



**BERKELEY CITY COUNCIL HEALTH, LIFE ENRICHMENT, EQUITY &  
COMMUNITY COMMITTEE  
REGULAR MEETING**

**Monday, December 9, 2019  
10:00 AM**

2180 Milvia Street, 6th Floor - Redwood Room

Committee Members:

Councilmembers Rashi Kesarwani, Cheryl Davila, and Sophie Hahn

**AGENDA**

**Roll Call**

**Public Comment on Non-Agenda Matters**

**Minutes for Approval**

*Draft minutes for the Committee's consideration and approval.*

**1. Minutes - November 25, 2019**

**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.*

## Committee Action Items

2. **Listening Session on general conditions in encampments and from the homeless population at large (15 minutes)**
3. **Presentation on Vector Control**  
Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400
4. **Healthy Checkout Ordinance**  
**From: Councilmembers Harrison and Hahn**  
**Referred: October 28, 2019**  
**Due: April 26, 2019**  
**Recommendation:** 1. Adopt an ordinance requiring stores over 2,500 square feet in size to sell more nutritious food and beverage options in their checkout areas.  
2. Refer to the City Manager to determine funding and staffing needs to implement and enforce the ordinance and sources of funding to support this program.  
**Financial Implications:** See report  
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.*

- 5a. Recommendation to Modify Policies Related to the Enforcement of the Berkeley Smoke-Free Multi-Unit Housing Ordinance**  
**From: Housing Advisory Commission**  
**Referred: October 29, 2019**  
**Due: April 27, 2020**  
**Recommendation:** Approve modifications to policies related to the enforcement of the Smoke-Free Multi-Unit Housing Ordinance, as follows:
1. Increase staffing to implement enforcement of the ordinance as part of the next budget;
  2. Improve signage related to the ordinance in residential buildings;
  3. Make the complaint process less onerous and more user-friendly, including enabling complainants to submit complaints electronically, providing complaint forms in different languages, and removing language requiring the statements to be “sworn,” and considering other, less threatening language that still expects a complaint be provided under the best of appellant’s knowledge;
  4. Relax the current requirements around how the Ordinance-based complaint form must be completed in order to be processed (e.g., removing the requirement of providing two separate complaints from different individuals within a six-month period, if the building contains two or fewer units, removing the requirement of providing a sworn statement under penalty of perjury); and
  5. Refer to the Community Health and Cannabis Commissions the question of whether the use of recreational (non-medical) cannabis should be incorporated into the Smoke-Free Housing Ordinance.
- Financial Implications:** See report  
Contact: Mike Uberti, Commission Secretary, (510) 981-7400
- 5b. Companion Report: Recommendation to Modify Policies Related to the Enforcement of the Berkeley Smoke-Free Multi-Unit Housing Ordinance**  
**From: City Manager**  
**Referred: October 29, 2019**  
**Due: April 27, 2020**  
**Recommendation:** The City Manager appreciates the Housing Advisory Commission’s efforts to strengthen the implementation of the Smoke-free Multi-Unit Housing ordinance and recommends that the proposed modifications be referred to the City Manager Office for an analysis of the financial and legal feasibility of the proposed changes.  
**Financial Implications:** See report  
Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400

## Items For Future Agendas

- Discussion of items to be added to future agendas
- Discussion of future hearings and open forums

## Adjournment

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*Written communications addressed to the Health, Life Enrichment, Equity & Community 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. 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 this matter may be addressed to Mark Numainville, City Clerk, (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.

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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 December 5, 2019.

A handwritten signature in black ink that reads "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.*

**BERKELEY CITY COUNCIL HEALTH, LIFE ENRICHMENT, EQUITY &  
COMMUNITY COMMITTEE  
REGULAR MEETING MINUTES**

**Monday, November 25, 2019  
10:00 AM**

2180 Milvia Street, 6th Floor - Redwood Room

Committee Members:

Councilmembers Rashi Kesarwani, Cheryl Davila, and Sophie Hahn

**Roll Call:** 10:07 a.m. Councilmember Kesarwani absent.

**Public Comment on Non-Agenda Matters** – 3 speakers

Councilmember Kesarwani present at 10:12 a.m.

**Minutes for Approval**

*Draft minutes for the Committee's consideration and approval.*

**1. Minutes - October 28, 2019**

**Action:** M/S/C (Kesarwani/Hahn) to approve the minutes of October 28, 2019.

**Vote:** Ayes – Kesarwani, Hahn; Noes – None; Abstain – Davila; Absent – None.

**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.*

## Committee Action Items

### 2a. Recommendations Related to Code Enforcement Actions and Leonard Powell Fact Finding

**From: Housing Advisory Commission**

**Referred: June 11, 2019**

**Due: November 26, 2019**

**Recommendation:** On June 11, 2019, the City Council referred the two Commission items to the Health, Life Enrichment, Equity & Community Committee to create a policy that receivership should only be used when the property is a danger to the public, and as a last resort, and only upon approval of the Council.

The original recommendation from the Housing Advisory Commission is as follows: Establish policies that will provide housing stability for homeowners and tenants. The City Council should set in place clear, objective, and equitable standards for conducting code enforcement actions and ensure that due process rights of affected homeowners and/or tenants are preserved. Commission a formal fact-finding process to ascertain what occurred in the matter of Mr. Leonard Powell. It should also refer this matter to the City Auditor. The fact finding should, among other things, focus on any actions taken by the Receiver in the case of Mr. Powell and any communications that the City has had with the Receiver. The HAC recognizes that additional steps may be necessary in regard to this matter, and may forward additional recommendations to the City Council at a later date.

**Financial Implications:** Staff time

Contact: Mike Uberti, Acting Commission Secretary, HHCS (510) 981-5114

### 2b. Recommendation to Bring Justice to Mr. Leonard Powell and to Change Certain Policies to Ensure Housing Stability for Homeowners and Tenants

**From: Peace and Justice Commission**

**Referred: June 11, 2019**

**Due: November 26, 2019**

**Recommendation:** On June 11, 2019, the City Council referred the two Commission items to the Health, Life Enrichment, Equity & Community Committee to create a policy that receivership should only be used when the property is a danger to the public, and as a last resort, and only upon approval of the Council.

The original recommendation from the Peace and Justice Commission is as follows: The Peace and Justice (PJC) recommends that the Berkeley City Council take the following actions:

Send a letter to the Superior Court Judge overseeing Mr. Leonard Powell's receivership case thanking him for the fairness and justice of his decision to deny the Bay Area Receivership Group's ongoing requests to sell Mr. Powell's home, and allowing Mr. Powell and his friends and family time to make the necessary financial arrangements.

PJC also recommends to the Berkeley City Council that it set in place the following policies that would provide housing stability for homeowners. In particular, when

## Committee Action Items

legal action is being attempted by the City as a result of code enforcement violations, the following practices should be put into place:

1. Punitive actions such as eviction, substantial fines, or placing an individual into legal guardianship, or receivership that are likely to result in the permanent displacement of a homeowner or their low-income tenants presently occupying or renting their home is the very last resort that city staff should take. It should only be conducted if all other attempts to resolve the situation have been unsuccessful; and should only be a response to severe code enforcement violations that cause immediate danger to life safety or have been determined by a quasi-judicial body (e.g., Zoning Adjustments Board, City Council) to endanger the health and safety of the immediate neighbors.
2. The Mayor, and Councilmember representing the district of the address in question, and Housing Advisory Commission are notified of their constituent's name (if allowed by applicable privacy laws), address, the nature of the alleged code violations, and a report detailing the status of the matter and any past, ongoing, and anticipated future attempts to resolve the matter; and
3. The City shall explore the use of anti-displacement funds to assist low-income homeowners and/or tenants residing on the premises with legal matters of forced relocation, expenses, and/or other needs as applicable and appropriate.
4. Establish a policy that code enforcement should aim to improve the safety and security of the property for its current residents and their neighbors.
5. "Reimburse" Mr. Powell, Friends of Adeline and NAACP by placing an amount not to exceed \$68,000 raised privately to pay for Receivers legal and administrative fees. These parties may collectively determine how to best use these funds.

**Financial Implications:** See report

Contact: Bre Slimick, Commission Secretary, (510) 981-7000

### 2c. Draft Plan for Public Meeting on Receivership

**From: Councilmember Bartlett**

Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130

**Action:** 11 speakers. Discussion held.

M/S/C (Kesarwani/Hahn) to accept Councilmember Kesarwani's submitted referral to the City Manager for an information session on the technical issues surrounding receivership.

**Vote:** Ayes – Kesarwani, Hahn; Noes – None; Abstain – Davila; Absent – None.

M/S/C (Hahn/Kesarwani) to send the item to Council with a positive recommendation that for purposes of understanding the issues and identifying potential changes to the City's codes, policies, and procedures the committee recommends the following:

- a. That the City Manager provide an information session to the City Council regarding the various ways in which code enforcement issues have been brought to the attention of the City over the last 5 years;

## Committee Action Items

- b. How various code enforcement issues at residential properties are currently handled;
- c. Timeframe and mechanisms for achieving code compliance at residential properties;
- d. Any existing assistance programs available to support property owners found to have code violations;
- e. Specific learnings/changes in City practices resulting from the Leonard Powell receivership case;
- f. Other information deemed relevant and appropriate to understand the City's current code enforcement practices for residential properties

Additionally, the Policy Committee requests that the Mayor call a special meeting of the City Council for purposes of a forum based on the recommendations provided by Councilmember Bartlett as the draft plan for a public meeting on receivership.

And third, the Committee requests from the City Manager a specific reply on creating a mechanism to provide legal and technical assistance by an independent third party for individuals who are facing City of Berkeley initiated receivership, and that the reply also include a process for the individual to pick legal and technical representatives of their choice. This response should also include a recommendation from the City Manager and a budget referral.

**Vote:** All Ayes.

### 3. **Healthy Checkout Ordinance**

**From: Councilmembers Harrison and Hahn**

**Referred: October 28, 2019**

**Due: April 6, 2019**

**Recommendation:** 1. Adopt an ordinance requiring stores over 2,500 square feet in size to sell more nutritious food and beverage options in their checkout areas.  
2. Refer to the City Manager to determine funding and staffing needs to implement and enforce the ordinance and sources of funding to support this program.

**Financial Implications:** See report

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

Item continued to next meeting on December 9, 2019.

### 4. **Listening Session on general conditions at encampments and from the homeless population at large (30 minutes)**

**Action:** 3 speakers. Future agendas will include a 15 minute listening session on the same topic. No action on this item.



## Committee Action Items

5. **Establishing an Outdoor Emergency Shelter** *(Item contains revised materials)*  
**From: Councilmembers Harrison, Davila, Mayor Arreguin, and Councilmember Robinson**

**Referred: October 1, 2019**

**Due: March 10, 2020**

**Recommendation:** Adopt five referrals to the City Manager to begin the process of establishing a sanctioned homeless encampment in Berkeley:

1. Enter into a contract to purchase climate-controlled, wind-resistant durable tents.
2. Issue a Request for Proposals for an agency to manage and oversee the encampment.
3. Install a portable toilet and handwashing station at the encampment parcel.
4. Request that Lava Mae to service the encampment parcel once a week, thereby reinstating the City's twice weekly service standard.
5. Add the emergency shelter parcel to an existing garbage pickup route and provide safe needle disposal as part of trash services.

**Financial Implications:** See report

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

**Action:** 5 speakers. Discussion held. M/S/C (Davila/Hahn) to send the item to Council with a positive recommendation and the following additional amendments made by the author:

1. Refer to the November budget process the costs of \$615,000 associated with establishing the outdoor emergency shelter to be considered with other Measure P Panel of Experts recommendations;
2. Referral to the City Manager to begin the process of establishing an outdoor emergency shelter in Berkeley. This includes seeking an agency to manage and oversee the outdoor emergency shelter including amenities for trash pick-up, toilets, handwashing stations, showers services, and needle receptacles, as well as provide basic service levels including security, housing support services, and outreach coordinators.
3. Additionally, the committee recommends but does not require, that staff establish protocols based on existing application processes for eligibility allocation and that the eligibility criteria be less restrictive than the HUD criteria.

**Vote:** Ayes – Davila, Hahn; Noes – None; Abstain – Kesarwani; 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.*

- 6a. Recommendation to Modify Policies Related to the Enforcement of the Berkeley Smoke-Free Multi-Unit Housing Ordinance**  
**From: Housing Advisory Commission**  
**Referred: October 29, 2019**  
**Due: April 7, 2020**  
**Recommendation:** Approve modifications to policies related to the enforcement of the Smoke-Free Multi-Unit Housing Ordinance, as follows:
1. Increase staffing to implement enforcement of the ordinance as part of the next budget;
  2. Improve signage related to the ordinance in residential buildings;
  3. Make the complaint process less onerous and more user-friendly, including enabling complainants to submit complaints electronically, providing complaint forms in different languages, and removing language requiring the statements to be “sworn,” and considering other, less threatening language that still expects a complaint be provided under the best of appellant’s knowledge;
  4. Relax the current requirements around how the Ordinance-based complaint form must be completed in order to be processed (e.g., removing the requirement of providing two separate complaints from different individuals within a six-month period, if the building contains two or fewer units, removing the requirement of providing a sworn statement under penalty of perjury); and
  5. Refer to the Community Health and Cannabis Commissions the question of whether the use of recreational (non-medical) cannabis should be incorporated into the Smoke-Free Housing Ordinance.
- Financial Implications:** See report  
Contact: Mike Uberti, Commission Secretary, (510) 981-7400
- 6b. Companion Report: Recommendation to Modify Policies Related to the Enforcement of the Berkeley Smoke-Free Multi-Unit Housing Ordinance**  
**From: City Manager**  
**Referred: October 29, 2019**  
**Due: April 7, 2020**  
**Recommendation:** The City Manager appreciates the Housing Advisory Commission’s efforts to strengthen the implementation of the Smoke-free Multi-Unit Housing ordinance and recommends that the proposed modifications be referred to the City Manager Office for an analysis of the financial and legal feasibility of the proposed changes.  
**Financial Implications:** See report  
Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400
- 7. Presentation on Vector Control**  
Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400

## Items for Future Agendas

- Discussion of items to be added to future agendas
- Discussion of future hearings and open forums

## Adjournment

Adjourned at 12:55 p.m.

I hereby certify that this is a true and correct record of the Health, Life Enrichment, Equity & Community Committee meeting held on November 25, 2019.


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April Richardson, Assistant 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.*





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, Health, Life Enrichment, Equity & Community Policy Committee**  
**Webpage:**

[https://www.cityofberkeley.info/Clerk/Home/Policy\\_Committee\\_\\_Health,\\_Life\\_Enrichment,\\_Equity\\_\\_Community.aspx](https://www.cityofberkeley.info/Clerk/Home/Policy_Committee__Health,_Life_Enrichment,_Equity__Community.aspx)





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, Health, Life Enrichment, Equity & Community Policy Committee**  
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Kate Harrison  
Councilmember District 4

ACTION CALENDAR  
November 12, 2019

To: Honorable Mayor and Members of the City Council  
From: Councilmembers Kate Harrison and Sophie Hahn  
Subject: Healthy Checkout Ordinance

RECOMMENDATION

1. Adopt an ordinance requiring stores over 2,500 square feet in size to sell more nutritious food and beverage options in their checkout areas.
2. Refer to the City Manager to determine funding and staffing needs to implement and enforce the ordinance and sources of funding to support this program.

POLICY COMMITTEE TRACK

Health, Life Enrichment, Equity and Community

FINANCIAL IMPLICATIONS

1. Implementation of the ordinance would require staff time to educate the approximately 25 stores about what is required of them to comply with the ordinance. The Center for Science in the Public Interest could provide technical assistance including a suggested list of products that meet the criteria of the ordinance. Healthy Berkeley funded programs could also assist with store education and monitoring. Community partners could assist with implementation.
2. Enforcement of the ordinance may be incorporated into the regular inspections of food retailers conducted by the City. Spot checks of items sold in each aisle could monitor compliance.
3. The City-held public meetings for retailers and community residents to share their input will require time from the Commission secretaries.

BACKGROUND

Today's food landscape plays a large role in determining what people purchase and consume. Unhealthy food and beverages are promoted and placed repeatedly throughout retail stores. Cheap, ready-to-eat foods high in salt, saturated fat, and added sugars dominate checkout aisles, where shoppers are more likely to make impulse purchases and where parents struggle with their children over demands to buy treats at the end of a shopping trip.

This ordinance would require all stores over 2,500 square feet in size that sell at least 25 linear feet of food to follow the requirements for Healthy Checkout, as written in the

2180 Milvia Street, Berkeley, CA 94704 • Tel: (510) 981-7140 • TDD: (510) 981-6903 • Fax: (510) 981-6903 E-Mail: KHarrison@cityofberkeley.info

ordinance, the specifics of which are to be determined in the policy committee process. This would impact approximately 25 stores in Berkeley, including Safeway, Whole Foods, CVS, Walgreens, Berkeley Bowl, and Monterey Market.

### ***Health Impacts of Sugar and Sodium Consumption and Related Disease Disparities***

Impulse buying at checkout contributes to the high levels of sugar consumption in American diets. There has been much research and media attention<sup>1</sup> about the health impacts of excessive added sugar intake, including elevated risk of tooth decay, heart disease, and Type 2 diabetes.<sup>2</sup> The adverse health effects of added sugar consumption further entrench health disparities, burdening people of color more than white populations. Currently, Type 2 diabetes is on the rise across the country; one in three children and one of two children of color will be diagnosed in their lifetime.<sup>3</sup>

Diets that are high in sodium are linked to high blood pressure, heart disease, and stroke,<sup>4</sup> all of which disproportionately affect African Americans and communities of color.<sup>5</sup>

Berkeley also has health disparities in diet-related disease. In 2014, African American residents were four times more likely than White residents to be diagnosed with diabetes and 14 times more likely to be hospitalized due to its effects.<sup>6</sup> This gap has decreased since 2014, but the disparity continues to exist.<sup>7</sup> Rates of hospitalization for heart disease and high blood pressure are also significantly higher among African-American residents than White and Latino residents.<sup>5</sup>

### ***Checkout Areas of Grocery Stores Contribute to the Problem***

Consumers are trying to make healthier purchases. A 2019 report found that 73 percent of shoppers are concerned about the nutritional content of their food.<sup>89</sup>

Despite consumer desire to select healthier foods, unhealthy foods are prevalent in checkout areas in a wide variety of retail stores. A national study of 8,600 stores – including supermarkets, convenience stores, drug stores, and dollar stores – found that 88 percent display candy at checkout and one-third (34 percent) sell sugar-sweetened beverages.<sup>10</sup> Only 24 percent of stores sell water at checkout, and only 13 percent sell fresh fruits or vegetables at checkout.<sup>8</sup> Almost all supermarkets (91 percent) display candy and 85 percent sell soda and other sugary drinks at checkout.<sup>8</sup>

In 2018, a Berkeley-based youth group assessed a sample of 35 Berkeley stores including Walgreens, Safeway, Trader Joes, Target, Berkeley Bowl, Dollar Tree and others. Data was collected from 16,404 facings, which are the display of a single product on the shelf (not including the items stacked behind it). They found that 69 percent of beverages and 81 percent of foods sold in the checkout area of surveyed stores were considered unhealthy using the [National Alliance for Nutrition and Activity Model Nutrition Standards for Checkout](#).<sup>11</sup>

Research shows that food choices are strongly affected by the environments in which they are made. The aim of placing food and beverages at checkout is to induce

unplanned purchases; thus, unhealthy checkout options undermine consumers' efforts to purchase healthier foods.<sup>12</sup> The placement of snacks near the register increases the likelihood that people purchase those foods.<sup>13</sup> In addition, most of the candy, soda, and chips in checkout aisles are placed at eye-level and within reach of children, undermining parents' efforts to feed their children well.<sup>14</sup>

Three-quarters of parents report that it is hard to shop at grocery stores because unhealthy food is so prevalent.<sup>15</sup> Healthy checkout aisles provide all families more opportunities to say yes to their kids.

### ***Grocery Stores are a Prime Place for Policy Change***

Grocery stores are Americans' top source for food and beverages, providing more than 60 percent of calories.<sup>16</sup> Ninety percent of Supplemental Nutritional Assistance Program (SNAP) dollars are redeemed at supermarkets and grocery stores.<sup>17</sup> Though grocery stores sell a wide range of healthy products, they are also the largest contributor of unhealthy food and beverages to the diet. Seventy percent of the sugary beverages children consume come from food retail.<sup>18</sup>

Sugary drinks are promoted repeatedly throughout stores; appearing in as many as 25 different places in a single grocery store.<sup>19</sup> At checkout, these drinks make up 60% of beverage offerings.<sup>20</sup>

For all these reasons, grocery store checkout lanes are an ideal place to begin changing norms around healthy snacks and drinks.

### ***Strategies to Reduce Sugar Consumption in Berkeley***

In 2014, Berkeley became the first city in the country to tax the distribution of sugar sweetened beverages. In the last five years, the City created the Healthy Berkeley program which supports the Berkeley Unified School District garden education program as well as community programs that educate residents about nutrition and are changing norms around beverage choice.

This ordinance is another effort to create a healthy food environment that would support families by providing them the ability to avoid high-calorie, low-nutrient food and beverages when they do their grocery and other shopping. Individuals and families who want to purchase sugary drinks, candy, chips, and other sweet and salty snacks will be able to find them in their respective aisles in the center of stores. By changing checkout norms, shoppers and their children face less temptation to consume sugary foods and there is less reinforcement of these unhealthy choices.

### ***Berkeley Residents are Demanding Checkout Changes***

In 2018, Berkeley-based youth advocates conducted four focus groups where adults and adolescents unanimously supported removing unhealthy food and beverages from grocery store checkout lanes and requiring stores to have healthy checkout aisles. Participants suggested retailers stock checkout with water, fruit juice, coffee, and tea. They also requested that gum, mints and healthy snacks be available. Using the National Alliance for Nutrition and Activity standards as a guide, this ordinance aims to

create checkout aisles where beverages with no added sugars or artificial sweeteners, such as 100% juice and water are considered healthy beverages, and where healthy snacks are predominantly fruits, nuts, and vegetables.

In order to streamline implementation and enforcement, the proposed Healthy Checkout Ordinance restricts added sugars and sodium for food products sold at checkout.

### ***Healthy Checkout Reduces Impulse Buying of Sugary Snacks and Drinks***

A recent study by the University of Cambridge analyzed purchasing data for common unhealthy checkout foods from 2013-2017 in nine U.K. supermarket chains. They found that consumers purchased 17 percent fewer sweets, chocolate and potato chips. One year later the decline in unhealthy purchases remained steady at 16 percent.<sup>1</sup>

The Healthy Checkout Ordinance will create a level playing field for customers and retailers and support consistent, healthy snacking norms for shoppers and families.

### ***Reducing Unhealthy Food and Beverages Sold at Checkout in Berkeley: Ordinance Elements***

The attached ordinance (Attachment 1):

- limits food and beverage products sold at the checkout area;
- applies to approximately 25 stores in Berkeley that are over 2,500 square feet (see attached) and have more than 25 linear feet of food for sale; and
- allows only beverages with no added sugars and no artificial sweeteners and food items with limited calories, added sugars, and sodium to be sold in the checkout area.

The attached ordinance still has some unanswered questions that will require input from public health advocates, City staff, food retailers, and the policy committee. Those questions are:

- how to define healthy food, and what parameters are most appropriate;
- date of implementation;
- appropriate definition of “checkout area”. The attached draft ordinance includes the definition of “checkout area” as defined in AB 765, but that definition may not appropriately reflect the needs of all large retail stores in Berkeley.

### **RATIONALE FOR RECOMMENDATION**

Requiring the approximately 25 stores to follow the requirements for Healthy Checkout would eliminate the encouragement of unplanned purchases of unhealthy foods and beverages. Such a change would thus contribute to healthy norms and reduce the consumption of sugary drinks and unhealthy foods in the City of Berkeley.

### **ALTERNATIVES CONSIDERED**

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In February 2019, Assemblymember Buffy Wicks introduced AB 765, a bill which would implement Healthy Checkout statewide. However, as the bill has not advanced from committee since April, progress at the state level is not guaranteed.

CONTACT PERSON

Kate Harrison, District 4

ATTACHMENTS:

1: Draft Ordinance

- 
- <sup>1</sup> Brody, JE. The Downside of Having a Sweet Tooth. *The New York Times*. July 22, 2019. <https://www.nytimes.com/2019/07/22/well/eat/the-downside-of-having-a-sweet-tooth.html>.
- <sup>2</sup> U.S. Department of Health and Human Services and U.S. Department of Agriculture. *2015–2020 Dietary Guidelines for Americans 8th Edition*. Washington, DC; HHS and USDA, 2015.
- <sup>3</sup> *Lancet Diabetes Endocrinol*. 2014 Nov;2(11):867-74. doi: 10.1016/S2213-8587(14)70161-5. Epub 2014 Aug 12.
- <sup>4</sup> <https://www.hsph.harvard.edu/nutritionsource/salt-and-sodium/>
- <sup>5</sup> <https://www.cdc.gov/mmwr/volumes/67/ss/ss6705a1.htm>
- <sup>6</sup> City of Berkeley. *Health Status Report 2014*. Berkeley, CA; 2014.
- <sup>7</sup> City of Berkeley. *Health Status Report 2018*. Berkeley, CA; 2018.
- <sup>8</sup> Food Marketing Institute. *The Power of Health and Well-Being in Food Retail*. Arlington, VA: FMI; 2019.
- <sup>9</sup> International Food Information Council Foundation. *2019 Food & Health Survey*. Washington, D.C.: IFIC; 2019.
- <sup>10</sup> Barker D, Quinn C, Rimkus L, Zenk S, Chaloupka F. *Availability of Healthy Food Products at Check-out Nationwide, 2010-2012*. Chicago, IL: Bridging the Gap Program, Health Policy Center, Institute for Health Research and Policy, University of Illinois at Chicago; 2015.
- <sup>11</sup> The Center for Science in the Public Interest. *Model Nutrition Standards for Checkout*. <https://cspinet.org/protecting-our-health/nutrition/model-nutrition-standards-checkout>.
- <sup>12</sup> Center for Science in the Public Interest. *Temptation at Checkout: The Power of Point-of-Sale Retail Food Marketing*. Washington, D.C.: CSPI; 2015.
- <sup>13</sup> Kerr J, Sallis JF, Bromby E, Glanz K. Assessing Reliability and Validity of the GroPromo Audit Tool for Evaluation of Grocery Store Marketing and Promotional Environments. *J Nutr Educ Behav*. 2012;44(6):597-603. doi:10.1016/j.jneb.2012.04.017.
- <sup>14</sup> Horsley JA, Absalom KA, Akiens EM, Dunk RJ, Ferguson AM. The Proportion of Unhealthy Foodstuffs Children Are Exposed to at the Checkout of Convenience Supermarkets. *Public Health Nutr*. 2014;17(11):2453-2458.
- <sup>15</sup> Caravan ORC International. *Checkout Polling: Online Survey of 1,024 adults*. Princeton, NJ; 2016.
- <sup>16</sup> Mancino L, Guthrie J. *Supermarkets, Schools, and Social Gatherings: Where Supplemental Nutrition Assistance Program and Other U.S. Households Acquire their Foods Correlates with Nutritional Quality*. Washington, DC: U.S. Department of Agriculture Economic Research Center; 2018.
- <sup>17</sup> U.S. Department of Agriculture Food and Nutrition Service. *2015 SNAP Retailer Management Year-End Summary*. Washington, D.C.: USDA; 2015.
- <sup>18</sup> Poti JM, Slining MM, Popkin BM, Kenan WR. Where are kids getting their empty calories? Stores, schools, and fast food restaurants each play an important role in empty calorie intake among US children in 2009-2010. *J Acad Nutr Diet*. 2014;114(6):908-917. doi: 10.1016/j.jand.2013.08.012.
- <sup>19</sup> Cohen DA, Bogart L, Castro G, Rossi AD, Williamson S, Han B. Beverage marketing in retail outlets and The Balance Calories Initiative. *Prev Med*. 2018;115:1-7.
- <sup>20</sup> Fielding-Singh P, Almy J, Wootan MG. *Sugar Overload: Retail Checkout Promotes Obesity*. Washington, DC: Center for Science in the Public Interest, 2014.

ORDINANCE NO. -N.S.

ADDING CHAPTER 9.82 TO THE BERKELEY MUNICIPAL CODE "HEALTHY CHECKOUT"

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

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

**9.82.010. Findings and Purpose.**

The City of Berkeley hereby finds and declares as follows:

- A. Diets with an excess of added sugars and sodium are correlated to chronic health issues including diabetes, high blood pressure, and stroke.
- B. Grocery stores are Americans' top source for food and beverages, contributing an average of 60% of caloric intake.
- C. Food choices are strongly affected by the environments in which they are made. The placement of unhealthy snacks near a register increases the likelihood that consumers will purchase those foods and drinks, thus undermining consumer health choices and public health initiatives.
- D. It is in the interest of the health, safety, and welfare of all who live, work, and do business in the City that large stores offer healthy options and do not actively encourage the purchase of unhealthy foods.
- E. This Chapter is consistent with the General Provisions of Environmental Health of the City (Berkeley Municipal Code 11.04).

**9.82.020. Definitions.**

- A. Added Sugars shall mean sugars added during the processing of food and beverages, or are packaged as such, and include sugars (free, mono and disaccharides), sugars from syrups and honey, and sugars from concentrated fruit or vegetable juices that are in excess of what would be expected from the same volume of 100 percent fruit or vegetable juice of the same type, as defined in Section [101.9](#) of Title 21 of the Code of Federal Regulations.
- B. Artificial Sweetener shall mean sweeteners with few to no calories that have a higher intensity of sweetness per gram than sucrose.
- C. Category List shall mean the list of foods and beverages which meet the standards of BMC 9.82.030.
- D. Checkout Area shall mean any area that is accessible to a customer of the Large Retail Store that is
  - i. within **XX** feet of any Register; or
  - ii. in an area in the Large Retail Store which is designated only for

customers to wait in line to make a purchase.

- E. "Register" shall mean a device used for monetary transactions that calculates the sales of goods and displays the amount of sales for the customer.
- F. "Large Retail Store" shall mean a commercial establishment selling goods to the public with a total floor area of 2,500 square feet or more and selling 25 linear feet or more of food.

**9.82.030. Healthy Checkout Areas.**

Each Large Retail Store shall, at all hours during which the Large Retail Store is open to the public, ensure that the only foods and beverages available in all checkout areas meet the standards in Sec 9.82.030 A-B:

- A. Beverages with no added sugars and no artificial sweeteners.
- B. Food items with no more than XX calories, XX grams of added sugars, and XX grams of sodium.

**9.82.040. Enforcement.**

- A. The City is hereby authorized to issue all rules and regulations consistent with this ordinance, including, but not limited to, fees for re-inspection.
- B. Compliance with this Chapter shall be administered by the City during regular inspections of qualifying Large Retail Stores. The City may require a Large Retail Store to provide such information as may be necessary to determine the Large Retail Store's compliance with this Chapter.

**9.82.050. Violation--Penalty.**

- A. A Large Retail Store that violates any provision of this chapter may be subject to an administrative citations pursuant to Chapter 1.28 of this Code.
- B. This section shall not limit the City from recovering all costs associated with implementing this chapter or investigating complaints pursuant to fee resolution.
- C. Remedies and penalties under this chapter are cumulative and not exclusive.

Commented [JCD1]: I'm not sure what the intent is here. We would need to evaluate whether there is a mechanism to recover administrative enforcement costs.

**9.82.060. Effective Date.**

This ordinance and the legal requirements set forth herein shall take effect and be in force XX.

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.





Housing Advisory Commission

5a

ACTION CALENDAR

October 29, 2019

To: Honorable Mayor and Members of the City Council  
From: Housing Advisory Commission  
Submitted by: Xavier Johnson, Chairperson, Housing Advisory Commission  
Subject: Recommendation to Modify Policies Related to the Enforcement of the Berkeley Smoke-Free Multi-Unit Housing Ordinance

RECOMMENDATION

Approve modifications to policies related to the enforcement of the Smoke-Free Multi-Unit Housing Ordinance, as follows:

- 1) Increase staffing to implement enforcement of the ordinance as part of the next budget;
- 2) Improve signage related to the ordinance in residential buildings;
- 3) Make the complaint process less onerous and more user-friendly, including enabling complainants to submit complaints electronically, providing complaint forms in different languages, and removing language requiring the statements to be "sworn," and considering other, less threatening language that still expects a complaint be provided under the best of appellant's knowledge;
- 4) Relax the current requirements around how the Ordinance-based complaint form must be completed in order to be processed (e.g., removing the requirement of providing two separate complaints from different individuals within a six-month period, if the building contains two or fewer units, removing the requirement of providing a sworn statement under penalty of perjury); and
- 5) Refer to the Community Health and Cannabis Commissions the question of whether the use of recreational (non-medical) cannabis should be incorporated into the Smoke-Free Housing Ordinance.

SUMMARY

At its July 11, 2019 meeting, the HAC took the following actions:

Action: M/S/C (Tregub/Sharenko) to recommend that City Council modify certain policies related to the enforcement of the Smoke-Free Multi-Unit Housing Ordinance, as follows:

- 1) Increase staffing to implement enforcement of the ordinance as part of the next budget;
- 2) Improve signage related to the ordinance in residential buildings;

- 3) Make the complaint process less onerous and more user-friendly, including enabling complainants to submit complaints electronically, providing complaint forms in different languages, and removing language requiring the statements to be “sworn,” and considering other, less threatening language that still expects a complaint be provided under the best of appellant’s knowledge; and
- 4) Relax the current requirements around how the Ordinance-based complaint form must be completed in order to be processed (e.g., removing the requirement of providing two separate complaints from different individuals within a six-month period, if the building contains two or fewer units, removing the requirement of providing a sworn statement under penalty of perjury).

Vote: Ayes: Johnson, Lewis, Sargent, Tregub, and Wright. Noes: Lord and Sharenko. Abstain: None. Absent: Mendonca (excused), Owens (unexcused), Simon-Weisberg (excused), and Wolfe (excused).

Action: M/S/C (Tregub/Sharenko) to recommend that City Council modify certain policies related to the enforcement of the Smoke-Free Multi-Unit Housing Ordinance, as follows:

- 5) Refer to the Community Health and Cannabis Commissions the question of whether the use of recreational (non-medical) cannabis should be incorporated into the Smoke-Free Housing Ordinance.

Vote: Ayes: Johnson, Sargent, Sharenko, Tregub, and Wright. Noes: Lewis and Lord. Abstain: None. Absent: Mendonca (excused), Owens (unexcused), Simon-Weisberg (excused), and Wolfe (excused).

#### FISCAL IMPACTS OF RECOMMENDATION

Unknown direct costs. Staff time would be needed to implement these recommendations and to administer a possibly increased volume of complaints should the process of filing a complaint become less onerous. However, savings in staff time would potentially be realized as a result of implementing the efficiencies being proposed.

#### CURRENT SITUATION AND ITS EFFECTS

The HAC’s recommendation to modify certain policies related to the enforcement of the Berkeley Smoke-Free Multi-Unit Housing Ordinance is a Strategic Plan Priority Project, advancing our goal to create affordable housing and housing support service for our most vulnerable community members.

Ordinance No. 7,321-N.S., The Berkeley Smoke-Free Multi-Unit Housing Ordinance was adopted in early 2014 and, as of May 1, 2014, prohibits smoking in 100% of multi-unit housing with two or more units. This also includes common areas such as private

decks, balconies, and porches of units.<sup>1</sup> Enforcement of the ordinance is complaint-based and modeled after the “Events” section of the Community Noise Ordinance<sup>2</sup> and Barking Dog Ordinance, in that the standard for enforcement is “two non-anonymous citizen noise complaints.” In the case of the Smoke-Free Housing Ordinance, the City must “[receive] at least two complaints from residents of at least two separate units of the same multi-unit residence, or in the case of a two-unit multi-unit residence, from a resident of the other unit of a violation of [the Ordinance] by the same person provided notice...” in order for the complaints to be sustained. Further, both of these notices must be received within “a six month period following issuance of a [first] notice” to the resident allegedly in violation of the Ordinance.<sup>3</sup> The existing complaint form appears to only be available in English on the City website<sup>4</sup> and includes the following information that a complainant is required to acknowledge:

1. I am a resident in a multi-unit residence within the City of Berkeley;
2. This Complaint is not confidential and may be shared with the person responsible for the violation;
3. If this is the 3rd complaint, City of Berkeley Code Enforcement staff will review the complaint and if they find the complaint contains enough information to move forward, they will consider the matter for further action;
4. If an administrative citation is issued, and the recipient(s) appeals, I will be called to testify at an administrative appeal hearing. I agree to make myself available to testify, and understand that if I fail to testify, the citation may be dismissed.”<sup>5</sup>

As part of the declaration, the complainant must also attest to the following statement: “I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.”<sup>6</sup>

## BACKGROUND

Over the prior twenty months, the Berkeley Housing Advisory Commission (HAC) received and heard several concerns from members of the public about the difficulty they encountered in an attempt to bring the City of Berkeley to enforce its Smoke-Free Multi-Unit Housing Ordinance. The HAC recommended to the City Council that a Berkeley Considers survey be conducted, an action that was adopted and completed.

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<sup>1</sup> [https://www.cityofberkeley.info/Health\\_Human\\_Services/Public\\_Health/Smoke\\_Free\\_MUH.aspx](https://www.cityofberkeley.info/Health_Human_Services/Public_Health/Smoke_Free_MUH.aspx)

<sup>2</sup> [https://www.cityofberkeley.info/uploadedFiles/Clerk/Level\\_3\\_-\\_City\\_Council/2009/1n2Dec/2009-12-08\\_Item\\_01\\_Ordinance\\_7122.pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_City_Council/2009/1n2Dec/2009-12-08_Item_01_Ordinance_7122.pdf)

<sup>3</sup> [https://www.cityofberkeley.info/uploadedFiles/Health\\_Human\\_Services/Level\\_3\\_-\\_Public\\_Health/TobaccoFreeMultiUnitOrdinance.pdf](https://www.cityofberkeley.info/uploadedFiles/Health_Human_Services/Level_3_-_Public_Health/TobaccoFreeMultiUnitOrdinance.pdf)

<sup>4</sup> [https://www.cityofberkeley.info/Health\\_Human\\_Services/Public\\_Health/Smoke\\_Free\\_MUH.aspx](https://www.cityofberkeley.info/Health_Human_Services/Public_Health/Smoke_Free_MUH.aspx)

<sup>5</sup> [https://www.cityofberkeley.info/uploadedFiles/Health\\_Human\\_Services/Level\\_3\\_-\\_Public\\_Health/SFMUH-ComplaintForm-02-28-18.pdf](https://www.cityofberkeley.info/uploadedFiles/Health_Human_Services/Level_3_-_Public_Health/SFMUH-ComplaintForm-02-28-18.pdf)

<sup>6</sup> *Ibid.*

The survey results point to similar challenges, primarily associated with:

- 1) The real or perceived difficulty of having a complaint sustained due to the standard applied to the complaint in order for the City to process it;
- 2) The real or perceived onerous nature of filling out and submitting the present complaint form in the manner required by the City;
- 3) The undesirable nature of pursuing action under the Ordinance against a neighboring property owner or tenant, particularly since the complaint is required to be non-anonymous; and
- 4) The perception that, even if the complaint process is followed as required, the City will not enforce it due to the high standard associated with enforcement and complaint-based nature of the enforcement mechanism.

At its March 2019 meeting, the HAC convened a Smoke-Free Housing Ordinance Subcommittee which met in April 2019. Members of the subcommittee reached consensus on several recommendations to the HAC, which were discussed at the April 2019 HAC meeting. Additional feedback was solicited from HAC members as well as members of the public at that meeting. Although the subcommittee did not meet a second time to finalize these recommendations, one of the members of the subcommittee discussed these recommendations with the Eviction Defense Center and the East Bay Community Law Center and modified the draft recommendations so that the idea of empowering inspectors to integrate proactive inspections at the same time that they are conducting other city-mandated inspections (e.g., the Rental Housing Safety Program), exploring the legality of allowing anonymous complaints to be processed, and relaxing the requirement of having to provide two separate complaints within a six-month period in buildings of *all* unit counts were removed from the proposed recommendations that were discussed and approved at the July meeting.

#### ENVIRONMENTAL SUSTAINABILITY

Insofar as the ability of every occupant of multi-family housing to reside in a smoke-free environment has a nexus to environmental sustainability and environmental justice, these recommendations support the City of Berkeley's environmental sustainability goals.

#### RATIONALE FOR RECOMMENDATIONS

The recommendations above address the primary challenges associated with enforcement that have been previously described. A brief rationale for each recommendation is presented below.

- 1) Increase staffing to implement enforcement of the ordinance as part of the next budget;

- 2) Improve signage related to the ordinance in residential buildings;

The recommendations above were made at the request of several members of the public who credibly claimed that the current staffing level to enforce the ordinance and required signage are inadequate to meet the goals of this ordinance.

- 3) Make the complaint process less onerous and more user-friendly, including enabling complainants to submit complaints electronically, providing complaint forms in different languages, and removing language requiring the statements to be “sworn,” and considering other, less threatening language that still expects a complaint be provided under the best of appellant’s knowledge; and
- 4) Relax the current requirements around how the Ordinance-based complaint form must be completed in order to be processed (e.g., removing the requirement of providing two separate complaints from different individuals within a six-month period, if the building contains two or fewer units, removing the requirement of providing a sworn statement under penalty of perjury).

These four recommendations would address the following concerns that the HAC noted from members of the public as well as from survey responses:

- 1) The real or perceived difficulty of having a complaint sustained due to the standard applied to the complaint in order for the City to process it;
- 2) The real or perceived onerous nature of filling out and submitting the present complaint form in the manner required by the City;
- 3) The undesirable nature of pursuing action under the Ordinance against a neighboring property owner or tenant, particularly since the complaint is required to be non-anonymous; and
- 4) The perception that, even if the complaint process is followed as required, the City will not enforce it due to the high standard associated with enforcement and complaint-based nature of the enforcement mechanism.

The current process requires an extremely high bar of evidence and effort for a complainant, and in a situation in which the complainant resides in close quarters with the allegedly offending party, may expose the complainant to possible retaliation (due to the lack of anonymity of the complaint). In addition, while the correctness of a complaint is fundamental to its ability to be processed, using the same language in the complaint form that is seen in a sworn affidavit is likely to intimidate some would-be complainants from undergoing the process of completing and submitting the form.

Furthermore, while the Smoke-Free Multi-Unit Housing Ordinance page on the City of Berkeley website currently includes several forms in Spanish as well as English, the complaint form itself is only available in English. No other languages besides English and Spanish were found anywhere on the site.<sup>7</sup> The requirement that only a hard copy can be submitted and that electronic submission mechanisms are not accepted is overly burdensome, in an age where even police reports can be filed online. The provision that three separate complaints (two of them from separate individuals) must be received within the span of six months shifts the burden of policing onto the complainants rather than City, which is charged with enforcing this ordinance. Each of these recommendations addresses these and related concerns mentioned above.

The final recommendation approved by a separate vote by the HAC is as follows:

- 5) Refer to the Community Health and Cannabis Commissions the question of whether the use of recreational (non-medical) cannabis should be incorporated into the Smoke-Free Housing Ordinance.”

The Smoke-Free Housing Subcommittee and several additional members of the HAC and public felt that, with the recent relaxation of state law around the use of recreational (non-medical) cannabis, it would be worthwhile for these two commissions, both comprised of subject matter experts in their respective fields, to study this question. Only further study rather than any concrete actions is recommended at this time.

#### ALTERNATIVE ACTIONS CONSIDERED

Members of the HAC Smoke-Free Housing Subcommittee briefly discussed but dismissed the notion of making changes to the underlying Berkeley Smoke-Free Multi-Unit Housing Ordinance itself. Based on discussions with the eviction defense community, several elements were removed from the initial recommendations. These recommendations that are no longer proposed included the following:

- 1) Empowering inspectors to integrate proactive inspections regarding the smoke-free Ordinance enforcement at the same time that the inspectors are conducting other city-mandated inspections (e.g., the Rental Housing Safety Program);
- 2) Exploring the legality of allowing anonymous complaints to be processed;
- 3) Relaxing the requirement of having to demonstrate two separate complaints within a six-month period in buildings of *all unit sizes*.

Therefore, though some of the recommended actions, if approved, may trigger the need to provide subtle adjustments to the enforcement of the Ordinance, none of the actions above alter the fundamental architecture of the Ordinance.

<sup>7</sup> [https://www.cityofberkeley.info/Health\\_Human\\_Services/Public\\_Health/Smoke\\_Free\\_MUH.aspx](https://www.cityofberkeley.info/Health_Human_Services/Public_Health/Smoke_Free_MUH.aspx)

Recommendation to Modify Policies Related to the Enforcement  
of the Smoke-Free Multi-Unit Housing Ordinance

ACTION CALENDAR  
October 29, 2019

CITY MANAGER

See companion report.

CONTACT PERSON

Mike Uberti, Commission Secretary, HHCS, (510) 981-5114







Office of the City Manager

5b

ACTION CALENDAR

October 29, 2019

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Kelly Wallace, Interim Director, Health, Housing, & Community Services  
Subject: Companion Report: Recommendation to Modify Policies Related to the Enforcement of the Berkeley Smoke-Free Multi-Unit Housing Ordinance

RECOMMENDATION

The City Manager appreciates the Housing Advisory Commission's efforts to strengthen the implementation of the Smoke-free Multi-Unit Housing ordinance and recommends that the proposed modifications be referred to the City Manager Office for an analysis of the financial and legal feasibility of the proposed changes.

FISCAL IMPACTS OF RECOMMENDATION

The modifications proposed by the Housing Advisory Commission could require increase in staffing and resources for Public Health's Tobacco Prevention Program and the City Manager's Code Enforcement Division. A feasibility analysis will provide more insight to the costs of revised program administration as proposed.

CURRENT SITUATION AND ITS EFFECTS

On July 11, 2019, the Housing Advisory Commission adopted a multi-pronged recommendation to modify the SFMUH ordinance. The proposed modifications vary in their scope and will require additional analysis prior to adoption, which fits with the Strategic Plan Priority goal to provide an efficient and financially-healthy City government.

The commission's recommendations are outlined below with proposed analysis by staff. The proposed analysis would include:

**Commission Recommendation 1: Increase staffing to implement enforcement of the ordinance as part of the next budget.**

Staff should analyze how the proposed modifications, if adopted, will impact current demands on staff time and determine how many Full Time Equivalent (FTE) employees would be needed. The Public Health Division's Tobacco Prevention Program manages the administration of the ordinance, including processing and monitoring complaints and correspondence with potential violators and landlords. Enforcement of this ordinance is

managed by the City Manager's Code Enforcement Division in coordination with the PH Tobacco Prevention Program.

This request for analysis aligns with a recommendation of the June 2018 City Audit of the Neighborhood Services' Code Enforcement Unit. The audit states any proposed legislation that creates additional workload for the Neighborhood Services Code Enforcement Unit should undergo a resource analysis by City Council to evaluate the proposed fiscal and workload impacts and determine the opportunity cost and implementation approach. The Audit also notes that new code enforcement areas may require significant staff time and resources, which may take away from the unit's ability to meet its other enforcement obligations. Additions to the unit's workload could result in loss of revenue generated from fines and enforcement fees, as well as an increased risk to lawsuits brought on by those who claim the City failed to meet its enforcement obligations.

**Commission Recommendation 2: Improve signage related to the ordinance in residential buildings.**

The City's Tobacco Prevention Program provides property owners/managers with "No Smoking" signage for common areas consistent with the signposting requirements of Berkeley Municipal Code Section 12.70.060. Staff could consult with the Community Health Commission to seek information and determine any potential improvements.

**Commission Recommendation 3: Make the complaint process less onerous and more user-friendly, including enabling complainants to submit complaints electronically, providing complaint forms in different languages, and removing language requiring the statements to be "sworn," and considering other, less threatening language that still expects a complaint be provided under the best of appellant's knowledge.**

Staff appreciates the Commission's efforts to make the complaint process more user-friendly. An electronic complaint submission system would considerably ease the complaint process (which requires signature authentication) as well as administrative tasks. At the same time, some of the Commission's suggestions could raise potential unintended consequences that would need to be considered and thought through. For instance, several departments—including the City Attorney's office—would need to provide an opinion on the City's ability to accept signatures electronically and the implications of removing requirements for sworn statements. Additionally, electronic forms and signatures should be considered as a part of the City's ongoing website redesign.

Staff currently has a limited capacity for language translation. A feasibility analysis would have to determine criteria for what languages should be included and funding needed to provide these services, as well as changes to the language in the ordinance to simply the process.

**Commission Recommendation 4: Relax the current requirements around how the Ordinance-based complaint form must be completed in order to be processed (e.g., removing the requirement of providing two separate complaints from different individuals within a six-month period, if the building contains two or fewer units, removing the requirement of providing a sworn statement under penalty of perjury).**

Again, we support efforts to ease the process for complainants, and would work with the City Attorney on any liabilities or legal implications associated with the proposed modifications.

**Commission Recommendation 5: Refer to the Community Health and Cannabis Commissions the question of whether the use of recreational (non-medical) cannabis should be incorporated into the Smoke-Free Housing Ordinance.**

Staff are currently working on amendments to the current SFMUH ordinance (and other parts of the Berkeley Municipal Code) to clarify that it includes cannabis. Proposition 64 legalized adult-use of cannabis in California by creating limited exceptions to the state Uniform Controlled Substances Act. But Proposition 64 specifically provided that it did not permit smoking of “cannabis or cannabis products in a location where smoking tobacco is prohibited.” (Health & Safety Code, § 11362.3.) Thus, cannabis smoking is still unlawful in places where tobacco smoking is prohibited, including under local laws like the SFMUH ordinance.

#### BACKGROUND

The Berkeley City Council adopted Ordinance No. 7,321-N.S. regulating second hand smoke in all multi-unit residences common areas. As of May 1, 2014, smoking tobacco products is prohibited in 100% of multi-unit housing with two or more units (i.e. apartments, co-ops, condominiums, common interest developments, etc.). This also includes common areas such as private decks, balconies, and porches of units.

#### ENVIRONMENTAL SUSTAINABILITY

Providing smoke-free housing improves the local air quality of Berkeley’s housing stock.

#### RATIONALE FOR RECOMMENDATION

Staff appreciate the commission’s efforts to respond to community concerns and ensure the City has the most effective and accessible ordinance possible to serve our residents. Due to the varied, multi-pronged nature of their recommendations, staff are recommending a feasibility analysis is first considered to better understand the potential impacts and needs associated with the proposed ordinance modifications.

#### ALTERNATIVE ACTIONS CONSIDERED

The City Council may consider to maintain the current enforcement mechanisms that fall within the City’s established legal and administrative protocol.

CONTACT PERSON

Mike Uberti, Commission Secretary, HHCS, (510) 981-5114