



Office of the City Attorney

INFORMATION CALENDAR  
April 14, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Farimah Brown, City Attorney

Subject: Public Health Officer's Order Directing the Placement of COVID-19 Isolation and Quarantine Facilities for Persons Experiencing Homelessness on Public Property

INTRODUCTION

The attached Order was issued by the Public Health Officer on April 2, 2020. Pursuant to the Order, public property in the City of Berkeley, including public parks and open space, may be used to isolate and quarantine persons experiencing homelessness who are infected with or exposed to novel coronavirus, and to provide temporary housing to persons experiencing homelessness who are at elevated risk of being exposed to coronavirus. The Order directs City employees and contractors to install necessary facilities and structures on public property.

CURRENT SITUATION AND ITS EFFECTS

Due to the global spread of a severe acute respiratory illness caused by a novel coronavirus (COVID-19), which is now a pandemic according to the World Health Organization, a public health emergency exists in the City. On March 3, 2020, the City Manager, in her capacity as Director of Emergency Services, issued a Proclamation of Local Emergency, which was ratified by the Council on March 10, 2020.

At this stage of the emergency caused by the pandemic, it is essential to slow virus transmission as much as possible to protect the most vulnerable and to prevent the health care system from being overwhelmed. Accordingly, the City's Emergency Operations Center (EOC), which was activated in response to the COVID-19 crisis, is pursuing multiple initiatives to prevent the transmission of COVID-19 citywide, with considerable focus on persons experiencing homelessness. The City has identified City properties located at 1281 University Avenue and 1654 Fifth Street as locations for providing temporary, safe shelter to persons experiencing homelessness who have been infected with or exposed to novel coronavirus, or are at elevated risk of being exposed to and/or becoming serious ill from coronavirus due to their lack of shelter or

medical condition. In addition, the City has identified a location in Aquatic Park that is suitable for locating temporary shelter (tents or trailers) to provide temporary housing for infected or exposed persons experiencing homelessness. In addition, the City is presently evaluating the option of using other City parks for purposes of providing temporary, safe shelter to persons experiencing homelessness.

On April 2, 2020, the Public Health Officer issued an Order authorizing actions necessary to establish temporary shelter for persons experiencing homelessness in City parks and open space areas. The intent of the Order is to ensure that persons who may have been infected with, have been exposed to, or have an elevated risk of exposure to novel coronavirus, including persons experiencing homelessness, have access to safe housing that isolates or quarantines them from other members of the community to prevent the spread of COVID-19.

The Public Health Officer has determined that it is necessary to direct available public property to be used for the purposes of providing temporary housing to isolate and quarantine persons experiencing homelessness who are infected with, have been exposed to, or have an elevated risk of exposure to novel coronavirus in order to prevent the spread of COVID-19 and the occurrence of additional cases in the community. The Order therefore authorizes public parks and open space to be used to isolate, quarantine, and provide shelter for such persons. Additionally, the Public Health Officer's Order directs EOC staff, other City of Berkeley employees, and any necessary contractors to take all necessary measures to acquire emergency shelter for persons experiencing homelessness who are infected with or exposed to novel coronavirus, and place and operate such facilities on public property within the City.

The Order is issued pursuant to California Health and Safety Code sections 101040 and 120175. Section 101040 provides that the Public Health Officer "may take any preventive measure that may be necessary to protect and preserve the public health from any public health hazard during any . . . 'state of emergency,' or 'local emergency.'" Section 120175 provides that in the event of the spread of a disease such as COVID-19, the Public Health Officer "shall take measures as may be necessary to prevent the spread of the disease or occurrence of additional cases." Because the Public Health Officer is required by state law to take action "necessary to prevent the spread of the disease or occurrence of additional cases," the Public Health Officer's authority to issue this Order supersedes local law restricting the permissible uses of public parks and public open space. (See BMC § 6.42.010.)

## BACKGROUND

As a result of the spread of COVID-19 within the City of Berkeley, the Public Health Officer has determined that it is necessary to make public property, including public parks and open space, available when necessary to shelter or quarantine persons experiencing homelessness who are infected with, have been exposed to, or have an elevated risk of exposure to the novel coronavirus.

ENVIRONMENTAL SUSTAINABILITY

The construction of temporary shelter in public parks will temporarily limit the availability of parks to City residents. The parks will be restored to their preexisting condition when the property is no longer need to support the City's COVID-19 response efforts.

FISCAL IMPACT

The Public Health Officer's Order does not change the underlying, and substantial, cost that is being incurred by the City to respond to the COVID-19 pandemic.

CONTACT PERSON

Dee Williams-Ridley, City Manager, City Manager's Office (510) 981-7000

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Attachments:

- 1: Order of the Health Officer of the City of Berkeley Directing the Placement of COVID-19 Isolation and Quarantine Facilities for Persons Experiencing Homelessness on Public Property

**ORDER OF THE HEALTH OFFICER  
OF THE CITY OF BERKELEY DIRECTING THE PLACEMENT OF  
FACILITIES FOR COVID-19 ISOLATION, QUARANTINE AND SOCIAL  
DISTANCING FOR PERSONS EXPERIENCING HOMELESSNESS ON  
PUBLIC PROPERTY**

DATE OF ORDER: April 2, 2020

UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 101475 AND 120175, THE HEALTH OFFICER OF THE CITY OF BERKELEY ("HEALTH OFFICER") ORDERS AS FOLLOWS:

1. This Order is issued based on evidence of increasing occurrence of COVID-19 within the City and throughout the Bay Area, scientific evidence and best practices regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically, and evidence that the age, condition, and health of a significant portion of the population of the City places it at risk for serious health complications, including death, from COVID-19. Due to the outbreak of COVID-19 in the general public, which is now a pandemic according to the World Health Organization, there is a public health emergency throughout the City. The scientific evidence shows that at this stage of the emergency, it is essential to slow virus transmission as much as possible to protect the most vulnerable and to prevent the health care system from being overwhelmed.
2. The intent of this Order is to help ensure that all persons who may have been or may become infected with or have been exposed to SARS-CoV-2 ("novel coronavirus"), including persons experiencing homelessness, have access to safe housing that isolates or quarantines them from other members of the community, or allows for greater social distancing, to prevent the spread of COVID-19.
3. The isolation and quarantine of persons experiencing homelessness who are infected with or exposed to novel coronavirus is necessary to prevent the spread of COVID-19 and the occurrence of additional cases in the community. Further, effective social distancing measures, which may be impossible in existing homeless encampments or shelters, are necessary to prevent the transmission of COVID-19 among individuals who experience homelessness. Therefore, it is necessary to direct available public property to be used for the purposes of providing temporary housing to such persons.
4. City of Berkeley Emergency Operations Center staff, other City of Berkeley employees, and any contractors they deem necessary to comply with this Order are hereby authorized and ordered to take all necessary measures to acquire emergency shelter for persons experiencing homelessness who are infected with, exposed to, or at elevated risk of being exposed to coronavirus, and to place and operate such facilities on public property within the City of Berkeley.

5. Emergency Operations staff and City employees and contractors shall have authority to install and maintain any facilities or structures, including fencing and sanitation facilities, necessary to implement the requirements of this Order.
6. Pursuant to Health and Safety Code sections 101475 and 120175, it is hereby ordered that public parks and open space are necessary for and may be used to isolate and quarantine persons experiencing homelessness who are infected with or exposed to novel coronavirus, and to provide temporary housing to persons experiencing homelessness who are at elevated risk of being exposed to coronavirus which could be reduced by better social distancing. The requirements of Berkeley Municipal Code Chapter 6.42 are superseded to the extent they conflict with this Order.
7. This Order is issued in accordance with, and incorporates by reference, the March 4, 2020 Proclamation of a State of Emergency issued by Governor Gavin Newsom, the March 3, 2020 Proclamation by the Director of Emergency Services Declaring the Existence of a Local Emergency in the City, and the March 10, 2020 Resolution of the City Council Ratifying and the Declaration of a Local Health Emergency.
8. The Order shall be effective for the duration of the Local Emergency and shall terminate upon the cessation of the Local Emergency. A reasonable amount of time after the cessation of the Local Emergency shall be allowed to remove temporary structures and related facilities from City parks and open space areas.
9. Copies of this Order shall promptly be: (1) posted at 2134 Martin Luther King Jr. Way, Berkeley, CA 94704; (2) posted on the City's website at [www.cityofberkeley.info](http://www.cityofberkeley.info); and (3) provided to any member of the public requesting a copy of this Order..
10. If any provision of this Order or its application to any person or circumstance is held to be invalid, then the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.

IT IS SO ORDERED:

  
Lisa B. Hernandez MD, MPH  
Health Officer of the City of Berkeley

Dated: April 2, 2020

