

CONSENT CALENDAR

November 18, 2025

To: Honorable Members of the City Council

From: Councilmember Lunaparra (Author), Mayor Ishii (co-sponsor), Vice Mayor Humbert (co-sponsor), Councilmember Blackaby (co-sponsor)

Subject: Sanctuary City Contracting Ordinance Updates

RECOMMENDATION

Adopt the proposed amendments to the Sanctuary City Contracting Ordinance (BMC 13.105) to mirror key definitions with the language in the new Sanctuary City Ordinance and shorten the Right to Cure time period from 90 days to 30 days.

BACKGROUND

The City of Berkeley adopted the Sanctuary City Contracting Ordinance in 2018 to “protect the privacy, safety, dignity, and quality of life of the members of the Berkeley community, especially targeted immigrants and religious minorities” by prohibiting the award of city contracts to “vendors acting as ICE data brokers, or those providing extreme vetting services.” This ordinance has been a vital tool for ensuring that the protected personal information of Berkeley residents and visitors is protected and City of Berkeley resources are used in a manner consistent with Berkeley values and our Sanctuary City policies.

RATIONALE FOR RECOMMENDATION

The current Sanctuary City Contracting Ordinance bars the City of Berkeley from awarding city contracts to “vendors acting as ICE data brokers, or those providing extreme vetting services.” However, in recent months, large swaths of the federal government have been used for immigration enforcement purposes, including the U.S. Department of Homeland Security and its component agencies, U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, U.S. Citizenship and Immigration Services, and more¹.

The Berkeley City Council recently passed, unanimously, the Sanctuary City Ordinance, which, among other things, provides clarity and further definition for several key terms. This item’s proposed amendments to the Sanctuary City Contracting Ordinance, drafted in consultation with the City Attorney’s Office, mirror these definitions from the Sanctuary City Ordinance to ensure congruence within the Berkeley Municipal Code. Notably, this item defines “Immigration Authority” as “any person or agency engaging in efforts to investigate, enforce, or assist in the investigation or enforcement of federal

¹ <https://www.washingtonpost.com/national-security/2025/10/08/fbi-agents-reassigned-immigration/>

immigration law against natural persons,” not just ICE. This item also mirrors the Sanctuary City Ordinance’s definition of “Protected Personal Information.”

This item also proposes shortening the Right to Cure time period from 90 days to 30 days. In its current form, if the ordinance is alleged to have been violated, a person or entity may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce the Sanctuary City Contracting Ordinance if the alleged violation is not remedied within 90 days after the allegation is first made in writing. This means that, if a City of Berkeley vendor is alleged to be sharing data with immigration authorities, it could take up to three months before corrective action is taken to safeguard the privacy of Berkeley residents, uphold Berkeley values, and enforce local law, risking immeasurable harm. Recognizing this, other municipalities have 30-day Right to Cure time periods for ordinances that protect the privacy of their residents. For example, San Francisco ([Sec. 19B.8.\(c\)](#)) and San Diego ([Sec. 210.0109\(a\)\(1\)](#)) both have 30-day Right to Cure time periods in their respective Surveillance Ordinances. This proposed change to Berkeley’s Sanctuary City Contracting Ordinance would match this timeline, further safeguarding our privacy and our values. To ensure that this remains feasible for City staff, the item tolls the 30-day notice period during City Council recesses, as recommended to the Author by the City Attorney’s Office.

CURRENT SITUATION AND ITS EFFECTS

The Sanctuary City Ordinance declares the following:

- The City of Berkeley is home to people of diverse racial, ethnic, and national backgrounds, including a large immigrant population.
- Immigrants are valuable and essential members of the City of Berkeley community.
- A relationship of trust between the City of Berkeley’s immigrant community and the City of Berkeley, its departments, programs, and personnel is central to the public safety of Berkeley residents.
- This trust is threatened when state and local agencies are entangled with federal immigration enforcement, with the result that immigrant community members may fear approaching police when they are victims of or witnesses to crimes, or may fear seeking basic health services or attending school, to the detriment of public safety and the wellbeing of all Berkeley residents.
- Entangling state and local agencies with federal immigration enforcement programs diverts already limited resources and blurs the lines of accountability between local, state, and federal governments.
- Multiple studies have proven that jurisdictions that do not assist in immigration enforcement are safer and economically more prosperous compared to other jurisdictions – including a 2017 report by the Center for American Progress that shows on average there are 35.5 fewer crimes committed per 10,000 people in sanctuary jurisdictions, the average annual income is \$4,353 higher, the poverty rate is 2.3% lower, and unemployment is 1.1% lower.

By ensuring that all of our Sanctuary City policies are aligned, we can ensure they are as effective as possible at defending Berkeley's values and protecting our residents' rights to due process.

FISCAL IMPACTS OF RECOMMENDATION

No anticipated impacts.

ENVIRONMENTAL SUSTAINABILITY

No anticipated impacts.

Attachments:

1. Amended Ordinance

CONTACT PERSON

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Chapter 13.105

SANCTUARY CITY CONTRACTING*

Sections:

13.105.010 Title.

13.105.020 Definitions.

13.105.030 Prohibition on Use of City Resources.

13.105.040 Investigation and Reporting.

13.105.050 Enforcement.

13.105.060 Severability.

13.105.070 Construction.

13.105.080 Chapter Supersedes Existing Law and Regulations.

13.105.090 Effective Date.

* Ordinance No. [7650-N.S](#) adds the provisions of this chapter as Chapter [13.104](#). It has been editorially renumbered to account for the preexisting Chapter [13.104](#).

13.105.010 Title.

This ordinance shall be known as the Sanctuary City Contracting Ordinance. (Ord. 7650-NS § 1 (part), 2019)

13.105.020 Definitions.

- A. "City" means the City of Berkeley, California.
- B. "Data Broker" (also commonly called information broker, information reseller, data aggregator, and information solution provider) means either of the following:
 - 1. The collection of information, including **P**rotected **P**ersonal **I**nformation about consumers, from a wide variety of sources for the purposes of reselling such information to their customers, which include both private-sector businesses and government agencies;
 - 2. The aggregation of data that was collected for another purpose from that for which it is ultimately used.

- C. "Extreme Vetting" means data-mining, threat modeling, predictive risk analysis, or other similar services. Extreme Vetting ~~Does~~does not include the following:
1. The City's computer-network health and performance tools;
 2. Cybersecurity capabilities, technologies and systems used by the City of Berkeley Department of Information Technology to predict, monitor for, prevent, and protect technology infrastructure and systems owned and operated by the City of Berkeley from potential cybersecurity events and cyber-forensic based investigations and prosecutions of illegal computer based activity.
- D. ~~"ICE" means the United States Immigration and Customs Enforcement, and any subdivision thereof.~~ Immigration Authority" means any person or agency engaging in efforts to investigate, enforce, or assist in the investigation or enforcement of federal immigration law against natural persons, including but not limited to the U.S. Department of Homeland Security or its component agencies, U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, or U.S. Citizenship and Immigration Services.
- E. "Person or Entity" means any private natural person, corporation, institution, subsidiary, affiliate, or division under operating control of such person; the parent entities that have operating control over such person, and the subsidiaries, affiliates and divisions under operating control of such parent entity. Government entities and employees are expressly excluded from this definition. (Ord. 7650-NS § 1 (part), 2019)
- F. "Protected Personal Information" means any information that identifies, relates to, describes, or is capable of being associated with a particular individual, including but not limited to a person's name, birthdate, Social Security Number or Individual Taxpayer Identification Number, telephone number, home or work address, driver's license number, place of birth, or biometric information.

13.105.030 Prohibition on Use of City Resources.

- A. No officer, employee, department, board, commission, City Council, City Manager, or other entity of the City shall enter into a new, amended, or extended contract or agreement with any Person or Entity that provides ~~ICE~~ an Immigration Authority with any "Data Broker" or "Extreme Vetting" services as defined herein, unless a waiver is granted based on a specific determination that no reasonable alternative exists, taking into consideration the following:
1. The intent and purpose of this ordinance;
 2. The availability of alternative services, goods and equipment; and
 3. Quantifiable additional costs resulting from use of available alternatives.

The following processes shall be followed in considering a waiver: The City Manager or designee shall file a waiver request. The Council shall make the final decision on granting the waiver.

- B. All public works, construction bids, requests for information, requests for proposals or any other solicitation issued by the City shall include notice of the prohibition listed above.
- C. For the purpose of determining which Person or Entity provides **ICE an Immigration Authority** with Data Broker or Extreme Vetting services, the City Manager shall rely on:
 - 1. Information available on federal contracting websites, or in the absence of those, another common source of federal data;
 - 2. A declaration under the penalty of perjury executed by the Person or Entity, affirming that they do not provide Data Broker or Extreme Vetting services to ICE an Immigration Authority.
- D. Any Person or Entity identified as a supplier of Data Broker or Extreme Vetting services to **ICE an Immigration Authority** and potentially affected by this Section shall be notified by the City Manager of the determination. Any such Person or Entity shall be entitled to a review of the determination by appeal to the City Manager. Request for such review shall be made within thirty (30) business days of notification, or seven (7) business days of the date of a City solicitation or notice of a pending contract or purchase, of interest to the Person or Entity seeking review. Any Person or Entity vendor so identified may appeal the City Manager's determination to the City Council, within fifteen (15) business days of the determination. (Ord. 7650-NS § 1 (part), 2019)

13.105.040 Investigation and Reporting.

- A. The City Manager, or their designee, shall review compliance with Section [13.105.030](#). The City Manager may initiate and shall receive complaints regarding violations of Section [13.105.030](#). All officers, employees, departments, boards, commissions, and other entities of the City shall cooperate with the City Manager in any investigation of a violation of Section [13.105.030](#).
- B. By November 1 of each year, the City Manager shall schedule and submit to the City Council a written, public report regarding compliance with Section [13.105.030](#) over the previous year. At minimum, this report must (1) detail with specificity the steps taken to ensure compliance with Section [13.105.030](#), (2) disclose any issues with compliance, including any violations or potential violations of this Ordinance, and (3) detail actions taken to cure any deficiencies with compliance. (Ord. 7650-NS § 1 (part), 2019)

13.105.050 Enforcement.

- A. *Right to Cure.* This Chapter does not provide a private right of action upon any person or entity to seek injunctive relief against the City or any employee unless that person or entity has first provided written notice to the City Manager by serving the City Clerk, regarding the specific alleged violations of this Chapter. If the alleged

violation is substantiated and subsequently cured, a notice shall be posted in a conspicuous manner on the City's website that describes, to the extent permissible by law, the corrective measures taken to address the violation.

- B. *Cause of Action.* If a specific alleged violation is not remedied within ~~30~~ 90 days of that written notice, a person or entity may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce this Ordinance; provided, however, that if the City receives notice of a potential violation pursuant to section 12.105.050(A) while the City Council is on recess, the 30-day period shall be tolled during the pendency of the recess.
- C. *Civil Penalties.* If the City is found liable in a cause of action brought by an individual under subsection B. above for a violation that is the result of arbitrary or capricious action by the City or an employee or agent thereof in their official capacity, the City shall be liable for a civil penalty no greater than \$5,000 per violation, as determined by the court. In determining the amount of civil penalty, the court shall consider prior violations of this ordinance by the City department that committed the violation.
- D. *Attorney's Fees and Costs.* A court shall award a plaintiff who prevails on a cause of action under subsection B. reasonable attorney's fees and costs in an amount not to exceed \$15,000.
- E. *Limitations on Actions.* Any person bringing an action pursuant to this ordinance must first file a claim with the City pursuant to Government Code [section 905](#) or any successor statute within four years of the alleged violation.
- F. Any contracting Person or Entity knowingly or willingly supplying false information in violation of Section 13.105.030C.2., shall be guilty of a misdemeanor and up to a \$1,000 fine. (Ord. 7650-NS § 1 (part), 2019)

13.105.060 Severability.

The provisions in this Ordinance are severable. If any part or provision of this Ordinance, or the application of this Ordinance to any person or circumstance, is held invalid, the remainder of this Ordinance, including the application of such part or provisions to other persons or circumstances, shall not be affected by such holding and shall continue to have force and effect. (Ord. 7650-NS § 1 (part), 2019)

13.105.070 Construction.

The provisions of this Ordinance are to be construed broadly to effectuate the purposes of this Ordinance. (Ord. 7650-NS § 1 (part), 2019)

13.105.080 Chapter Supersedes Existing Law and Regulations.

The provisions of this chapter shall supersede any conflicting law or regulations. (Ord. 7650-NS § 1 (part), 2019)

13.105.090 Effective Date.

This Ordinance shall take effect on July 1, 2019. (Ord. 7650-NS § 1 (part), 2019)