



**BERKELEY CITY COUNCIL FACILITIES, INFRASTRUCTURE,
TRANSPORTATION, ENVIRONMENT & SUSTAINABILITY COMMITTEE
REGULAR MEETING**

**Wednesday, November 15, 2023
2:00 PM**

2180 Milvia Street, 6th Floor - Redwood Room

Committee Members:

Councilmembers Terry Taplin, Kate Harrison, and Rigel Robinson
Alternate: Councilmember Mark Humbert

This meeting will be conducted in a hybrid model with both in-person attendance and virtual participation. If you are feeling sick, please do not attend the meeting in person.

Remote participation by the public is available through Zoom. To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL <https://cityofberkeley-info.zoomgov.com/j/1604033673>. To request to speak, use the “raise hand” icon on the screen. To join by phone: Dial **1-669-254-5252 or 1-833-568-8864 (Toll Free)** and Enter Meeting ID: **160 403 3673**. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized by the Chair. Please be mindful that the meeting will be recorded.

To submit a written communication for the Committee’s consideration and inclusion in the public record, email policycommittee@berkeleyca.gov.

Written communications submitted by mail or e-mail to the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee by 5:00 p.m. the Friday before the Committee meeting will be distributed to the members of the Committee in advance of the meeting and retained as part of the official record.

Pursuant to the City Council Rules of Procedure and State Law, the presiding officer may remove, or cause the removal of, an individual for disrupting the meeting. Prior to removing an individual, the presiding officer shall warn the individual that their behavior is disrupting the meeting and that their failure to cease their behavior may result in their removal. The presiding officer may then remove the individual if they do not promptly cease their disruptive behavior. “Disrupting” means engaging in behavior during a meeting of a legislative body that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes, but is not limited to, a failure to comply with reasonable and lawful regulations adopted by a legislative body, or engaging in behavior that constitutes use of force or a true threat of force.

AGENDA

Roll Call

Public Comment on Non-Agenda Matters

Minutes for Approval

Draft minutes for the Committee's consideration and approval.

1. Minutes - November 1, 2023

Committee Action Items

The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.

Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.

2. **Modernizing and updating outdated & unnecessary language in the BMC related to transportation**

From: Councilmember Robinson (Author)

Referred Date: October 23, 2023

Due Date: April 21, 2024

Recommendation: Refer to the City Manager to modernize and update outdated and unnecessary language in the BMC related to transportation to align with new state laws and promote a more equitable transportation system. Proposed amendments should be brought to the Transportation & Infrastructure Commission, Disability Commission, and Commission on Aging for review and feedback. Staff should consider the following draft amendments to BMC Chapters 6.32, 14.32, and 14.68:

1. Rescind outdated or unnecessary regulations pertaining to jaywalking, skateboarding, bicycle licenses, and bicycle establishment requirements;
2. Allow 24/7 use of public paths by pedestrians and bicyclists for the purpose of transportation;
3. Allow bicyclists on non-electric bicycles to ride on the sidewalk while exercising due care and yielding right-of-way to pedestrians when no Class I, Class II, or Class IV bicycle facility is available;
4. Align the penalty for bicycle violations with other moving violations by amending it from a misdemeanor to an infraction; 5. Update definitions of bicycles and scooters to align with definitions in the California Vehicle Code.

Financial Implications: See report

Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170

Committee Action Items

3. **Discussion Item: Calm Traffic in West Berkeley to Protect Children**
From: Councilmember Harrison (Author)
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140
4. **Discussion Item: Progress on the Bike and Pedestrian Plans**
From: Councilmember Harrison (Author)
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

Unscheduled Items

These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.

5. **Adopt an Ordinance Adding a New Chapter 12.01 to the Berkeley Municipal Code Establishing Emergency Greenhouse Gas Limits, Process for Updated Climate Action Plan, Monitoring, Evaluation, Reporting and Regional Collaboration**
From: Councilmember Harrison (Author), Councilmember Bartlett (Co-Sponsor) and Councilmember Hahn (Co-Sponsor)
Referred: November 15, 2021
Due: December 31, 2023
Recommendation: 1. Adopt an ordinance adding a new Chapter 12.01 to the Berkeley Municipal Code (BMC) establishing Emergency Greenhouse Gas Limits with an effective date of [], 2022.
2. Refer to the FY23-24 Budget Process \$[] consistent with implementing the requirements of Sections 12.01.040, 12.01.050, 12.01.060.
Financial Implications: See report
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

Items for Future Agendas

- **Requests by Committee Members to add items to the next agenda**

Adjournment

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*Written communications addressed to the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee and submitted to the City Clerk Department will be distributed to the Committee prior to the meeting.*

*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953 and applicable Executive Orders as issued by the Governor that are currently in effect. Members of the City Council who are not members of the standing committee may attend a standing committee meeting even if it results in a quorum being present, provided that the non-members only act as observers and do not participate in the meeting. If only one member of the Council who is not a member of the committee is present for the meeting, the member may participate in the meeting because less than a quorum of the full Council is present. Any member of the public may attend this meeting. Questions regarding public participation may be addressed to the City Clerk Department (510) 981-6900.*



**COMMUNICATION ACCESS INFORMATION:**

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date. Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.

~~~~~  
I hereby certify that the agenda for this meeting of the Standing Committee of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on November 9, 2023.

A handwritten signature in black ink, appearing to read "Mark Numainville".

Mark Numainville, City Clerk

Communications

Communications submitted to City Council Policy Committees are on file in the City Clerk Department at 2180 Milvia Street, 1st Floor, Berkeley, CA, and are available upon request by contacting the City Clerk Department at (510) 981-6908 or policycommittee@berkeleyca.gov.

**BERKELEY CITY COUNCIL FACILITIES, INFRASTRUCTURE,
TRANSPORTATION, ENVIRONMENT & SUSTAINABILITY COMMITTEE
REGULAR MEETING MINUTES**

**Wednesday, November 1, 2023
2:00 PM**

2180 Milvia Street, 6th Floor - Redwood Room

Committee Members:

Councilmembers Terry Taplin, Kate Harrison, and Rigel Robinson
Alternate: Councilmember Mark Humbert

This meeting will be conducted in a hybrid model with both in-person attendance and virtual participation. For in-person attendees, face coverings or masks that cover both the nose and the mouth are encouraged. If you are feeling sick, please do not attend the meeting in person.

Remote participation by the public is available through Zoom. To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL <https://cityofberkeley-info.zoomgov.com/j/1606230651>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon on the screen. To join by phone: Dial **1-669-254-5252** or **1-833-568-8864 (Toll Free)** and Enter Meeting ID: **160 623 0651**. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized by the Chair.

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MINUTES

Roll Call: 2:05 p.m.

Present: Councilmembers Humbert (for Taplin), Robinson, and Harrison.

Public Comment on Non-Agenda Matters: 2 speakers.

Minutes for Approval

Draft minutes for the Committee's consideration and approval.

1. Minutes - July 19, 2023

Action: M/S/C (Robinson/Harrison) to approve the July 19, 2023 minutes.

Vote: All Ayes.

Committee Action Items

The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.

Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.

2. Building Emissions Saving Ordinance (BESO) - Time of Sale Energy Upgrades From: City Manager

Recommendation: Review proposed amendments to Berkeley's Building Emissions Saving Ordinance (BESO) to require energy upgrades for 1-4 unit residential buildings when they're sold.

Financial Implications: See report

Contact: Jordan Klein, Planning and Development, (510) 981-7400

Action: 4 speakers. Presentation made and discussion held. Committee feedback provided to staff as requested. No further action required by the Committee.

Committee Action Items

3. **Adopt an Ordinance Adding Chapter 12.39 to the Berkeley Municipal Code to Regulate Deconstruction and Construction Materials Management**

From: Councilmember Harrison (Author)

Referred: June 12, 2023

Due: November 27, 2023

Recommendation:

1. Adopt an ordinance adding Chapter 12.39 to the Berkeley Municipal Code to regulate management of deconstruction and construction materials.
2. Refer to the November 2023 Budget AAO Process \$[x] to administer and enforce the ordinance.

3. Refer to the City Attorney's Office to conduct a nexus fee study for a potential social cost of carbon fee applied to landfilled construction and demolition debris.

Financial Implications: See report

Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

Action: 1 speaker. Presentation made and discussion held. M/S/C

(Robinson/Harrison) to refer the revised agenda material with a positive recommendation to Council with the following revisions to the recommendation:

1. Section C.3 to read as follows: "potentially implementing a social cost of carbon fee on construction and demolition debris".
2. Section D to read as follows: "Background survey on contents of existing building stock to get more data on intended impact and opportunities regarding new deconstruction requirements; vetting of existing service providers (certified salvage contractors and salvage material vendors), markets for salvage materials, a list of approved reuse/salvage facilities; and a plan for educating contractors on requirements; and an analysis of the costs of compliance with and implementation of any proposed regulations and analysis of any corresponding impacts on feasibility of new construction."

Vote: Ayes – Robinson, Harrison; Noes – None; Abstain – Humbert; Absent – None.

Unscheduled Items

These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.

4. Adopt an Ordinance Adding a New Chapter 12.01 to the Berkeley Municipal Code Establishing Emergency Greenhouse Gas Limits, Process for Updated Climate Action Plan, Monitoring, Evaluation, Reporting and Regional Collaboration

From: Councilmember Harrison (Author), Councilmember Bartlett (Co-Sponsor) and Councilmember Hahn (Co-Sponsor)

Referred: November 15, 2021

Due: December 31, 2023

Recommendation:

1. Adopt an ordinance adding a new Chapter 12.01 to the Berkeley Municipal Code (BMC) establishing Emergency Greenhouse Gas Limits with an effective date of [], 2022.

2. Refer to the FY23-24 Budget Process \$[] consistent with implementing the requirements of Sections 12.01.040, 12.01.050, 12.01.060.

Financial Implications: See report

Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

Items for Future Agendas

- None

Adjournment

Action: M/S/C (Robinson/Harrison) to adjourn the meeting.

Vote: All Ayes.

Adjourned at 3:42 p.m.

I hereby certify that the foregoing is a true and correct record of the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee meeting held on November 1, 2023.

Denise Burgara, Assistant City Clerk

Communications

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CONSENT CALENDAR
November XX, 2023

To: Honorable Mayor and Members of the City Council

From: Councilmember Rigel Robinson (Author)

Subject: Modernizing and updating outdated & unnecessary language in the BMC related to transportation

RECOMMENDATION

Refer to the City Manager to modernize and update outdated and unnecessary language in the BMC related to transportation to align with new state laws and promote a more equitable transportation system. Proposed amendments should be brought to the Transportation & Infrastructure Commission, Disability Commission, and Commission on Aging for review and feedback. Staff should consider the following draft amendments to ~~Adopt first reading of an Ordinance amending~~ BMC Chapters 6.32, 14.32, and 14.68 to:

1. Rescind outdated or unnecessary regulations pertaining to jaywalking, skateboarding, bicycle licenses, and bicycle establishment requirements
2. Allow 24/7 use of public paths by pedestrians and bicyclists for the purpose of transportation
3. Allow bicyclists on non-electric bicycles to ride on the sidewalk while exercising due care and yielding right-of-way to pedestrians when no Class I, Class II, or Class IV bicycle facility is available
4. Align the penalty for bicycle violations with other moving violations by amending it from a misdemeanor to an infraction
5. Update definitions of bicycles and scooters to align with definitions in the California Vehicle Code

PROPOSED POLICY COMMITTEE TRACK

Facilities, Infrastructure, Transportation, Environment, & Sustainability. The Policy Committee should discuss the merits of specific proposed revisions as well as the ideal public process for moving forward with changes to these sections of the BMC.

BACKGROUND

Berkeley Municipal Code Chapter 6.32 regulates parks and public pathways, and Chapters 14.32 and 14.68 regulate pedestrians and bicyclists respectively. BMC 14.32 was adopted in 1952 and BMC 14.68 was adopted in 1976, with minimal amendments since adoption. As a result, many provisions of these ordinances are outdated and do

not reflect current practice, terminology, or state law. Table 1 summarizes proposed amendments to the municipal code and their justifications.

Draft BMC revisions are presented as a draft proposed ordinance, attached.

Table 1: Summary of Proposed Amendments

Proposed Amendment	Reasoning
6.32.020: Allowing use of public paths during park closure hours	Public paths in parks, such those in Ohlone Park, Strawberry Creek Park, San Pablo Park, and Cedar-Rose Park, provide a connection for pedestrians and bicyclists where the park interrupts the continuity of public streets. Several of these paths also connect directly to on-street and off-street bicycle facilities. In addition to recreation, these paths serve an important transportation function and should be open for through travel 24/7 as public streets are.
6.32.050 – 060: Clarifying vehicle regulations in parks	BMC 6.32.010 includes bicycles and scooters in the definition of “vehicle.” However, BMC 6.32.050 and 6.32.060 regulate vehicles in a manner that seems to only make sense for automobiles and motorcycles — for example, disallowing their use on public paths and requiring that they be parked in painted parking spaces. This amendment clarifies that these restrictions only apply to motor vehicles.
14.32.020 – 050: Rescinding jaywalking regulations	The California Vehicle Code (CVC) already regulates jaywalking, rendering these BMC sections redundant as local law is preempted by state law. Furthermore, the passage of AB 2147 (2022) decriminalized jaywalking when there is no immediate danger. ¹ The City of Berkeley supported a previous iteration of this bill (AB 1238) that would have repealed jaywalking laws altogether. ² Rescinding the City’s local jaywalking laws is therefore in line with past Council action.
14.32.060: Rescinding skateboarding regulations	The CVC already regulates skateboarding, prohibiting the use of motorized skateboards on sidewalks, roadways, and trails. ³ This BMC section requires skateboarders to wear reflective or light-

¹ https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2147

² <https://berkeleyca.gov/sites/default/files/documents/2021-05-11%20Item%2027%20Support%20for%20AB%201238%20and%20AB%20122.pdf>

³ https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=21968.&nodeTreePath=15.5&lawCode=VEH

	colored clothing after dark — a requirement that is not imposed on bicyclists, scooter riders, or roller skaters.
6.32.010, 14.68.110: Updating bicycle, electric bicycle, and motorized scooter definitions	These amendments align the definitions in the BMC with recently updated definitions in the CVC, improving clarity, consistency, and accuracy. Terminology is updated throughout BMC 6.32 and 14.68.
14.68.020 – 100, 320 – 340: Rescinding bicycle licensing requirements	These regulations are currently not enforced or followed in practice. There is no system in place for residents to register their bicycles with BPD and has not been since at least 2015. Furthermore, this change is necessary to comply with state law: AB 1909 (2022) prohibits jurisdictions from requiring bicycle licenses. ⁴ In lieu of obtaining bicycle licenses, residents can register their bikes with Bike Index, a free, non-profit, and open-source database that partners with local community organizations such as Bike East Bay. ⁵
14.68.130: Allowing sidewalk bicycling with due care	Sidewalk bicycling is a direct result of insufficient bicycling facilities and dangerous traffic conditions on streets. Research shows that bike infrastructure is disproportionately absent from Black and Latino neighborhoods, and bicyclist citations are subsequently issued disproportionately in these neighborhoods. ⁶ The due care clause still allows for enforcement in situations where the bicyclist is not yielding right-of-way to pedestrians or otherwise not exercising due care. This ordinance permits sidewalk bicycle with due care for people riding non-electric bicycles on streets without Class I, Class II, or Class IV bicycle facilities. This recommendation is similar to language in AB 825, ⁷ which was passed by the California state legislature but failed to be signed into law.
14.68.140: Allowing bicycling in parks, playgrounds, and school grounds with due care	The current language, requiring “permission of the person having supervision of said playground, park or school ground,” is unenforceable as it is unclear who has the supervisory power to grant access to a public park or playground. Trespassing laws already prohibit trespassing on public property after hours and on private property. This change strikes the permission requirement and adds a requirement to exercise due care for children playing in the area.

⁴ https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1909

⁵ <https://bikeeastbay.org/Register>

⁶ <https://www.sciencedirect.com/science/article/pii/S1361920921003254>

⁷ https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB825

<p>14.68.210 – 300: Rescinding bicycle establishment requirements</p>	<p>These regulations are currently not enforced or followed in practice. BPD does not have sufficient capacity to enforce the regulations.</p>
<p>14.68.370: Amending penalty for violation to be an infraction instead of a misdemeanor</p>	<p>In the state of California, misdemeanors are punishable by a maximum fine of \$1,000 or up to 6 months of imprisonment. Infractions are less serious offenses with fines of \$100 to \$500 and no imprisonment option.⁸ Examples of misdemeanors are reckless driving, driving under the influence, and hit and runs, which are violations far more severe than those outlined in this chapter. This change brings penalties for violations of this chapter in line with the vast majority of moving violations.</p>

FINANCIAL IMPLICATIONS

No significant financial implications.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable negative environmental impacts associated with this action.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170
 Angie Chen, Legislative Assistant
 Julie Zhu, Intern

Attachments:

1: Draft Ordinance

⁸ <https://berkeley.municipal.codes/BMC/1.20.020>

ORDINANCE NO. -N.S.

ORDINANCE AMENDING TITLES 6 AND 14 OF THE BERKELEY MUNICIPAL CODE
TO UPDATE BICYCLE AND PEDESTRIAN REGULATIONS

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

Section 1. That Berkeley Municipal Code Chapter 6.32 is amended to read as follows:

Chapter 6.32 PARKS AND PUBLIC PATHWAYS--USE RESTRICTIONS

6.32.010 Definitions.

A. "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by human power, devices used exclusively upon stationary rails or tracks, and motor-driven wheelchairs or similar devices used by a physically handicapped person; provided, however, that for the purposes of this chapter, a bicycle shall be deemed a vehicle.

B. "Bicycle" means a device upon which a person may ride, propelled exclusively by human power, except as provided in BMC 6.32.010.C, through a belt, chain or gears, and having one or more wheels. An electric bicycle is a bicycle.

C. "Electric bicycle" means a bicycle equipped with fully operable pedals and an electric motor of less than 750 watts.

1. "Class 1 electric bicycle," or "low-speed pedal-assisted electric bicycle," means a bicycle equipped with a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the bicycle reaches the speed of 20 miles per hour.

2. "Class 2 electric bicycle," or "low-speed throttle-assisted electric bicycle," means a bicycle equipped with a motor that may be used exclusively to propel the bicycle, and that is not capable of providing assistance when the bicycle reaches the speed of 20 miles per hour.

3. "Class 3 electric bicycle," or "speed pedal-assisted electric bicycle," means a bicycle equipped with a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the bicycle reaches the speed of 28 miles per hour, and equipped with a speedometer.

B. "Automobile" means every motor vehicle, as herein defined, except motorcycles.

DC. "Loud or offensive noise" means willful disruption of the public tranquility or peace by any tumultuous proceeding.

ED. "Motorcycle" means every motor vehicle, other than a tractor, designed to travel on not more than three wheels in contact with the ground.

F. "Motorized scooter" means any two-wheeled device that has handlebars, has either a floorboard that is designed to be stood upon when riding or a seat and footrests in place of the floorboard, and is powered by a motor.

~~E. "Motor-driven cycle" means any motorcycle, including every motor scooter, with a motor which produces less than fifteen gross brake horsepower, and every bicycle with motor attached.~~

GF. "Motor vehicle" means every device, as herein defined, which is self-propelled. Electric bicycles and motorized scooters are not motor vehicles.

HG. "Operator" means every person who drives, operates or is in actual physical control of a ~~motor~~ vehicle.

IH. "Person" means every natural person, firm, copartnership, association or corporation.

JL. "Public path" means public rights-of-way other than sidewalks dedicated to pedestrian use and connecting public streets. (Ord. 4731-NS § 1, 1974; Ord. 4716-NS § 1, 1974)

6.32.020 Park hours.

A. No person shall enter upon or otherwise remain within City parks, or portions thereof, between the hours or for the period specifically posted as closure hours at the entrance to the particular park and, where applicable, adjacent to any portion of a park being closed.

B. Where no hours are posted, a park shall be closed between the hours of ten p.m. and six a.m., except that parks equipped with user operated lights shall be closed between the hours of eleven p.m. and six a.m.

C. Closure hours shall not apply to persons, bicycles, and motorized scooters traveling on a public path within a park for the sole purpose of transportation through the park.

DC. Reserved. (Ord. 6524-NS § 1, 2000; Ord. 5823-NS § 1, 1987; Ord. 5454-NS § 1, 1982; Ord. 4716-NS § 8, 1974)

6.32.030 Park rules and uses.

A. The City Manager or their designee is authorized to issue such regulations and take such other actions as are necessary to preserve park property and public safety and to distribute park space and facilities among competing uses, including the prohibition of certain activities or restriction of them to certain times and/or locations. Failure to obey any directive issued by the City Manager or their designee pursuant to this section shall be a violation of this chapter.

B. Whenever any activity is restricted or prohibited in specified areas of any park, or whenever the use of specified areas is restricted or prohibited, the City Manager or their designee shall cause signs to be posted or permits to be issued notifying the public of such restrictions or prohibitions. Failure to obey the restrictions stated in any properly posted sign or in any permit shall be a violation of this chapter.

C. This ordinance is intended to be declaratory of and does not constitute any change in existing law. (Ord. 6577-NS § 1, 2000)

6.32.040 Offensive noise.

A. It is unlawful for any person to produce or cause to be produced loud or offensive noise in public parks after the hour of ten p.m. and before the hour of seven a.m.

B. Programs and events which may be sponsored by the Department of Recreation, Parks and Community Services or by authorized groups, where a valid permit has been issued therefor by the Director of Recreation and Parks, may continue after ten p.m., but such programs or events shall not unreasonably disturb the neighborhood. (Ord. 6577-NS § 2, 2000; Ord. 4736-NS § 6 (part), 1974; Ord. 4716-NS § 5, 1974)

6.32.050 Traffic prohibited in Aquatic Park when.

It is unlawful for any person to operate, park, stop or leave standing any motor vehicle in the Berkeley Aquatic Park at any time from a half-hour after sunset to a half-hour before sunrise, except that portion lying east of the lake between the southern line of the extension of Bancroft Way and the northern line of the extension of Addison Street. (Ord. 6577-NS § 2, 2000; Ord. 4716-NS § 3, 1974)

6.32.060 Parking and vehicle operation restrictions.

It is unlawful for any person to stop, park or leave standing any ~~vehicle, motor vehicle, automobile, or motorcycle or motor-driven cycle~~, whether attended or unattended, in any park in the City, including the Berkeley Aquatic Park, except that motor vehicles may be parked in the allotted parking spaces designated by painted or marked lines placed for the purpose of allotting spaces to parked motor vehicles, and in such cases

where there are no painted or marked lines designating the allotted parking spaces, motor vehicles shall be parked in such a manner that both wheels on the right side of the roadway of such motor vehicle are not more than six inches from the right-hand edge of the roadway, and such motor vehicle is at least three feet distant from any motor vehicle standing in the front or the rear thereof. It is further unlawful to operate any ~~vehicle~~, motor vehicle, automobile, motorcycle, or Class 3 electric bicycle or motor-driven cycle in parks and on public paths except on roadways designated for vehicular use. (Ord. 6577-NS § 2, 2000: Ord. 4716-NS § 2, 1974)

6.32.070 Vehicle removal authorized when--Procedures required.

The Police Department is authorized to remove or cause to be removed to the nearest garage or other place of safety, or to a garage designated or maintained by the City, any vehicle that is stopped, standing or parked in violation of any of the provisions herein and when signs are posted giving notice of such removal. The provisions of the California Vehicle Code pertaining to notice to owner and garagekeeper's lien shall apply in the event of such removal. (Ord. 6577-NS § 2, 2000: Ord. 4716-NS § 7, 1974)

6.32.080 Applicability--Exceptions.

Authorized officers, employees, agents or representatives of the City shall be excepted from the provisions of this chapter only when such officer, employee, agent or representative is on the official business of the City and such official business requires such person to be in a City park. (Ord. 6577-NS § 2, 2000: Ord. 4716-NS § 4, 1974)

6.32.090 Signs required.

The Police Department is authorized and directed to erect, maintain, place and paint the necessary signs and markings which shall give notice of the regulations prescribed in this chapter. (Ord. 6577-NS § 2, 2000: Ord. 4716-NS § 6, 1974)

6.32.095 Skate parks--rules.

A. All persons using skate parks within the City of Berkeley shall comply with the following requirements:

1. Only persons using skateboards and skates, including but not limited to roller skates, in-line skates and/or roller blades, shall be allowed within any skate park. Persons without skateboards or skates are not allowed within skate parks.
2. Persons using bicycles or scooters are not allowed within any skate park.

3. All persons using skate parks shall wear a helmet, elbow pads and kneepads, suitable to provide protection in the event of falls or collisions. Such safety equipment must be worn at all times.
 4. Additional obstacles or other materials, including but not limited to ramps and jumps, are prohibited within skate parks.
 5. Glass products are prohibited within skate parks.
 6. Earphones or headsets are prohibited while skating or otherwise using a skate park.
- B. Skate parks shall be open only from 6:30 a.m. until 9:30 p.m., provided that if a skate park does not have adequate lighting for after-dark operation, as determined by the City Manager or designee, it shall close no later than one-half (1/2) hour before sunset. No person shall be allowed within a skate park outside of these hours.
- C. The City Manager, or designee, may close any skate park whenever the City Manager, or said designee, determines that such a closure is necessary, or may promulgate other rules as necessary, for the protection of public property or public safety.
- D. No skating contests or events of any kind are permitted within skate parks without the prior written approval of the City Manager or designee.
- E. Amplified sounds are not permitted in skate parks.
- F. Graffiti of any form within, on, or around any skate park is prohibited.
- G. All injuries must be reported to the City Manager's office.
- H. For purposes of this ordinance, a skate park is a public recreational facility that is designed and built specifically to provide skating opportunities to persons using either a skateboard or skates. A skateboard is a flat platform, two to three feet in length, with no handholds, attached to four wheels for riding on while standing or crouching. Skates are defined as a boot or shoe having wheels either attached in-line at the center of the boot or having two wheels attached at the toe and two wheels attached at the heel.
- I. Any person who violates this section shall, in addition to any other criminal or civil penalties provided by this Code, be subject to removal from all skate parks operated by the City of Berkeley for up to twenty-four (24) hours, upon the order of any authorized employee or officer of the City. (Ord. 6592-NS 2, 2000)

6.32.100 Violation--Penalty.

Any person violating any provision or failing to comply with any of the requirements of this chapter shall be deemed guilty of an infraction as set forth in Chapter 1.20 of this code. (Ord. 6577-NS § 2, 2000; Ord. 5591-NS § 1 (part), 1984; Ord. 4716-NS § 9, 1974)

Section 2. That Berkeley Municipal Code Chapter 14.32 is amended to read as follows:

Chapter 14.32 PEDESTRIAN REGULATIONS

14.32.010 Traffic Engineer to establish marked crosswalks.

The City Traffic Engineer is authorized to establish and maintain crosswalks and to designate them by appropriate devices or painted signs upon the surface of the roadway. (Ord. 3262-NS § 8, 1952)

~~14.32.020 When pedestrian must use crosswalks.~~

~~It is unlawful for any pedestrian to cross a roadway in any business district other than by a crosswalk. (Ord. 3262-NS § 8.1, 1952)~~

~~14.32.030 Crossing at right angles.~~

~~It is unlawful for any pedestrian to cross a roadway at any place other than by a route at right angles to the curb or by the shortest route to the opposite curb except in a marked crosswalk. (Ord. 3262-NS § 8.2, 1952)~~

14.32.0~~2~~40 Standing in roadway--Use of divisional islands.

It is unlawful for any person to stand in any roadway other than in a safety zone or in a crosswalk if such action interferes with the lawful movement of traffic and it is unlawful for any person to use any safety zone or divisional island for any purpose other than that necessary to provide temporary safety from moving vehicular traffic. This section shall not apply to any public officer or employee, or employee of a public utility when necessarily upon a street or divisional island in the line of duty. (Ord. 4241-NS § 1, 1967; Ord. 3262-NS § 8.3, 1952)

~~14.32.050 Pedestrians to obey special pedestrian traffic signals.~~

~~Pedestrians shall obey the indication of special traffic signals installed for pedestrians only and shall disregard the indication of a vehicular traffic signal at any location where special pedestrian traffic signals are in place. (Ord. 3262-NS § 8.4, 1952)~~

~~14.32.060 Regulating the use of skateboards.~~

~~Skateboards shall obey all rules applicable to pedestrians, the California Vehicle Code and comply with the following regulations:~~

~~A. No age restrictions shall be placed upon skateboard users;~~

~~B. Skateboarders shall wear reflecting material and/or light colored clothing when skateboarding after dark;~~

~~C. Butt boarding and lying down on skateboards shall be prohibited;~~

~~D. Home made ramps in streets shall be prohibited;~~

~~E. Sidewalks shall be used for skateboarding where available, and skateboarders will yield the right-of-way to pedestrians;~~

~~F. Where sidewalks are not available, the skateboarder will be required to use the extreme left hand edge of the roadway; facing oncoming traffic;~~

~~G. Skateboarders are required to obey traffic laws and vehicles codes set forth in California Highway Patrol's Skateboard Safety Handbook. (Ord. 5853-NS § 1, 1988)~~

Section 3. That Berkeley Municipal Code Chapter 14.68 is amended to read as follows:

Chapter 14.68 BICYCLES ~~AND BICYCLE ESTABLISHMENTS~~

14.68.010 Definitions.

~~A. "Bicycle" means a device upon which any person may ride, propelled exclusively by human power, except as provided in BMC 14.68.010.B, through a belt, chain or gears, and having one or more wheels either two or three wheels in a tandem or tricycle arrangement. An electric bicycle is a bicycle.~~

~~B. "Bicycle establishment" means and includes a business operated by any person, partnership, association or corporation, wherein new or used bicycles or bicycle parts are purchased, sold, dismantled or junked.~~

~~BC. "Motorized Electric bicycle" means any two-wheeled or three-wheeled device having fully operative pedals for propulsion by human power, or having no pedals if powered solely by electrical energy, and an automatic transmission and a motor which produces less than two gross brake horsepower and is capable of propelling the device at a maximum speed of not more than thirty miles per hour on level ground. means a bicycle equipped with fully operable pedals and an electric motor of less than 750 watts.~~

1. “Class 1 electric bicycle,” or “low-speed pedal-assisted electric bicycle,” means a bicycle equipped with a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the bicycle reaches the speed of 20 miles per hour.

2. “Class 2 electric bicycle,” or “low-speed throttle-assisted electric bicycle,” means a bicycle equipped with a motor that may be used exclusively to propel the bicycle, and that is not capable of providing assistance when the bicycle reaches the speed of 20 miles per hour.

3. “Class 3 electric bicycle,” or “speed pedal-assisted electric bicycle,” means a bicycle equipped with a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the bicycle reaches the speed of 28 miles per hour, and equipped with a speedometer.

C. “Non-electric bicycle” means a bicycle that does not fall under BMC 14.68.010.B.

CD. “Motorized scooter” means any two-wheeled device that has handlebars, has either a floorboard that is designed to be stood upon when riding or a seat and footrests in place of the floorboard, and is powered by a motor. (Ord. 7786-NS § 3, 2021; Ord. 4957-NS §§ 1-3, 1976)

Article I. Bicycles and Motorized BicyclesScooters

14.68.020 License and registration required.

It is unlawful for any person to operate or use a bicycle or motorized bicycle in the city which has not been registered and licensed in accordance with Section 39002(a) of the Vehicle Code of the state. (Ord. 4957-NS § 4, 1976)

14.68.030 Applicability of provisions.

Any bicycle or motorized bicycle not subject to the provisions of Division 16.7 of the Vehicle Code of the state of California shall be subject to this chapter, as provided by Section 39002(b) of the Vehicle Code of the state. (Ord. 4957-NS § 5, 1976)

14.68.040 License--Application required.

Every person making application for a bicycle license or registration in the City shall make application to the Chief of Police, either directly or through a bicycle establishment, upon forms provided by the Chief of Police. Said application form shall contain such information as may be required by the Chief of Police as to the applicant and the description of the bicycle licensed. (Ord. 6230-NS § 1, 1994; Ord. 4957-NS § 6, 1976)

~~14.68.050 License--Proof of ownership.~~

~~For each bicycle license issued, the applicant may be required to provide proof of ownership to the Chief of Police. Said proof shall be in any form designated by the Chief of Police to be satisfactory for such purpose. (Ord. 4957-NS § 7, 1976)~~

~~14.68.060 License--Bicycle to be presented.~~

~~Upon making application for a bicycle license or bicycle license renewal, the applicant shall present the bicycle at such place designated by the Chief of Police as a licensing facility. (Ord. 4957-NS § 8, 1976)~~

~~14.68.070 License--Examination of applicant required when.~~

~~Upon making an application for a first bicycle license, the applicant may be required to be examined by an examining officer designated by the Chief of Police. The Chief of Police may further designate the manner of examination. Upon completion of said examination, the examining officer may refuse to issue a license to the applicant if the said examination discloses to the examining officer that the applicant does not have a reasonable knowledge of the provisions of this chapter, the provisions of Division 11 (commencing with Section 21220) of the Vehicle Code of the state, or that the applicant is unable to exercise reasonable control in operating a bicycle. (Ord. 4957-NS § 9, 1976)~~

~~14.68.080 License--Renewal procedures.~~

~~Application for a bicycle license renewal shall be made by presentation of the licensed bicycle and the registration certificate last issued for the bicycle, and by payment of the full annual fee for said bicycle as provided by this chapter. (Ord. 4957-NS § 10, 1976)~~

~~14.68.090 License--Fees.~~

~~The fees required to be paid pursuant to the provisions of this chapter are:~~

~~A. For each new bicycle license and registration certificate, the sum shall be two dollars per year or any portion thereof;~~

~~B. For each transfer of registration certificate, the sum shall be one dollar;~~

~~C. For each replacement of a bicycle license and registration certificate, the sum shall be one dollar;~~

~~D. For each replacement of a registration certificate only, there shall be no fee;~~

~~E. For each bicycle license renewal, the sum shall be one dollar. (Ord. 5181-NS § 1, 1979; Ord. 4957-NS § 11, 1976)~~

~~14.68.100 License-Issuance.~~

~~Upon approval of the application and payment of the license fee, the Chief of Police will issue a license and a copy of the registration certificate to the applicant pursuant to Section 39003 of the Vehicle Code of the state. (Ord. 4957-NS § 12, 1976)~~

14.68.02110 Operation--Conformity with chapter provisions required.

It is unlawful for any person to operate a bicycle ~~_or motorized bicycle~~ or motorized scooter in the City in violation of any of the provisions of this chapter. (Ord. 4957-NS § 13, 1976)

14.68.03120 Riding ~~motorized~~ electric bicycles and motorized scooters on sidewalk prohibited.

No person shall ride or operate an electric ~~motorized~~ bicycle or motorized scooter on any sidewalk in the City. (Ord. 7786-NS § 4, 2021; Ord. 4957-NS § 14, 1976)

14.68.04130 Riding bicycles on sidewalk permitted when.

No person shall ride or operate a bicycle on any sidewalk in the city except:

A. ~~Juveniles~~ Persons, exercising the due care and giving the pedestrian the right-of-way, may ride and operate their non-electric bicycles upon the sidewalk adjacent to a street that does not include a Class I, Class II, or Class IV bikeway, as defined in Section 890.4 of the Streets and Highway Code, except such sidewalks as are in front of schools, stores or buildings used for business purposes;

B. ~~Juveniles~~ Persons riding or operating a non-electric bicycle on the sidewalk shall do so in single file at a speed no higher than 10 miles per hour;

C. Peace officers who determine in good faith that riding or operating a bicycle on the sidewalk is necessary to perform official duties. (Ord. 6113-NS § 1, 1992; Ord. 4957-NS § 15, 1976)

14.68.05140 Operation restrictions—~~Playgrounds, parks, school grounds.~~

No person shall ride or operate a bicycle ~~_or motorized bicycle~~ upon any playground, park, or school ground where children are playing, without ~~the permission of the person~~

~~having supervision of said playground, park or school ground~~due regard for the safety of the operator and other persons upon such place. (Ord. 4957-NS § 16, 1976)

14.68.06150 Operation restrictions--Public places.

No person shall ride or operate a bicycle ~~or motorized bicycle~~ upon any public place in the City other than a public street or highway, without due regard for the safety of the operator and other persons upon such public place. (Ord. 4957-NS § 17, 1976)

14.68.07160 Stunt riding.

No person riding or operating a bicycle ~~or motorized bicycle~~ shall perform or attempt to perform any acrobatic, fancy or stunt riding upon any public place, other than a street or highway, in the City. (Ord. 4957-NS § 18, 1976)

14.68.08170 Procedures on emerging from driveway or alley.

The operator of a bicycle ~~or motorized bicycle~~or motorized scooter, on leaving a driveway or alley when the operator's view of either the sidewalk or street area is obstructed, shall stop such bicycle ~~or motorized bicycle~~or motorized scooter immediately prior to riding upon or across such sidewalk or street area. (Ord. 4957-NS § 19, 1976)

14.68.09180 Parking Restrictions.

No person shall park any bicycle ~~, motorized bicycle,~~ or motorized scooter against windows or parking meters or on the main-traveled portion of the sidewalk, nor in such manner as to constitute a hazard to pedestrians, traffic or property. (Ord. 7786-NS § 5, 2021; Ord. 4957-NS § 20, 1976)

14.68.1090 Accidents--Procedures required.

The operator of any bicycle ~~or motorized bicycle~~or motorized scooter involved in an accident shall take reasonable steps to ascertain whether or not anyone was injured, and shall give their name and, address ~~and the license number of their bicycle or motorized bicycle~~ to the person with whom they had the accident, and shall obtain the same information from the other person. (Ord. 4957-NS § 21, 1976)

14.68.11200 Accidents--Report required when.

It shall be the duty of the operator of any bicycle ~~or motorized bicycle~~or motorized scooter to make a written report of any accident resulting in death or injury to the Police Department immediately after such accident. (Ord. 4957-NS § 22, 1976)

~~Article II. Bicycle Establishments~~

~~14.68.210 Business license and permit required.~~

~~No person or persons in the city shall establish, carry on or operate a bicycle establishment, except as authorized by this chapter, and without first obtaining a business license as provided in Ordinance 2805-NS of the City, and a permit from the Chief of Police. (Ord. 4957-NS § 23, 1976)~~

~~14.68.220 Permit--Application.~~

~~A. The application for such permit shall be in writing and signed by the applicant and shall set forth the following information: The name, age and residence address of the applicant if a natural person, or if a corporation, its name, date and place of incorporation, address of its principal place of business and the names of all its officers with their respective residence addresses, or if a partnership, association or unincorporated company, the names of the partners or persons comprising the partnership, association or company with their respective residence addresses. The application shall state whether the applicant had conducted a bicycle establishment prior to the current filing. If so, the applicant shall specify each and every such business, its location and dates of operation.~~

~~B. The application shall be made on forms provided by the Chief of Police and filed in duplicate with the Chief of Police. (Ord. 4957-NS § 24, 1976)~~

~~14.68.230 Permit--Not transferable.~~

~~No person having a bicycle establishment permit under the provisions of this chapter shall transfer, sell, assign, loan or permit any person to have or use such permit. (Ord. 4957-NS § 25, 1976)~~

~~14.68.240 Weekly secondhand buy report required.~~

~~A. All persons operating a bicycle establishment are required to make a weekly report to the Chief of Police upon forms provided for that purpose by the Chief of Police, giving the true name and address of the person from whom each bicycle or bicycle part is purchased, and a description of each bicycle, its frame number and the number of any license found thereon, if any. If the bicycle does not have a license, the buyer shall require the seller to obtain the approval of the Chief of Police to complete such sale or exchange. This report shall be known as the "secondhand buy report," and shall be made in triplicate. The original shall be mailed or delivered to the Chief of Police, the duplicate shall remain with the dealer, and the triplicate shall be given to the seller. It shall be the duty of the dealer to mail or deliver to the Chief of Police all reports at the close of each business week.~~

~~B. This section shall not apply to new bicycles or bicycle parts purchased at wholesale. (Ord. 4957-NS § 26, 1976)~~

~~**14.68.250 Dealer's report of sale required weekly.**~~

~~All persons operating a bicycle establishment shall make a weekly report to the Chief of Police upon forms provided for that purpose by the Chief of Police, to report all sales made, including the name and address of each person to whom a bicycle is sold, together with the make, frame number and license number found thereon, if any. These reports shall be known as the "dealer's report of sale," and shall be made in triplicate. The original shall be mailed or delivered to the Chief of Police, the duplicate shall be retained by the dealer, and the triplicate shall be given to the seller. It shall be the duty of the dealer to make or deliver all reports to the Chief of Police at the close of each business week. (Ord. 4957-NS § 27, 1976)~~

~~**14.68.260 Holding period for bicycles and parts.**~~

~~No person operating a bicycle establishment shall alter, repair or dispose of any bicycle or bicycle part purchased or taken in exchange as secondhand bicycle or bicycle part thereof until after the expiration of thirty days from the date of purchase or exchange, and during those thirty days the bicycle or bicycle part so obtained shall remain without alteration on the premises of such bicycle establishment, shall be kept separate from bicycles or bicycle parts previously purchased, and shall be subject to inspection at any time during business hours by the Chief of Police, or any police officer or other person designated by the Chief of Police. (Ord. 4957-NS § 28, 1976)~~

~~**14.68.270 Bicycle register--Required--Contents.**~~

~~A. The Chief of Police shall furnish free of charge to every person operating a bicycle establishment a book known as the "bicycle register" in which shall be entered in plain and legible handwriting a record of all bicycles or bicycle parts purchased or taken in exchange. The entry must be made at the time of purchase or immediately thereafter and shall include, in addition to the date and hour of purchase, a full description of the bicycle or bicycle part, the price paid therefor, and the name, address, age, height, weight and complexion of the seller. In entering the description of the bicycle, the name of the manufacturer and the factory serial number thereof shall in every case be recorded if known or if it can be ascertained.~~

~~B. This section shall not apply to new bicycles or bicycle parts purchased at wholesale. (Ord. 4957-NS § 29, 1976)~~

~~**14.68.280 Bicycle register--Disposition of purchased items.**~~

~~The operator of a bicycle establishment shall also enter in the bicycle register a record showing the disposition of each bicycle purchased, indicating whether such bicycle was resold or dismantled. (Ord. 4957-NS § 30, 1976)~~

~~14.68.290 Bicycle register--Safekeeping--Inspection.~~

~~The operator of a bicycle establishment shall keep the bicycle register in a safe place and see that it is not mutilated or destroyed. The bicycle register shall remain the property of the City, and shall be opened to inspection by the Chief of Police or any police officer at any time the establishment is open for business, and it may be taken by such police officer from the possession of the operator of a bicycle establishment if deemed necessary. (Ord. 4957-NS § 31, 1976)~~

~~14.68.300 Permit--Revocation conditions.~~

~~A. Bicycle establishment licenses issued pursuant to this chapter may be revoked by the Chief of Police after notice and hearing for any of the following reasons:~~

- ~~1. Fraud, misrepresentation, or any false statement contained in the application for a permit;~~
- ~~2. Any violation of any provision of this chapter or any provisions of any other chapter or law relating to and regulating the bicycle establishment;~~
- ~~3. Conviction of the permit holder of any felony or lesser crime reasonably related to the purposes of this chapter.~~

~~B. Any hearing on revocation or suspension conducted by the Chief of Police shall be conducted pursuant to written rules of procedure adopted by the City Council. (Ord. 4957-NS § 32, 1976)~~

Article III. General Regulations

14.68.12310 Provisions supersede other regulations.

The provisions of this chapter with reference to bicycles and motorized scooters shall supersede and be in lieu of any other ordinance or section of any other ordinance which is in conflict with the provisions of this chapter. (Ord. 4957-NS § 40, 1976)

~~14.68.320 License transfer prohibited.~~

~~It is unlawful to transfer a bicycle license from one bicycle or motorized bicycle to another. (Ord. 4957-NS § 34, 1976)~~

14.68.330 Dismantled or junked bicycles--Return of registration certificate.

~~Upon dismantling or disposing of a bicycle or motorized bicycle as junk, the licensee shall turn in the registration certificate for such bicycle or motorized bicycle to the Chief of Police within ten days of the date of said disposal indicating that the bicycle or motorized bicycle was junked. (Ord. 4957-NS § 35, 1976)~~

14.68.340 Bicycle rental agency--Licensing requirements.

~~All persons engaged in operating a bicycle rental agency for the purpose of renting or lending bicycles or motorized bicycles to patrons shall first obtain a bicycle license and registration certificate for each bicycle or motorized bicycle prior to renting or lending such bicycle or motorized bicycle. (Ord. 4957-NS § 36, 1976)~~

14.68.13350 Abandoned or unidentified bicycles and motorized scooters.

All bicycles ~~and motorized bicycles~~and motorized scooters that are abandoned or unidentified remaining in the hands of the Chief of Police shall at the end of six months be sold at auction and the proceeds therefrom deposited in the general fund of the City. (Ord. 4957-NS § 37, 1976)

14.68.14360 Violation of provisions by persons under eighteen--Penalty.


Where this chapter has been violated by juveniles under the age of eighteen years, in lieu of such fine ~~and imprisonment~~ provided in Section 14.68.150370, and in lieu of filing charges in the juvenile court, the Chief of Police may prohibit the operation upon the streets, alleys and public places in the City for a period not to exceed thirty days of a bicycle or motorized scooter so used in such violation, in which event the bicycle or motorized scooter so used in such violation shall be impounded by the Chief of Police and retained by them during the period of the operation which is prohibited, ~~and the owner's registration card shall be held for a like period.~~ (Ord. 4957-NS § 39, 1976)

14.68.15370 Violations Generally--Penalty.

Any person found to be in violation of any of the provisions of this chapter, ~~except for Section 14.68.130, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished as set forth in Chapter 1.20 of this code. Any person found to be in violation of Section 14.68.130~~ shall be deemed guilty of an infraction and upon conviction thereof shall be punished as set forth in Chapter 1.20 of this code. (Ord. 6921-NS § 1, 2006; Ord. 5716-NS § 3 (part), 1986; Ord. 4957-NS § 38, 1976)

Section 4. 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.




No Material
Available for
this Item

There is no material for this item.

City Clerk Department
2180 Milvia Street
Berkeley, CA 94704
(510) 981-6900

The City of Berkeley Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee Webpage:

<https://berkeleyca.gov/your-government/city-council/council-committees/policy-committee-facilities-infrastructure-transportation-environment-sustainability>



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Kate Harrison
Councilmember District 4

ACTION CALENDAR
November 30, 2021

To: Honorable Mayor and Members of the City Council
From: Councilmember Harrison
Subject: Adopt an Ordinance Adding a New Chapter 12.01 to the Berkeley Municipal Code Establishing Emergency Greenhouse Gas Limits, Process for Updated Climate Action Plan, Monitoring, Evaluation, Reporting and Regional Collaboration

RECOMMENDATION

1. Adopt an ordinance adding a new Chapter 12.01 to the Berkeley Municipal Code (BMC) establishing Emergency Greenhouse Gas Limits with an effective date of [], 2022.
2. Refer to the FY23-24 Budget Process \$[] consistent with implementing the requirements of Sections 12.01.040, 12.01.050, 12.01.060.

CURRENT SITUATION, EFFECTS, AND RATIONALE FOR RECOMMENDATION

Scientific evidence indicates that between the industrial period of 1850 and 2021, economic systems, namely state and free-market forms of capital accumulation and economic growth have increased global atmospheric carbon dioxide levels to a staggering 418 parts per million (ppm), beyond the established planetary boundary of 350 ppm, and warmed global average temperature by approximately 1.1 degrees Celsius. Available scientific evidence indicates there is no 'safe' level of warming beyond 350 ppm, only gradations of risk with respect to habitability.

Berkeley is already experiencing unprecedented negative effects of warming associated with 1 degree of warming, and current global growth trends and policies could push humanity past 1.5 degrees by mid-century, leading to a devastating 2-4 degrees by the end of the century. The 'Global North,' which includes Berkeley, has far exceeded its fair share of the emissions comprising and exceeding the boundary, and must reduce its emissions rapidly and justly.

The City of Berkeley has engaged with the issue of global warming for at least three decades and has unquestionably been a leader in certain climate actions. Yet, in light of the current gravity of the climate emergency, current strategies and targets are not adequate. Exceptionally risky “mitigation” strategies, namely midcentury ‘net-zero’ pledges have provided for unbridled economic and emissions growth and thus severely dwindled carbon budgets, effectively rendering Berkeley’s gradual reduction goals: 80% by 2050 (Measure G, 2005 and Resolution 64,480-N.S., 2009) and net-zero by 2045 (Resolution 69,852–N.S., 2021), untenable. The majority of risk associated with each additional ton of greenhouse gas emitted will be borne by generations who will have not consented to current reduction goals and strategies. Current policies could exacerbate or lead to exceedingly dangerous new tipping points.

This item is timely in light of ongoing reports that national “pledges” under Paris Agreement could lead to at least 3 degrees of catastrophic warming, the inability for Congress to pass meaningful domestic and international climate policies and legislation, and the failure of world leaders to reach an effective and substantive agreement at the 26th UN Climate Change Conference of the Parties (COP26) in Glasgow.

BACKGROUND

The ordinance establishes emergency greenhouse gas limits aimed at reducing sector-based greenhouse gas emissions 90% below 2000 levels and consumption-based emissions 90% below 2013 levels by 2030. These limits would bring Berkeley closer to its global ‘fair share’ and science-based reduction obligations, and could help achieve reductions at scale as part of a program of regional coordination and collaboration.

While such targets are ambitious, mitigating and minimizing global warming risk and maximizing adaptation, resilience and adherence to planetary boundaries earlier in the century rather than later will likely result in less disruption to society over the long term, and will generate opportunities for more inclusive and sound democratic decision making as compared to waiting until atmospheric carbon levels reach increasingly catastrophic levels.

These limits are consistent with the City’s 2006 “precautionary principle” established by BMC 12.29, and which states:

“The purpose of this chapter is to promote the health, safety, and general welfare of the community by minimizing health risks, improving air quality, protecting the quality of ground and surface water, minimizing consumption of resources, and minimizing the City’s contribution to global climate change by implementing in a phased manner, as provided in this chapter, the City’s use of a precautionary principle approach in its decisions.”

As enacted by Council, BMC 12.29 requires the City to apply the following precautionary principle tenets in the course of action and decision-making:

1. Anticipatory Action: Anticipatory action may prevent harm. Government, business, community groups, and the public share this responsibility.

2. Right to Know: The community has a right to know complete and accurate information on potential health and environmental impacts associated with the selection of products, services, operations or plans.
3. Alternatives Assessment: Examine a full range of alternatives and select the alternative with the least potential impact on health and the environment including the alternative of doing nothing.
4. Consideration of Significant Costs: Consider significant short-term and long-term costs in comparing product alternatives, when feasible. This includes evaluation of significant costs expected during the lifetime of a product, (e.g. raw materials, manufacturing and production, transportation, use, clean-up, acquisition, extended warranties, operation, supplies, maintenance, disposal costs, long and short-term environmental and health impacts); and that expected lifetime compared to other alternatives.
5. Participatory Decision Process: Decisions applying the Precautionary Principle should be transparent, participatory by including community input, and informed by the best available information.

The ordinance requires the City to develop a new Climate Action Plan and consistent with these GHG limits and precautionary principle tenets, and to establish relevant legislative and budgetary timelines to help the City reach its objectives.

In addition, the ordinance requires the City to consider post-growth climate mitigation strategies and policies as potential alternatives to the growth and market-based and other policies that created the crisis and remain a persistent obstacle to meaningful action. The City's policies and programs *must not* aim to merely increase economic growth for growth's sake, but rather to support the provision of basic human needs and happiness.

It also provides an institutional framework to build solidarity with neighboring Bay Area communities and jurisdictions to achieve collective limits that could change rate of global warming while simultaneously providing sister cities in other countries precious time to improve living standards and pursue decarbonization.

ENVIRONMENTAL SUSTAINABILITY

This item is consistent with the latest climate science and the precautionary principle established by BMC 12.29.

ATTACHMENTS

1. Proposed Ordinance adding a new Chapter 12.01.

FINANCIAL IMPLICATIONS

Staff time will be necessary to implement the new ordinance. This item refers \$[] to the FY23-24 Budget Process consistent with implementing the requirements of Sections 12.01.040, 12.01.050, 12.01.060.

CONTACT PERSON

Councilmember Kate Harrison, Council District 4, (510) 981-7140

ORDINANCE NO. –N.S.

ADDING CHAPTER 12.01 TO THE BERKELEY MUNICIPAL CODE TO ESTABLISH
EMERGENCY GREENHOUSE GAS EMISSIONS LIMITS

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

Section 1. That Chapter 12.01 of the Berkeley Municipal Code is added to read as follows:

Chapter 12.01

EMERGENCY GREENHOUSE GAS EMISSIONS LIMITS

Sections:

12.01.010 Findings and purpose.

12.01.020 Definitions.

12.01.030 Greenhouse Gas Emissions Limits.

12.01.040 Climate Action Plan.

12.01.050 Monitoring, Evaluation, And Reporting.

12.01.060 Regional Collaboration.

12.01.070 Severability.

12.01.080 Construction.

12.01.090 Effective date.

12.01.010 Findings and purpose.

The Council of the City of Berkeley finds and declares as follows:

- A. Available scientific evidence indicates that between the industrial period of 1850 and 2021 economic systems, namely state and free-market forms of capital accumulation and economic growth, have increased global atmospheric carbon dioxide levels to a staggering 418 parts per million (ppm) beyond the established planetary boundary of 350 ppm, and warmed global average temperature by approximately 1.1 degrees Celsius. The 'Global North,' which includes Berkeley, has far exceeded its fair share the emissions comprising and exceeding the boundary, and must reduce its emissions rapidly and equitably.
- B. Available scientific evidence indicates there is no 'safe' level of warming beyond 350 ppm, only gradations of risk with respect to habitability. Berkeley, California, the United States, and the world is already experiencing unprecedented negative effects of warming associated with 1 degree of warming, and current global growth trends and policies will push humanity past 1.5 degrees as early as the 2030s and 3 to 4 degrees by the end of the century. Global warming between 1.5 to 2 degrees Celsius is expected to further accelerate existential risks to health and safety including but not limited to, extreme weather, mass extinction, water and food shortages, violent conflict, fire, forced migration, economic collapse, disease, heat stress, and sea level rise. The majority of risk associated with each additional ton of greenhouse gas emitted will be borne by generations who will have not consented to current reduction strategies.
- C. In the twenty-first century, Berkeley, California, and the United States have largely and irresponsibly relied on ineffective market-based mechanisms, unrealistic expectations of absolutely decoupling GDP growth from energy use, speculative mass deployment of negative emission reduction technologies and 'net-zero' practices to offset continued fossil fuel production and consumption, and underappreciation of irreversible tipping points, aerosol masking, and non-carbon greenhouse gasses. In light of the current gravity of the climate emergency, these strategies have unequivocally failed; between Measure G and 2018, each jurisdiction only reduced greenhouse gasses by a respective 10%, 12%, and 26%, while at the same time globally, nearly a third of all anthropogenic carbon dioxide was emitted. Exceptionally risky strategies pursued by the Global North, namely midcentury 'net-zero' pledges have provided for unbridled economic and emissions growth and thus severely dwindled carbon budgets, effectively rendering Berkeley's gradual reduction goals: 80% by 2050 (Measure G, 2005 and Resolution 64,480-N.S., 2009) and net-zero by 2045 (Resolution 69,852–N.S., 2021), untenable.
- D. It is the intent of the Council to adopt stringent and equitable science-based greenhouse gas emissions limits and related action plans and reports, consistent with the precautionary principle approach established by Chapter 12.29, for the purpose of achieving the rapid, far-reaching, unprecedented and just changes in all aspects of society associated with mitigating and minimizing global warming risk and maximizing adaptation, resilience and adherence to planetary boundaries.
- E. The Council further intends to endeavor to build solidarity with neighboring communities and jurisdictions to achieve collective limits that could change rate of global warming while simultaneously providing sister cities in other countries precious time to improve living standards and pursue decarbonization.

12.01.020 Definitions.

A. "Climate Action Plan" means the document required under Section 12.01 outlining the specific actions the City will endeavor to take to reduce Greenhouse gas emissions and to mitigation, resilience and adaptation efforts with respect to climate impacts.

B. "Consumption-Based Greenhouse Gas Emissions" means all the Greenhouse Gas emissions associated with producing, transporting, using, and disposing of products and services consumed by a particular community or entity in a given time period, including emissions generated outside the boundaries of the community or the geographic area where the entity is located.

C. "Greenhouse Gas" means any and all of the following gases: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride.

D. "Sector-Based Greenhouse Gas Emissions" means all of the Greenhouse Gas emissions generated within the geographic boundaries of the City in a given time period.

E. "Responsible Production and Consumption" means improving how materials and products are extracted, manufactured, delivered, acquired, used, reused, recycled, and disposed of to ensure that the production and consumption of materials and products promote basic human needs, are distributed in a socially equitable manner, and carried out in a way that minimizes environmental impacts over the lifecycle of those materials and products while matching the carrying capacity of the earth's resources and adding value so as not to jeopardize present and future generations. "Lifecycle" means the complete material life of a product, good, or service, including resource extraction, manufacture, assembly, construction, maintenance, transportation, operations or use, and end of life (reuse, recycling/composting, and disposal). "Carrying capacity" means the number or amount of people, plants, and other living organisms that an ecosystem can support indefinitely without causing environmental degradation.

F. "Post-Growth Emissions Mitigation" means Greenhouse Gas mitigation strategies and policies that acknowledge and support the following:

- (1) rapid emissions reductions may not be compatible with economic policies that support limitless growth, especially growth in the production and consumption of commodities that do not support basic human needs,
- (2) in jurisdictions with high aggregate wealth there may be a disassociation between additional capital accumulation, economic growth, and GDP, and key social outcomes, to include but not limited to, health, social wellbeing, happiness and equity,
- (3) fairer distribution of income and wealth, and guaranteed access to universal public services.

12.01.030 Emergency Greenhouse Gas Emissions Limits.

A. The following Greenhouse Gas emissions limits are hereby established:

- (1) By 2030, reduce Sector-Based Greenhouse Gas Emissions [90%] below 2000 levels.
- (2) By 2030, reduce Consumption-Based Greenhouse Gas Emissions to [5] mtCO₂e per household or less, equivalent to a [90%] reduction compared to 2013 levels.
- (3) By 2026, the Council shall determine an appropriate deadline for achieving 100% zero emissions across both Sector and Consumption-Based inventories.

12.01.040 Climate Action Plan.

A. By [], 2022, the City Manager or designee shall prepare and submit for relevant Council policy committee and Council approval a Climate Action Plan (CAP) which shall

do all of the following:

- (1) Align with the emissions limits established in Section 12.01.030.
 - (2) Consider equitable Post-growth Climate Mitigation strategies and policies.
 - (3) Incorporate an equity framework that addresses historic racial, class-based, and social inequalities; prioritizes social, economic, and environmental benefits derived from implementing the CAP; and ensures an equitable distribution of those benefits. This framework shall consider:
 - (a) The engagement and prioritization of those who are most impacted by climate change and have historically had the least influence in decision-making processes, including low-income communities of color, communities with disabilities, and other impacted populations;
 - (b) Burdens and/or unintended consequences of related actions, especially for low-income communities of color, communities with disabilities, and other vulnerable populations; and
 - (c) Social interventions needed to secure workers' rights and livelihoods when economies are shifting to responsible production and consumption, collectively referred to as a "just transition" framework, and other impacts on workforce and job opportunities.
 - (4) Include, but not be limited to, the following elements: energy supply; transportation and land use; building operations; housing; Responsible Production and Consumption; carbon sequestration and water conservation.
 - (5) Identify strategies and/or make recommendations to achieve emissions limits for all elements. The CAP shall recommend approaches on goals and principles. Each strategy or recommendation shall:
 - (a) Identify parties responsible for implementation;
 - (b) Incorporate an estimated cost; and
 - (c) Incorporate estimated legislative and budgetary timelines based consistent with Section 12.01.030; and
 - (d) Contain key performance indicators and explicit equity metrics to measure progress.
- B. The City Manager or their designee shall update the Climate Action Plan at least every two years.

12.01.050 Monitoring, Evaluation, And Reporting.

- A. The City shall demonstrate its long-term commitment to reducing Greenhouse Gas emissions and advancing racial and social equity by measuring and reporting emissions, tracking key performance indicators and equity metrics, and monitoring the City's progress on meeting its climate action goals and commitments.
- B. The City Manager or their designee shall, with the assistance from relevant City agencies:
- (1) Measure and monitor Sector-Based Greenhouse Gas Emissions, including municipal emissions, using best available global protocols for preparing Citywide Greenhouse Gas emission inventories.
 - (2) Measure production and consumption emissions using best available global methodologies for preparing consumption-based emission inventories.
 - (3) Evaluate Sector-Based Greenhouse Gas Emissions against set limits, document production and consumption emissions, and produce an annual Greenhouse Gas emissions report.
 - (4) Establish a monitoring and reporting process for the implementation of the CAP that:
 - (a) Tracks key performance indicators and equity metrics for strategies to help

monitor their progress and implementation;

(5) Request and receive data from City departments to support:

(a) The annual Greenhouse Gas emissions inventory. City departments may be asked to provide data on, but not limited to, the following: their energy use; types of fuels used for their operations; fuel volume; vehicle-miles travelled (if applicable) within their jurisdictions; and private sector Greenhouse Gas emission sources regulated by the department. Departments may also be requested to verify emission estimates and assumptions and review resulting reports;

(b) Monitoring and reporting of Climate Action Plan implementation. City departments may be asked to provide data on key performance indicators and equity metrics related to adopted strategies and actions; and

(6) Coordinate with other City agencies to monitor, track, and report on climate action progress to local, state, national, and global partners.

(7) Report its findings in a progress report to the Council and public every year.

(8) Report on at least a biannual basis to relevant Council policy committees and commissions to support policy and budget development consistent with reduction limits established in Section 12.01.030.

12.01.060 Regional Collaboration.

The Council and City staff, working alongside the public, shall endeavor to build solidarity and coalitions with neighboring communities, jurisdictions, and agencies to achieve equitable collective Greenhouse Gas limits and observe planetary boundaries.

11.63.070 Severability.

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

12.01.080 Construction.

This Chapter is intended to be a proper exercise of the City's police power, to operate only upon its own officers, agents, employees and facilities and other persons acting within its boundaries, and not to regulate inter-city or interstate commerce. It shall be construed in accordance with that intent.

12.01.090 Effective date.

The provisions in this ordinance are effective [], 2022.

Section 2. 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.