches: Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response;
- f. Effectiveness: Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes;
- g. Costs: Total annual costs for the Surveillance Technology, including personnel and other ongoing costs-; and,
- h. Vendor Compliance: A summary of any violation by a vendor of the agreement provisions required by Section 2.99.085 or of an applicable Surveillance Use Policy. The summary shall include information regarding any misuse of collected information, unauthorized access or disclosure, and data security failures, and a description of any sanctions, remedies, or corrective actions taken in response.

Section 3. That Berkeley Municipal Code Section 2.99.030, subdivision 2, is amended to read as follows:

2. The City Manager must present a Surveillance Use Policy for each Surveillance Technology to the Police ~~Review Commission~~Accountability Board, prior to adoption by the City Council. The Police ~~Review Commission~~Accountability Board shall also be provided with the corresponding Surveillance Acquisition Report that had been presented to council for that Surveillance Technology. No later than 30 days after receiving a Surveillance Use Policy for review, the Police ~~Review Commission~~Accountability Board must vote to recommend approval of the policy, object to the proposal, recommend modifications, or take no action. Neither opposition to approval of such a policy, nor failure by the Police ~~Review Commission~~Accountability Board to act, shall prohibit the City Manager from proceeding with its own review and potential adoption.

Section 4. That Berkeley Municipal Code Section 2.99.070 is amended to read as follows:

2.99.070 Oversight Following City Council Approval.

The City Manager must submit to the Council Action Calendar a written Surveillance Technology Report, covering all of the City's Surveillance Technologies, annually at the first regular Council meeting in ~~November~~March. Each Surveillance Technology Report shall cover the preceding calendar year, January 1 through December 31.

The first Surveillance Technology Report submitted following the effective date of the ordinance amending this Section shall be submitted at the first regular Council meeting in March 2027 and shall cover the period from October 1, 2025 through December 31, 2026, so that no period is omitted from annual reporting as a result of the transition to a calendar-year reporting period.

After review of the Surveillance Technology Report, Council may make modifications to Surveillance Use Policies.

Section 5. That Berkeley Municipal Code Chapter 2.99 is amended to add Section 2.99.085 to read as follows:

2.99.085 Vendor Accountability.

1. Required Contract Provisions. Any agreement between the City and a vendor for the acquisition, lease, use, operation, maintenance, or support of Surveillance Technology, or for the storage, hosting, processing, or analysis of information collected by Surveillance Technology, that is entered into, renewed or amended on or after the effective date of this Section shall include legally enforceable provisions that, at a minimum:

a. Define as a material breach of the agreement each of the following: misuse of information collected by or derived from the Surveillance Technology; any access to, or use, sale, sharing, or disclosure of, such information by the vendor, a subcontractor, or any third party, including any federal, state, or local agency, that the agreement and the applicable Surveillance Use Policy prohibit, including through the enabling or activation of any feature or setting that expands access to such information without the City's prior written approval; and any failure to maintain administrative, technical, or physical safeguards protecting such information against misuse, loss, or unauthorized access or disclosure, consistent with prevailing industry standards;

b. Require the vendor to provide written notice to the City within 72 hours of discovering any material breach described in subparagraph a, including a description of the scope of the incident and the corrective actions taken or proposed; and

c. Authorize the City, upon a material breach described in subparagraph a or a failure to provide the notice required by subparagraph b, to suspend the vendor's access to such information and to suspend use of the Surveillance Technology pending investigation and cure; to terminate the agreement for cause; to require the return or certified destruction of all such information held by the vendor or its subcontractors; to recover damages, including liquidated damages where the agreement so provides; and to pursue any other remedy available under the agreement, at law, or in equity, all such remedies being cumulative.

2. Enforcement. Upon receiving notice of, or otherwise learning of, a suspected violation of any provision required by subdivision 1 of this Section, the City shall promptly investigate; shall take appropriate interim measures to protect collected information and the public, which may include suspension of the vendor's access to collected information and suspension of use of the Surveillance Technology pending investigation and cure; and shall pursue available contractual remedies as warranted. The City shall provide written notice of any substantiated violation, and of any sanctions, remedies, or corrective actions imposed or pursued, to the City Council within 30 days of substantiation, unless such information is confidential or privileged. Any proposed termination or cancellation of an agreement for Surveillance Technology, or any suspension of such an agreement other than an interim protective measure under this subdivision, shall be presented to the City Council for approval. All vendor violations and any sanctions, remedies, or corrective actions taken shall be summarized in the annual Surveillance Technology Report as provided in Section 2.99.020, subdivision 2, subparagraph h.

3. Existing Agreements. For agreements in effect on the effective date of this Section, the City Manager shall seek to incorporate the provisions required by subdivision 1 of this Section at the earliest practicable opportunity. Nothing in this Section impairs the obligations of any agreement in effect on the effective date of this Section prior to its renewal or amendment.

Section 6. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

