



Office of the Mayor

CONSENT CALENDAR

March 14, 2023

To: Members of the City Council

From: Mayor Jesse Arreguín, Councilmember Robinson (Co-Sponsor),
Councilmember Hahn (Co-Sponsor)

Subject: Resolution to Support SB 50

RECOMMENDATION

Adopt a resolution in support of Senate Bill 50 with amendments, introduced by Senator Steven Bradford. Send a copy of the Resolution to Governor Gavin Newsom, State Senators Nancy Skinner and Scott Weiner, and Assemblymember Buffy Wicks.

SUMMARY

If adopted, California Senate Bill 50 would allow the City of Berkeley to move forward with alternatives to peace officers stopping or detaining the operator of a motor vehicle or bike for low-level infractions, and authorize local authorities to enforce Vehicle Code violations.

BACKGROUND

In the State of California, peace officers can stop an automobile and detain persons when officers possess probable cause that a traffic violation has occurred. Officers may use ulterior motives to justify probable cause leading to a traffic stop. Thus officers are within the law to make a stop despite it not being related to traffic enforcement. This creates an opportunity for other non-traffic related motives to play an outsized role as the basis for probable cause leading to a vehicle stop.

Statewide, drivers identified by officers as Black were 2.2 times more likely to be searched than people identified as White, according to an analysis of millions of vehicle and pedestrian stops in 2021 by the California Racial and Identity Profiling Advisory Board. The board recommends limiting enforcement of traffic laws and minor offenses that pose little risk to public safety, a recommendation in line with the City of Berkeley's commitment to Reimagining Public Safety.

The Public Policy Institute of California (PPIC) released findings in an October 2022 report detailing racial disparities in both the frequency of stops and the collection of evidence to lead to enforcement. Black drivers make up about a third of traffic stops in the hours around midnight, roughly twice the share of white drivers, and while local law enforcement officers are especially likely to search Black and Latino drivers during nighttime stops, discovery rates for contraband or evidence are lower than those of white drivers. Nearly one in three stops of Black drivers in the hours before and after

midnight result in no enforcement of traffic violations or discovery of contraband. Traffic stops that lead to no enforcement or discovery are not only a nuisance to the public, disproportionately effecting people of color, but are worth considering when exploring alternative enforcement methods without endangering public safety.

According to an audit of the City's traffic stop data, Black and Hispanic people are more likely to be stopped and searched by police than white and Asian people. For example, between 2015 and 2019, Black people were stopped at a rate 4.25 times greater than their white counterparts, with 34% of all traffic stops involving Black people despite this group making up 8% of our City's population. Hispanic residents accounted for 13% of officer-initiated stops while making up 11% of our population. During this same period, 55% of police stops were made in response to calls to the city's non-emergency dispatch center.

Senate Bill 50 would amend Section 21 of the Vehicle Code to:

- 1) prohibit a peace officer from stopping or detaining the operator of a motor vehicle or bicycle for a low-level infraction, unless there exists a separate and independent basis for a stop;
- 2) authorize a peace officer to, when they do not have grounds for a stop, determine the identity of the owner of the vehicle or bicycle and send a citation or warning letter to said owner; and
- 3) authorize local authorities to enforce Vehicle Code violations through government employees who are not peace officers.

A low-level infraction is detailed as meaning violations relating to:

- 1) vehicle registration;
- 2) positioning of license plates;
- 3) non-working turn, break lights, headlights, and other illuminating equipment;
- 4) window tints or obstructions to viewing;
- 5) vehicle bumper equipment; and
- 6) bicycle equipment and operation.

Through the City's approved process towards Reimagining Public Safety¹, we have made commitments to investigating the effects of distributing traffic enforcement responsibility

¹ On May 5, 2022, Council approved the Mayor's budget referral for Reimagining Public Safety (Item 1.a), which was ultimately approved during the FY 2023 and 2024 biennial budget. These steps included nearly \$1 million in estimated consultant costs to help the City analyze the creation of the Berkeley Department of Transportation (BerkDOT), the creation of a new Department of Community Safety, an evaluation of potential changes to Berkeley's dispatch center; and an analysis of BPD's staffing.

away from our police officers, freeing them to dedicate resources to completing investigatory work on more serious crimes and offenses. Passage of SB 50 will clear a path for the City Manager to continue developing the organizational design and study of a Berkeley Department of Transportation (BerKDOT)², which may remove certain traffic enforcement responsibilities away from police functions.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

No environmental impact.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

- 1: Resolution (SUPPORT OF CALIFORNIA SENATE BILL 50)
- 2: Latest text of SB 50 (as of January 13, 2023)

² On May 5, 2022, and with the passage of the biennial FY 2023 and FY 2024 budget, Council approved the investment of \$300,000 to fund the BerKDOT process that, in addition to furthering the organizational development, also committed to using consultant services to develop a vision for unarmed traffic enforcement and a new paradigm for supporting traffic safety that aligns with vision-zero, and evaluate paths to unarmed enforcement under both the scenario that state law changes to enable non-peace officer enforcement as well as the potential for a new designation of peace officers to enforce the California Vehicle Code

RESOLUTION NO. ##,###-N.S.

SUPPORTING SENATE BILL 50

WHEREAS, According to statewide statistics, drivers identified by officers as Black were 2.2 times more likely to be searched than people identified as White, according to an analysis of millions of vehicle and pedestrian stops in 2021 by the California Racial and Identity Profiling Advisory Board; and

WHEREAS, the City of Berkeley recognizes the benefits of exploring how traffic enforcement may be shifted to unarmed City employees to reduce the likelihood of traffic stops escalating to fatal encounters such as the recent murder of Tyre Nichols; and

WHEREAS, the City acknowledges the historical racial bias traffic stops present in disproportionately stopping and releasing persons of color without evidence needed for traffic enforcement or contraband; and

WHEREAS, the City of Berkeley experiences high racial disparities when considering traffic stop data, including, between 2015 and 2019, Black persons being stopped at a 4.25 times greater rate than their white counterparts, and an average of 34% of traffic stops involving Black people despite making up 8% Berkeley's population; and

WHEREAS, Senate Bill 50, introduced by Senator Steven Bradford, would amend state law to prohibit a peace officer from stopping or detaining the operator of a motor vehicle or bike for low-level infractions, and also the bill would authorize local authorities to enforce Vehicle Code violations through government employees who are not peace officers; and

WHEREAS, in 2020, the City Council launched the process to reimagine public safety including the creation of the Berkeley Department of Transportation (BerkDOT), creating a new civilian department to coordinate traffic enforcement, transportation planning and engineering. The goals of the BerkDOT process are to: 1) develop a vision for unarmed traffic enforcement and a new paradigm for supporting traffic safety that aligns with vision-zero, and 2) evaluate paths to unarmed traffic enforcement under the scenario that state law changes to enable non-peace officer enforcement; and

WHEREAS, the passage of SB 50 will support the City's efforts to design and implement a new Berkeley Department of Transportation (BerkDOT) which may absorb traffic enforcement responsibilities away from armed police officers from the Berkeley Police Department, and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby supports SB 50 with its current amendments.

BE IT FRUTHER RESOLVED that copies of the Resolution be sent to Governor Gavin Newsom, State Senators Nancy Skinner and Scott Weiner, and Assemblymember Buffy Wicks.

AMENDED IN SENATE FEBRUARY 13, 2023

SENATE BILL

No. 50

Introduced by Senator Bradford

(Principal coauthors: Assembly Members Kalra and Bryan)

(Coauthor: Senator Wahab)

(Coauthors: Assembly Members Jackson and McKinnor)

December 5, 2022

An act to amend Sections 21 and 21100 of, and to add Section 2804.5 to, the Vehicle Code, relating to ~~criminal procedure~~ vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 50, as amended, Bradford. ~~Criminal procedure: arrests. Vehicles: enforcement.~~

Existing law authorizes a peace officer to make an arrest pursuant to a warrant or without a warrant if, among other circumstances, the officer has probable cause to believe that the person has committed a public offense in the officer's presence. Under existing law, it is unlawful to disobey the lawful order, signal, or direction of a uniformed peace officer performing any duties pursuant to the Vehicle Code or to refuse to submit to any lawful vehicular inspection authorized by the Vehicle Code.

Existing case law deems a temporary detention of a person during an automobile stop by the police, even if only for a brief period and for a limited purpose, a seizure, under the Fourth Amendment of the Constitution of the United States, and as such, requires the actions to be reasonable. Under existing case law, the decision to stop an automobile is reasonable if the police have probable cause to believe that a traffic violation has occurred. Existing case law holds that constitutional reasonableness of traffic stops does not depend on the

SB 50

— 2 —

actual motivations of the individual officers involved and that ulterior motives do not invalidate police conduct that is justifiable on the basis of probable cause to believe that a violation of law has occurred.

~~This bill would state the intent of the Legislature to enact legislation relating to limiting a peace officer's authority to initiate pretextual stops to reduce racial profiling and the harm stemming from such stops.~~

This bill would prohibit a peace officer from stopping or detaining the operator of a motor vehicle or bicycle for a low-level infraction, as defined, unless a separate, independent basis for a stop exists. The bill would authorize a peace officer who does not have grounds to stop a vehicle or bicycle, but can determine the identity of the owner, to send a citation or warning letter to the owner.

The bill would authorize local authorities to enforce a violation of the Vehicle Code through government employees who are not peace officers.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 21 of the Vehicle Code is amended to*
2 *read:*

3 21. (a) Except as otherwise expressly provided, the provisions
4 of this code are applicable and uniform throughout the state and
5 in all counties and municipalities therein, and a local authority
6 shall not enact or enforce any ordinance or resolution on the matters
7 covered by this code, including ordinances or resolutions that
8 establish regulations or procedures for, or assess a fine, penalty,
9 assessment, or fee for a violation of, matters covered by this code,
10 unless expressly authorized by this code.

11 (b) To the extent permitted by current state law, this section
12 does not impair the current lawful authority of the Mountains
13 Recreation and Conservation Authority, a joint powers authority,
14 or any member agency constituted therein as of July 1, 2010, to
15 enforce an ordinance or resolution relating to the management of
16 public lands within its jurisdiction.

17 (c) *This section does not preclude a county, city, municipality,*
18 *or any other local authority from enforcing a violation provided*
19 *in this code through government employees who are not peace*
20 *officers.*

1 SEC. 2. Section 2804.5 is added to the Vehicle Code, to read:
2 2804.5. (a) (1) For the purpose of this section, “low-level
3 infraction” means any of the following:

4 (A) A violation related to the registration of a vehicle or vehicle
5 equipment in Sections 4000, 5352, and 12951.

6 (B) A violation related to the positioning or number of license
7 plates when at least one plate is clearly displayed, in Sections
8 5200, 5201, and 5204.

9 (C) A violation related to vehicle lighting equipment not
10 illuminating, if the violation is limited to a single brake light,
11 headlight, or running light, or a single bulb in a larger light of the
12 same, in Sections 24252, 24400, and 24600.

13 (D) A violation related to window tints or obstructions in
14 Sections 26708 and 26708.5.

15 (E) A violation related to vehicle bumper equipment in Section
16 28071.

17 (F) A violation related to bicycle equipment or operation in
18 Sections 21201 and 21212.

19 (2) “Low-level infraction” does not include violations relating
20 to commercial vehicles.

21 (b) Notwithstanding any other law, a peace officer shall not
22 stop or detain the operator of a motor vehicle or a bicycle for a
23 low-level infraction unless there is a separate, independent basis
24 to initiate the stop.

25 (c) If an officer does not have grounds to stop or detain the
26 operator of a motor vehicle or bicycle, and the officer can identify
27 the owner of the vehicle, the officer’s agency may, consistent with
28 current law, mail a citation to the owner, or send a warning letter
29 identifying the violation and instructing the owner to correct the
30 defect or otherwise remedy the violation.

31 SEC. 3. Section 21100 of the Vehicle Code is amended to read:
32 21100. Local authorities may adopt rules and regulations by
33 ordinance or resolution regarding all of the following matters:

34 (a) Regulating or prohibiting processions or assemblages on the
35 highways.

36 (b) Licensing and regulating the operation of vehicles for hire
37 and drivers of passenger vehicles for hire.

38 (c) Regulating traffic by means of traffic ~~officers~~: officers or
39 other government employees.

SB 50

— 4 —

1 (d) Regulating traffic by means of official traffic control devices
2 meeting the requirements of Section 21400.

3 (e) (1) Regulating traffic by means of a person given temporary
4 or permanent appointment for that duty by the local authority when
5 official traffic control devices are disabled or otherwise inoperable,
6 at the scenes of accidents or disasters, or at locations as may require
7 traffic direction for orderly traffic flow.

8 (2) A person shall not be appointed pursuant to this subdivision
9 unless and until the local authority has submitted to the
10 commissioner or to the chief law enforcement officer exercising
11 jurisdiction in the enforcement of traffic laws within the area in
12 which the person is to perform the duty, for review, a proposed
13 program of instruction for the training of a person for that duty,
14 and unless and until the commissioner or other chief law
15 enforcement officer approves the proposed program. The
16 commissioner or other chief law enforcement officer shall approve
17 a proposed program ~~if he or she reasonably determines~~ *they*
18 *reasonably determine* that the program will provide sufficient
19 training for persons assigned to perform the duty described in this
20 subdivision.

21 (f) Regulating traffic at the site of road or street construction or
22 maintenance by persons authorized for that duty by the local
23 authority.

24 (g) (1) Licensing and regulating the operation of tow truck
25 service or tow truck drivers whose principal place of business or
26 employment is within the jurisdiction of the local authority,
27 excepting the operation and operators of any auto dismantlers' tow
28 vehicle licensed under Section 11505 or any tow truck operated
29 by a repossessing agency licensed under Chapter 11 (commencing
30 with Section 7500) of Division 3 of the Business and Professions
31 Code and its registered employees.

32 (2) The Legislature finds that the safety and welfare of the
33 general public is promoted by permitting local authorities to
34 regulate tow truck service companies and operators by requiring
35 licensure, insurance, and proper training in the safe operation of
36 towing equipment, thereby ensuring against towing mistakes that
37 may lead to violent confrontation, stranding motorists in dangerous
38 situations, impeding the expedited vehicle recovery, and wasting
39 state and local law enforcement's limited resources.

1 (3) This subdivision does not limit the authority of a city or city
2 and county pursuant to Section 12111.

3 (h) Operation of bicycles, and, as specified in Section 21114.5,
4 electric carts by physically disabled persons, or persons 50 years
5 of age or older, on public sidewalks.

6 (i) Providing for the appointment of nonstudent school crossing
7 guards for the protection of persons who are crossing a street or
8 highway in the vicinity of a school or while returning thereafter
9 to a place of safety.

10 (j) Regulating the methods of deposit of garbage and refuse in
11 streets and highways for collection by the local authority or by
12 any person authorized by the local authority.

13 (k) (1) Regulating cruising.

14 (2) The ordinance or resolution adopted pursuant to this
15 subdivision shall regulate cruising, which is the repetitive driving
16 of a motor vehicle past a traffic control point in traffic that is
17 congested at or near the traffic control point, as determined by the
18 ranking peace officer on duty within the affected area, within a
19 specified time period and after the vehicle operator has been given
20 an adequate written notice that further driving past the control
21 point will be a violation of the ordinance or resolution.

22 (3) A person is not in violation of an ordinance or resolution
23 adopted pursuant to this subdivision unless both of the following
24 apply:

25 (A) That person has been given the written notice on a previous
26 driving trip past the control point and then again passes the control
27 point in that same time interval.

28 (B) The beginning and end of the portion of the street subject
29 to cruising controls are clearly identified by signs that briefly and
30 clearly state the appropriate provisions of this subdivision and the
31 local ordinance or resolution on cruising.

32 (l) Regulating or authorizing the removal by peace officers of
33 vehicles unlawfully parked in a fire lane, as described in Section
34 22500.1, on private property. A removal pursuant to this
35 subdivision shall be consistent, to the extent possible, with the
36 procedures for removal and storage set forth in Chapter 10
37 (commencing with Section 22650).

38 (m) Regulating mobile billboard advertising displays, as defined
39 in Section 395.5, including the establishment of penalties, which
40 may include, but are not limited to, removal of the mobile billboard

1 advertising display, civil penalties, and misdemeanor criminal
2 penalties, for a violation of the ordinance or resolution. The
3 ordinance or resolution may establish a minimum distance that a
4 mobile billboard advertising display shall be moved after a
5 specified time period.

6 (n) Licensing and regulating the operation of pedicabs for hire,
7 as defined in Section 467.5, and operators of pedicabs for hire,
8 including requiring one or more of the following documents:

9 (1) A valid California driver's license.

10 (2) Proof of successful completion of a bicycle safety training
11 course certified by the League of American Bicyclists or an
12 equivalent organization as determined by the local authority.

13 (3) A valid California identification card and proof of successful
14 completion of the written portion of the California driver's license
15 examination administered by the department. The department shall
16 administer, without charging a fee, the original driver's license
17 written examination on traffic laws and signs to a person who
18 ~~states that he or she is, or intends~~ *state that they are or that they*
19 *intend* to become, a pedicab operator, and who holds a valid
20 California identification card or has successfully completed an
21 application for a California identification card. If the person
22 achieves a passing score on the examination, the department shall
23 issue a certificate of successful completion of the examination,
24 bearing the person's name and identification card number. The
25 certificate shall not serve in lieu of successful completion of the
26 required examination administered as part of any subsequent
27 application for a driver's license. The department is not required
28 to enter the results of the examination into the computerized record
29 of the person's identification card or otherwise retain a record of
30 the examination or results.

31 (o) (1) This section does not authorize a local authority to enact
32 or enforce an ordinance or resolution that establishes a violation
33 if a violation for the same or similar conduct is provided in this
34 code, nor does it authorize a local authority to enact or enforce an
35 ordinance or resolution that assesses a fine, penalty, assessment,
36 or fee for a violation if a fine, penalty, assessment, or fee for a
37 violation involving the same or similar conduct is provided in this
38 code.

1 (2) This section does not preclude a local authority from enacting
2 parking ordinances pursuant to existing authority in Chapter 9
3 (commencing with Section 22500) of Division 11.

4 (3) *This section does not preclude a county, city, municipality,*
5 *or any other local authority from enforcing a violation provided*
6 *in this code through government employees who are not peace*
7 *officers.*

8 (p) (1) Regulating advertising signs on motor vehicles parked
9 or left standing upon a public street. The ordinance or resolution
10 may establish a minimum distance that the advertising sign shall
11 be moved after a specified time period.

12 (2) Paragraph (1) does not apply to any of the following:

13 (A) Advertising signs that are permanently affixed to the body
14 of, an integral part of, or a fixture of a motor vehicle for permanent
15 decoration, identification, or display and that do not extend beyond
16 the overall length, width, or height of the vehicle.

17 (B) If the license plate frame is installed in compliance with
18 Section 5201, paper advertisements issued by a dealer contained
19 within that license plate frame or any advertisements on that license
20 plate frame.

21 (3) As used in paragraph (2), “permanently affixed” means any
22 of the following:

23 (A) Painted directly on the body of a motor vehicle.

24 (B) Applied as a decal on the body of a motor vehicle.

25 (C) Placed in a location on the body of a motor vehicle that was
26 specifically designed by a vehicle manufacturer as defined in
27 Section 672 and licensed pursuant to Section 11701, in compliance
28 with both state and federal law or guidelines, for the express
29 purpose of containing an advertising sign.

30 ~~SECTION 1. It is the intent of the Legislature to enact~~
31 ~~legislation relating to limiting a peace officer’s authority to initiate~~
32 ~~pretextual stops to reduce racial profiling and the harm stemming~~
33 ~~from such stops.~~