



## ACTION CALENDAR

November 17, 2015

TO: Honorable Mayor and Members of the City Council

FROM: Councilmember Linda Maio, Mayor Tom Bates, Council Members Laurie Capitelli and Lori Droste

SUBJECT: Improve Conditions On Our Community Sidewalks; Amending Berkeley Municipal Code Chapters 13.36 and 14.48

### **RECOMMENDATION**

Discuss and refer the following services and ordinances to the City Manager for implementation, and adopt first reading of three Ordinances:

1. Adding Section 13.36.085 to the Berkeley Municipal Code prohibiting urination and defecation in public places.
2. Amending Sections 14.48.020 and 14.48.170 of the Berkeley Municipal Code regulating use of sidewalks.
3. Adding Section 13.36.040 to the Berkeley Municipal Code prohibiting obstruction of City-owned planters and trees.

### **ADDITIONAL SERVICES**

1. Create a **secure** storage facility for personal belongings; bins must be of adequate size, of reasonable number (estimate of 50 – 100 at the outset) and ensure reasonable access, with posted hours.
2. Provide additional bathrooms in the Downtown and Telegraph areas.
3. Provide mobile showers and bathrooms for public use.

### **ORDINANCES WOULD DISALLOW:**

1. Urination and defecation in public spaces.
2. The placement of personal belongings on sidewalks and plazas covering more than 2 square feet during the day, from 7 a.m. to 10 p.m. (storage to be provided).
3. The placement of a wheeled mobile unit, no more than 6 square feet in size (i.e. a standard shopping cart) during the day, from 7 a.m. to 10 p.m. for no more than

one hour in one location after which time the unit must be moved to a different block face (storage to be provided).

Note: Purpose of #2 and #3: Amend Berkeley Municipal Code Chapter 14.48 so the Traffic Engineer may adopt regulations and ensure that public streets, and especially sidewalks, are fully accessible and usable for the purposes for which they were constructed and intended, specifically the movement of goods and traffic, pedestrians and wheelchairs.

4. Lying inside of planter beds or on planter walls.
5. Personal items affixed to or placed on public fixtures including poles, bike racks (except bikes), planters, trees, tree guards, newspaper racks, parking meters and pay stations. Pet leashes exempt only as not prohibited in BMC 10.12.110.
6. Placement of personal objects in planters, tree wells, or within 2 feet of a tree well to enable tree care and to protect tree trunks.

#### **IN ADDITION**

- A. Provide public notice before enforcement, including direct interaction with persons to explain the ordinances, location of storage facilities, and location of services.
- B. Prior to issuing a citation regarding personal belongings persons shall receive an initial warning with information regarding available storage.
- C. Refer to the budget process extending transition-aged youth shelter hours beyond winter months.
- D. Make public restrooms available and well publicized. Involve BART in exploring possible locations.
- E. Ordinances concerning the placement of personal belongings and wheeled mobile units on sidewalks will not be enforced until storage services are in place.

#### **BACKGROUND**

Caring for people, especially those who are less fortunate, who do not have homes in which to keep their belongings and to sleep, is important to Berkeley residents. Caring for our public spaces, maintaining basic cleanliness and safe surroundings is also important to us. We need to attend to both.

Berkeley will never be able to provide homes for all of the people who have become needy in our town. The economic structure of this country is unjust, unfair, and cruel especially to those who have virtually nothing to fall back on or are too ill to care for themselves. As our social fabric erodes around us, literally on a daily basis, we must do

everything we can to ensure we remain a humanitarian city and at the same time set a standard for acceptable behavior in our town. That is the purpose of this recommendation: to put forth new services and a few basic rules to set the standard for acceptable behavior---for everyone.

The additional services **DO**

- provide adequate, safe storage of personal belongings that can be accessed in a reasonable manner
- provide additional public bathrooms available 24/7
- provide for mobile showers and sanitation facilities

The proposed ordinances **DO NOT**

- outlaw sitting on the sidewalk
- outlaw sleeping on the sidewalk during nighttime hours

### **FINANCIAL IMPLICATIONS**

New services could cost as much as \$300,000 each year, and additional staff time for implementation. Budget referral for extending shelter hours to be determined.

### **Attachments**

1. Document: Urination
2. Document: Belongings
3. Document: Planters and tree wells
4. Picture of storage bins at the Girls Think Tank Transitional Storage Center in San Diego. Picture courtesy of Councilmember Laurie Capitelli.

### **CONTACT**

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ORDINANCE NO. – N.S.

ADDING SECTION 13.36.085 TO THE BERKELEY MUNICIPAL CODE PROHIBITING  
URINATION AND DEFECATION IN PUBLIC PLACES

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

Section 1. That section 13.36.085 is added to the Berkeley Municipal Code to read as follows:

**13.36.085 Urination and defecation in public places**

- A. No person may urinate or defecate:
1. In a public place;
  2. In a place open to the public or exposed to public view;
  3. In a private place entered without consent of the owner, his agent, or the person in lawful possession thereof.
- B. For purposes of this Section, “public place” means and includes, but is not limited to, any street, park, pier, beach, restaurant, café, theater, store, building playground, school ground recreational area or other place to which the public is invited or has access or any place open to the public view.
- C. This Section shall not apply to urination or defecation in any fixture provided for such purposes in any bathroom, restroom, dressing room, or similar facility.

Section 2. Copies of this Bill shall be posted for two days prior to adoption in the glass case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within fifteen 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.

ORDINANCE NO. – N.S.

AMENDING SECTIONS 14.48.020 AND 14.48.170 OF THE BERKELEY MUNICIPAL CODE, REGULATING USE OF SIDEWALKS

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

Section 1. Purpose. The purpose of this ordinance is to ensure that the City's sidewalks are safe and accessible for pedestrians and wheelchairs, by regulating the placement of objects on the City's sidewalks, once the City has provided free and safe storage for such objects.

Section 2. That Section 14.48.020 of the Berkeley Municipal Code is amended to read as follows:

**14.48.020 Obstructions on streets and sidewalks.**

It is unlawful for any person to place or cause to be placed anywhere upon any sidewalk or roadway, any object which obstructs, restricts, or prevents the use of any portion of such sidewalk or roadway, except as set forth in this Chapter or a regulation adopted by the Traffic Engineer.

Section 3. That Section 14.48.020 of the Berkeley Municipal Code is amended to read as follows:

**14.48.170 Temporary noncommercial uses.**

A. Such items not otherwise prohibited by law designed for temporary noncommercial uses at such locations and at such times as may be permitted under any regulation adopted by the Traffic Engineer.

B. The Traffic Engineer may adopt regulations specifying what objects may be permitted under this Section and where such objects may be permitted, as well as procedures and limitations to implement this Section. Any such regulation shall contain provisions and shall be applied in such a manner as to ensure that it is applied in a manner that does not deprive any person of rights protected by the state or federal constitutions, including freedom of expression. Regulations adopted by the Traffic Engineer under this Section shall not take effect until they have been presented to the City Council for review at a regularly scheduled meeting. B. No limitation on the placement of objects on sidewalks contained in a traffic Engineer regulation adopted pursuant to this Section shall be enforced until the City has provided at least 50 storage lockers in a secure storage area.

C. After review by the City Council, Traffic Engineer regulations adopted pursuant to this Section shall be publicized by the City in a manner substantially equivalent to the manner in which ordinances are publicized.

Section 4. Copies of this Bill shall be posted for two days prior to adoption in the glass case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within fifteen 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.

ORDINANCE NO. – N.S.

ADDING SECTION 13.36.040 TO THE BERKELEY MUNICIPAL CODE PROHIBITING  
OBSTRUCTION OF CITY-OWNED PLANTERS AND TREES

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

Section 1. That section 13.36.040 is added to the Berkeley Municipal Code to read as follows:

**13.36.040 Obstructing City-owned planters and trees.**

A. It is unlawful for any person to lie in or on the walls of a City-owned planter that is located in the right of way. This subdivision shall not apply under the following circumstances:

1. To any person lying down due to a medical emergency.
2. To any person utilizing an object, placed on a commercial sidewalk by the City or other public agency, in the manner in which it is intended, such as sitting on a bus stop bench or downtown plaza benches.

B. It is unlawful for any person to place or cause to be placed any object in or on any City-owned planter or tree well.

C. It is unlawful for any person to affix any object other than a pet leash to the extent permitted under Section 10.12.110, to any City-owned tree guard, newspaper rack, planter, parking meter or parking pay station in the public right of way.

D. It is unlawful for any person to affix anything other than a bicycle or tricycle to a bike rack in the public right of way.

Nothing in these exceptions shall be construed to permit any conduct which is prohibited by any other provision of law.

Section 2. Copies of this Bill shall be posted for two days prior to adoption in the glass case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within fifteen 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.

**Attachment 4.**

Picture of storage bins at the Girls Think Tank Transitional Storage Center in San Diego.

