



Office of the City Manager

REVISED AGENDA MATERIAL

Meeting Date: September 15, 2020

Item Number: 12

Item Description: Civil Enforcement of Face Covering Orders; Amending BMC Section 2.50.040

Supplemental/Revision Submitted By: Paul Buddenhagen, Deputy City Manager

“Good of the City” Analysis:

The analysis below must demonstrate how accepting this supplement/revision is for the “good of the City” and outweighs the lack of time for citizen review or evaluation by the Council.

Included language in the staff report recommendation and Ordinance to clarify staff intent that there be an opportunity to cure by ensuring that fines are only implemented after utilizing educational tools and opportunities to correct, through written warnings and progressive fines associated with citations, with a priority for focusing enforcement on gatherings of more than twelve (12) people. Additionally, recommended the use of funds from fines be used for purchase of face coverings to be provided.

New language highlighted below

Adopt an urgency ordinance amending Berkeley Municipal Code Section 2.50.040 to authorize the City of Berkeley Public Health Officer or her designee to issue administrative citations for violation of a Health Officer order and establish a City policy to prioritize enforcement of violations occurring indoors or at outdoor gatherings of twelve or more people, and to further prioritize the use of written warnings and progressive fines associated with citations to achieve compliance with the order, to the greatest extent practicable.

2. Make a referral to the City Manager to consider the use of all funds garnered through the collection of fines related to this order for the purchase of facemasks for distribution to others.

ORDINANCE NO. -N.S.

URGENCY ORDINANCE: CIVIL ENFORCEMENT OF HEALTH OFFICER ORDERS; AMENDING BERKELEY MUNICIPAL CODE SECTION 2.50.040

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

Section 1. That Berkeley Municipal Code Section 2.50.040 is amended to read as follows:

2.50.040 Rule and regulation adoption authority.

A. The Director of Health, Housing and Community Services, subject to the approval of the City Manager, shall have authority to adopt rules and regulations for the prevention of disease and the promotion of health in the City. (Ord. 7227-NS § 1 (part), 2012)

B. The City of Berkeley Public Health Officer shall have authority to adopt rules, regulations, and orders pursuant to the authority granted under Health and Safety Code Sections 120175 through 120250.

1. The Health Officer and their designees shall have authority to enforce all such rules, regulations, and orders. Violation of any order issued by the Health Officer shall be subject to administrative citation under Chapter 1.28.

2. The City Manager may, upon request of any person receiving a citation under this Paragraph, waive the requirement to pay an administrative penalty upon a demonstration that payment of the penalty would result in undue financial burden or hardship. The person requesting a waiver of the administrative penalty must demonstrate that the condition leading to the violation of the Health Officer order has been corrected.

3. When enforcing a Health Officer order related to controlling the transmission of SARS-CoV-2 ("COVID-19"), it shall be the policy of the City of Berkeley to prioritize enforcement of violations occurring indoors or at outdoor gatherings of twelve or more people, and to further prioritize the use of written warnings and progressive fines associated with citations to achieve compliance with the order, to the greatest extent practicable.

Section 2. Vote Required, Immediately Effective

The Council determines that this Ordinance is necessary for the immediate preservation of the public health, peace and safety in accordance with Article XIV Section 93 of the Charter of the City of Berkeley and must therefore go into effect immediately. This Ordinance shall go into effect immediately upon a seven-ninths vote of the City Council, in satisfaction of the Charter of the City of Berkeley.

Consideration of supplemental or revised agenda material is subject to approval by a two-thirds roll call vote of the City Council. (BMC 2.06.070)

A minimum of **42 copies** must be submitted to the City Clerk for distribution at the Council meeting. This completed cover page must accompany every copy.

Copies of the supplemental/revised agenda material may be delivered to the City Clerk Department by 12:00 p.m. the day of the meeting. Copies that are ready after 12:00 p.m. must be delivered directly to the City Clerk at Council Chambers prior to the start of the meeting.

Supplements or Revisions submitted pursuant to BMC § 2.06.070 may only be revisions of the original report included in the Agenda Packet.

