



Office of the Mayor

CONSENT CALENDAR

March 14, 2017

To: Members of the City Council

From: Mayor Jesse Arreguín and Councilmembers Lori Droste, Sophie Hahn, Kriss Worthington

Subject: Amending BMC Chapter 12.96: Regulating Changes to Health Care Facilities

RECOMMENDATION

Adopt a first reading of an Ordinance amending Berkeley Municipal Code Chapter 12.96 to ensure appropriate notice is delivered and posted and public hearings are conducted prior to the closing of a hospital, clinic or out-patient facility that serves the City of Berkeley.

Additionally, the amended chapter will include instructions to the Community Health Commission on the requirements of the hospital, clinic or out-patient facility to provide a plan assuring access to necessary services following the closure.

BACKGROUND

The City of Berkeley, its neighboring communities, and UC Berkeley have relied on acute care hospital and psychiatric services delivered in the community for over 112 years. Since the merger of Alta Bates Hospital and Summit Medical Center there has been a decrease in acute care service delivery within the City of Berkeley boundaries. Several emergency services, including cardiac care, previously available to Berkeley residents at their local hospital, have been moved to Summit Medical Center in Oakland without any public process or adequate notice to the community.

Additionally, Sutter Health has announced its plans to close Alta Bates Hospital before 2030 and it continues to relocate medical disciplines in their entirety to other locations.

Proposed amendments to Berkeley Municipal Code Chapter 12.96 will ensure that appropriate notice is provided to the City and community, including the expected reduction in services and impacted labor organizations. The amendment also requires public hearings prior to the discontinuation of services and development of a plan and information to maintain access to health services.

FINANCIAL IMPLICATIONS

Staff time

ENVIRONMENTAL SUSTAINABILITY

No impact

CONTACT PERSON

Jesse Arreguín, Mayor 510-981-7100

Attachments:

1. Ordinance amending BMC Chapter 12.96, Regulation of Changes in Health Care Facilities

ORDINANCE NO. #,###-N.S.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 12.96 REGARDING  
CHANGES IN HEALTH CARE FACILITIES

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

Section 1. That Berkeley Municipal Code Chapter 12.96 is amended to read as follows:

**Chapter 12.96**  
**REGULATION OF CHANGES IN HEALTH CARE FACILITIES**

Sections:

12.96.010 Findings.

12.96.020 Public notification of changes in health facilities required.

12.96.030 Notification to Community Health Commission and Setting of Public Hearing ~~Advisory Committee (CHAC)~~.

12.96.040 Findings based on evidence and testimony from public hearing.

12.96.050 Intent.

**Section 12.96.010 Findings.**

The City Council finds and declares that the City of Berkeley has a vital public interest in available health care for all members of the community. In recognition of that interest the City Council has continued its support of an independent City Health Department, established and supports a City health clinic and has created several health-related boards and commissions, including the Community Health Commission. The City further finds and declares that elimination or curtailment of health services by private hospitals and clinics in this community may have a detrimental effect on the health and well-being of this community.

**Section 12.96.020 Public notification of changes in health facilities required.**

Prior to closing a private acute care hospital or an acute psychiatric hospital (as defined under California Health and Safety Code Section 430.4 1250), in-patient and/or any clinics or out-patient facilities connected thereto, and prior to transferring units or services to a new location, or eliminating or reducing the level of services provided, the hospital shall provide public notice not less than ninety days in advance. Including Such notice must be posted at the main Information Desk in the lobby of the facility, at all entrances to of the facility or facilities affected, and must be notice published in a local newspaper or newspapers through which at least twenty-five percent of the households and businesses in the City of Berkeley are reached through regular distribution. The posted notice shall be clear and legible using a 12 point font, or larger and must be posted in at least two languages in addition to

English. The two languages shall be chosen in a manner designed to provide notice to those non-English-speaking persons who predominate among the hospital's patient and employee population. The hospital shall provide the notice in additional languages if necessary to fairly inform the patient population.

The content of the notice shall at a minimum provide a detailed list of the proposed reduction or changes and the potential number of patients and employees, affected by this facility and service, current utilization rates for service(s) being discontinued, describe the anticipated impact of discontinuance on individuals in the hospital's service area, and provide the date proposed for the discontinuation, transfer or reduction of services.

The hospital shall also send the notice to any labor organization representing employees of the hospital, whether or not the intended changes to hospital or facility services directly impact those employees.

This notice requirement shall apply only to discontinuation, reductions and/or transfers of services expected to remain in effect for 90 days, or more.

**Section 12.96.030 Notification to Community Health Commission and Setting of Public Hearing ~~Advisory Committee (CHAC).~~**

The hospital shall also mail a notice of intended actions to the Secretary of the Community Health Commission, City of Berkeley, 1947 Center Street, 2<sup>nd</sup> Floor, Berkeley, CA 94704, Advisory Committee (CHAC). Such notice shall be posted and mailed not less than ninety days prior to the intended date of the action. The hospital shall also mail the notice of intended actions to the City Manager and City Council.

Upon receipt of the Notice, the Secretary of the Community Health Commission shall schedule a hearing at a time and location determined to be adequate to accommodate public attendance no later than 60 days prior to the proposed discontinuance of services date set out in the hospital's notice.

At the public hearing, the hospital shall describe the services to be closed, plans for alternate access to the service, and shall afford the opportunity for interested parties to present their comments on the hospital's proposal.

**Exceptions:** The requirements for a public notice, hearing and subsequent determinations, planning and reporting by the hospital shall not be applicable when the following circumstances exist:

**(1)** When there is no interruption in services to patients because another hospital or healthcare system is simultaneously seeking licensure to continue providing the same array of services to the same patients as are currently served by the hospital that is providing the notice of discontinuation of services and that other provider has indicated that it will provide the services within the City of Berkeley. To qualify for

this exception, the hospital and the applicant who is seeking the licensure approval, must ensure that there is no interruption in the service(s) which are provided to the patients currently served by the hospital at this same site.

(2) When a hospital proposes to discontinue services at an existing campus or site in order to continue providing the same service(s), without interruption, to the same patient population at a new site that is located within the City of Berkeley. The new site must have sufficient physical capacity and resources to serve the same patient volume as was previously served by the hospital at the site where service(s) are to be discontinued.

#### **Section 12.96.040 Findings based on evidence and testimony from public hearing.**

CHAC The Community Health Commission shall make findings based on evidence and testimony from public hearing that the proposed action will or will not have a detrimental impact on the health care service of the community. CHAC The Community Health Commission shall further explore in these public hearings what alternative means are available to the community to provide the services to be eliminated or curtailed.

If the Community Health Commission finds that the discontinued service is necessary for preserving access and health status in the hospital's service area, the hospital shall, within 15 calendar days of such finding, submit a plan for assuring access to such necessary service(s) following the hospital's closure of the service(s). The plan must include the following elements:

- (1) Information on utilization of the service prior to proposed closure.
- (2) Information on the location and service capacity of alternative delivery sites.
- (3) Travel times to alternative service delivery sites.
- (4) An assessment of transportation needs post discontinuance and a plan for meeting those needs.
- (5) A protocol that details mechanisms to maintain continuity of care for current patients of the discontinued service.
- (6) A protocol that describes how patients in the hospital's service area will safely and timely access the services at alternative delivery sites.

#### **Section 12.96.050 Intent.**

It is the intent of the City of Berkeley that the meaning and effect of this Chapter be construed consistent with the purpose and construction of California Health and Safety Code Section 1442 and 1442.5. The City further intends that this Chapter be construed consistent with applicable state and federal law, but the notice and information requirements set forth in this Chapter may not be reduced by application of state or federal law.

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 Council Chambers, 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.