

ORDINANCE NO. 8,033-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 Accountability Board, prior to adoption by the City Council. The Police 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 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 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 March. Each Surveillance Technology Report shall cover the preceding calendar year, January 1 through December 31.

The first March 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 2028 and shall cover the period from October 1, 2026 through December 31, 2027, 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.

At a regular meeting of the Council of the City of Berkeley held on September 29, 2026, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Blackaby, Humbert, Kesarwani, Lunaparra, O'Keefe, Taplin, Tregub, and Ishii.

Noes: None.

Absent: None.