

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

BERKELEY CITY COUNCIL SPECIAL MEETING

**Monday, July 8, 2019
10:00 AM**

2180 Milvia Street, 6th Floor - Redwood Room

Committee Members:

Councilmembers Rashi Kesarwani, Ben Bartlett, 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 - June 24, 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. Air Quality Monitoring Program

From: Councilmembers Bartlett, Harrison, and Davila

Referred: April 8, 2019

Due: October 28, 2019

Recommendation: Referral to the Public Health Department to establish an advanced air quality monitoring program in Berkeley to provide data about how air quality in the city varies over time and between neighborhoods. To better implement this program, the City should form partnerships with technology companies, environmental research groups, and healthcare providers.

Financial Implications: See report

Contact: Ben Bartlett, Councilmember, District 3, 981-7130

3. Ban Racial, Ethnic, Cultural, and Religious Discrimination on the Basis of Hairstyle or Headwear *(Item contains revised materials)*

From: Councilmembers Robinson, Davila, Bartlett, and Hahn

Referred: March 11, 2019

Due: September 15, 2019

Recommendation: Adopt a new Section of the Berkeley Municipal Code: Chapter 13.23 DISCRIMINATION ON THE BASIS OF HAIRSTYLE OR HEADWEAR IN EMPLOYMENT, HOUSING, AND PUBLIC ACCOMMODATIONS, prohibiting grooming or appearance policies which target natural or traditional hair, hairstyles, or headwear.

Financial Implications: See report

Contact: Rigel Robinson, Councilmember, District 7, 981-7170

Committee Action Items

4a. 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:

1. 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.
2. Request an analysis of receivers and conservators by the City.
3. Send representatives from the City to the fairness hearing for Mr. Powell to raise concerns.

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

4b. 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:

1. 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
2. Request an analysis of receivers and conservators by the City
3. Send representatives from the City to the fairness hearing for Mr. Powell to raise concerns.

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

Committee Action Items

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 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, 981-7000

5. **Pilot Cannabis Event at Cesar Chavez Park**

From: Councilmembers Bartlett and Davila

Referred: June 24, 2019

Due: December 9, 2019

Recommendation: That the City Council permit a pilot cannabis event at Cesar Chavez Park. Adopt an ordinance amending BMC Chapter 12.22 to permit temporary cannabis events for a period of one-year after the effective date of the ordinance.

Financial Implications: Staff time

Contact: Ben Bartlett, Councilmember, District 3, 981-7130

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.

- **None**

Items for Future Agendas

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

Adjournment

~~~~~  
*This is a meeting of the Berkeley City Council Health, Life Enrichment, Equity & Community Committee. Since a quorum of the Berkeley City Council may actually be present to discuss matters with the Council Health, Life Enrichment, Equity & Community Committee, this meeting is being noticed as a special meeting of the Berkeley City Council as well as a Council Health, Life Enrichment, Equity & Community Committee meeting.*

*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. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, 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 981-6418 (V) or 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.

~~~~~  
I hereby certify that the agenda for this special meeting 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 July 3, 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**

BERKELEY CITY COUNCIL SPECIAL MEETING MINUTES

**Monday, June 24, 2019
10:00 AM**

2180 Milvia Street, 6th Floor - Redwood Room

Committee Members:

Councilmembers Rashi Kesarwani, Ben Bartlett, and Sophie Hahn

Roll Call: 10:06 a.m. All present.

Public Comment on Non-Agenda Matters – 1 speaker

Councilmember Kesarwani absent 10:08 a.m. – 10:11 a.m.

Minutes for Approval

Draft minutes for the Committee's consideration and approval.

1. Minutes - June 10, 2019

Action: M/S/C (Bartlett/Hahn) to approve the minutes of June 10, 2019.

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

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. Ban Racial, Ethnic, Cultural, and Religious Discrimination on the Basis of Hairstyle or Headwear *(Item contains revised materials)*

From: Councilmembers Robinson, Davila, Bartlett, and Hahn

Referred: March 11, 2019

Due: September 15, 2019

Recommendation: Adopt a new Section of the Berkeley Municipal Code: Chapter 13.23 DISCRIMINATION ON THE BASIS OF HAIRSTYLE OR HEADWEAR IN EMPLOYMENT, HOUSING, AND PUBLIC ACCOMMODATIONS, prohibiting grooming or appearance policies which target natural or traditional hair, hairstyles, or headwear.

Financial Implications: See report

Contact: Rigel Robinson, Councilmember, District 7, 981-7170

Action: 0 speakers. Revised material submitted by author. Discussion held. The committee recommended the author consider the following changes to the item:

- Clarify application of Ordinance as only City of Berkeley vs. citywide
- Change department definition from HHCS to City Manager
- Reexamine the list of exceptions - are all included for the entire City?
- Is the enforcement too broad/too many avenues?
- As recommended by HHCS, change references from public health to health and safety
- As recommended by the City Attorney's office, change "different" in 13.23.040 (G) to "similarly situated"

Item continued to July 8, 2019.

3. Referral Responses: Managing Recreational Vehicle (RV) Parking *(Item contains supplemental material)*

From: City Manager

Referred: March 26, 2019

Due: September 30, 2019

Recommendation: On March 26, 2019, the City Council referred this item to the Health, Life Enrichment, Equity & Community Committee to establish basic criteria for a "permanent" standard two-week permitting process. The standard two-week permit should consider the following:

- A limited number of permits to be issued by the City per month (or other increment).
- Locations to be geographically dispersed among all Council districts.
- A reasonable fee to cover City costs associated with the permit.

Financial Implications: See Report

Contact: Paul Buddenhagen, City Manager's Office, 981-7000

Committee Action Items

Action: 7 speakers. Revised material submitted. Discussion held. M/S/C (Kesarwani/Bartlett) to send the basic criteria for a two-week RV permitting process to the City Council with a positive recommendation and include the following changes in the final report:

- Fix typo “RPP” in #6
- Change house cars or campers in #7 to RV
- Include outreach materials for homeless and other City services when permit is issued.

4. Air Quality Monitoring Program

From: Councilmembers Bartlett, Harrison, and Davila

Referred: April 8, 2019

Due: October 28, 2019

Recommendation: Referral to the Public Health Department to establish an advanced air quality monitoring program in Berkeley to provide data about how air quality in the city varies over time and between neighborhoods. To better implement this program, the City should form partnerships with technology companies, environmental research groups, and healthcare providers.

Financial Implications: See report

Contact: Ben Bartlett, Councilmember, District 3, 981-7130

Action: Item continued to July 8, 2019.

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

From: Housing Advisory Commission

Referred: June 11, 2019

Due: November 26, 2019

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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

5b. 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

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Unscheduled Items

(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

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Financial Implications: See report

Contact: Bre Slimick, Commission Secretary, 981-7000

Items for Future Agendas

- **Discussion of items to be added to future agendas**

The order of the agenda for July 8, 2019:

1. Minutes for approval
2. Air Quality Monitoring Program
3. Hairstyle discrimination Ordinance
4. Code enforcement actions related to Mr. Powell

- **Discussion of future hearings and open forums**

Adjournment

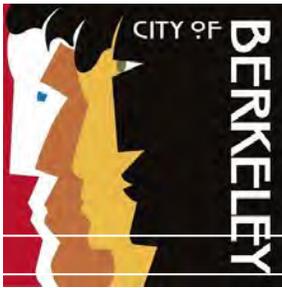
Action: M/S/C (Bartlett/Hahn) to adjourn the meeting.

Vote: All Ayes.

Adjourned at 12:06 p.m.

I hereby certify that this is a true and correct record of the Health, Life Enrichment, Equity & Community Committee meeting held on June 24, 2019.

April Richardson, Assistant City Clerk



City of Berkeley, District 3
2180 Milvia Street, 5th Floor
Berkeley, CA 94704
PHONE 510-981-7130
EMAIL: bbartlett@cityofberkeley.info

CONSENT CALENDAR
April 23, 2019

To: Honorable Mayor and Members of the City Council
From: Councilmembers Ben Bartlett, Kate Harrison & Cheryl Davila
Subject: Air Quality Monitoring Program

RECOMMENDATION:

Referral to the Public Health Department to establish an advanced air quality monitoring program in Berkeley to provide data about how air quality in the city varies over time and between neighborhoods. To better implement this program, the City should form partnerships with technology companies, environmental research groups, and healthcare providers.

CURRENT SITUATION

Berkeley has had a history of poor air quality, with causes ranging from smoke caused by regional wildfires to air pollution emitted by high amounts of vehicular traffic throughout the Bay Area. While this is harmful to all Berkeley residents in general, it is particularly harmful to those with respiratory issues and without adequate healthcare. By upgrading air quality monitoring in Berkeley, the City can provide more accurate reports to its residents and identify which areas of Berkeley contain the highest levels of air pollutants and address these issues accordingly. The program will also have the benefit of identifying poor air quality areas that coincide with low-income neighborhoods. Since these particular neighborhoods are less likely to have access to affordable and necessary medical services, they will be at much higher risk of health issues caused by air pollutants. Therefore, this program, in conjunction with the Health Innovation Zone, will not only benefit the general population but also serve to provide better, more equitable healthcare to underserved and low-income neighborhoods in Berkeley.

BACKGROUND:

Currently, Berkeley's primary air monitoring station is located in the Berkeley Aquatic Park area. This single station provides daily Air Quality Index (AQI) measurements as well as ozone and fine particulate matter (PM_{2.5}) levels¹. The station can provide only a single aggregate estimate for the entire city of Berkeley once every hour. However, it is unable to provide any measurements for different areas of the city which may experience disparate levels of air pollution due to Berkeley's varied geography and the

¹ <http://www.baaqmd.gov/about-air-quality/current-air-quality/air-monitoring-data?DataViewFormat=daily&DataView=aqi&ParameterId=316>

natural formation of inversion layers in the Bay Area.² These factors, along with the layout of the city, tend to place wealthier neighborhoods at higher elevations (such as on tops of hills) and low-income neighborhoods at lower elevations, with air pollutants possibly accumulating at ground level.³ Neighborhoods near high-traffic roadways are also believed to have higher levels of air pollution due to vehicle emissions.⁴ While all people are harmed by the effects of air pollution, those who consistently live in areas with poorer air quality are at a higher risk of developing long-term respiratory and other health-related issues. If these areas also happen to be low-income neighborhoods, then residents here may have more difficulty affording access to the healthcare necessary to treat or prevent the adverse health effects of air pollution.

In order to determine how different the levels of air pollution are between high-elevation and low-elevation neighborhoods as well as high-traffic and low-traffic areas, the City of Berkeley should upgrade its air monitoring network by installing sensors in different neighborhoods throughout the city. These smaller, less expensive sensors will complement the Berkeley Aquatic Park station by enhancing it with highly localized data that may reveal the differences in air quality in separate parts of Berkeley. Should these disparities exist, the City of Berkeley will be better equipped and informed to address these and other health-related issues.

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, AND LAWS

Currently, The Bay Area Air Quality Management District maintains an air quality monitoring network consisting of over 30 stations distributed among the nine Bay Area counties. This network measures concentrations of pollutants for which health-based ambient air quality standards have been set by the U.S. Environmental Protection Agency and the California Air Resources Board. The network also measures concentrations of various pollutants designated as Toxic Air Contaminants by the state of California.⁵ However, only one of these stations is located within Berkeley. Thus, to upgrade the quality of air monitoring within the city, a network of sensors should be installed throughout the city.

ACTIONS/ALTERNATIVES CONSIDERED

This program is modeled after the Breathe London project.

OUTREACH OVERVIEW AND RESULTS

² <http://static.lawrencehallofscience.org/scienceview/scienceview.berkeley.edu/html/view/plume.php>

³ <https://www.berkeleyside.com/2013/01/04/a-map-details-berkeley-gulf-between-rich-and-poor>

⁴ <https://cen.acs.org/environment/pollution/London-starts-worlds-largest-air/97/web/2019/02>

⁵ <http://www.baaqmd.gov/about-air-quality/air-quality-measurement/ambient-air-monitoring-network>

This legislation is designed to make it possible for the City of Berkeley to form partnerships with organizations such as technology companies, environmental groups, and healthcare groups to better implement this program. Recommendations were also received from former Councilmember Gordon Wozniak.

RATIONALE FOR RECOMMENDATION

Currently, Berkeley's single air monitoring station is located in the Berkeley Aquatic Park area, which provides daily measurements of air pollutant levels for the entire city once every hour. However, it is unable to provide any measurements for different areas of the city which may experience disparate levels of air pollution due to Berkeley's varied geography and the natural formation of inversion layers in the Bay Area. In order to determine how different the levels of air pollution are between high-elevation and low-elevation neighborhoods as well as high-traffic and low-traffic areas, the City of Berkeley should upgrade its air monitoring network by installing sensors in different neighborhoods throughout the city. By identifying poor air quality areas that coincide with low-income neighborhoods, the City can address health-related issues caused by air pollution more easily.

IMPLEMENTATION, ADMINISTRATION AND ENFORCEMENT

The program will be financed by the City of Berkeley with support from possible partnerships with interested organizations.

FISCAL IMPACTS OF RECOMMENDATION

Staff time and costs associated with purchasing, installing, and maintaining equipment.

ENVIRONMENTAL SUSTAINABILITY

This program will provide better measurements of air quality and help identify and address environmental issues related to air pollution.

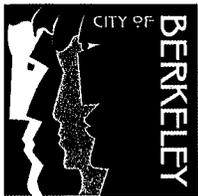
OUTCOMES AND EVALUATION

It is expected that the City of Berkeley and Public Health Department will partner with other organizations to create an effective and cost-efficient program to upgrade Berkeley's air quality monitoring system.

CONTACT PERSON

Councilmember Ben Bartlett
Brian Gan

510-981-7130
brianjgan@gmail.com



CITY COUNCILMEMBER
RIGEL ROBINSON
DISTRICT 7

**RECEIVED AT
COUNCIL MEETING OF:**

JUN 24 2019 03

**OFFICE OF THE CITY CLERK
CITY OF BERKELEY
March 26, 2019**

To: Honorable Mayor and Members of the City Council
From: Councilmembers Rigel Robinson, Cheryl Davila, Ben Bartlett, and Sophie Hahn
Subject: Ban Racial, Ethnic, Cultural, and Religious Discrimination on the Basis of Hairstyle or Headwear

RECOMMENDATION

Adopt a new Section of the Berkeley Municipal Code: Chapter 13.23 DISCRIMINATION ON THE BASIS OF HAIRSTYLE OR HEADWEAR IN EMPLOYMENT, HOUSING, AND PUBLIC ACCOMMODATIONS, prohibiting grooming or appearance policies which target natural or traditional hair, hairstyles, or headwear.

BACKGROUND

In February 2019, the New York City Commission on Human Rights (NYCCHR) issued new Legal Enforcement Guidance on Race Discrimination on the Basis of Hair, under the New York City Human Rights Law (NYCHRL). The City of Berkeley should follow in New York's footsteps, and take similar action to expressly prohibit discriminatory hair styling and appearance requirements in the areas of employment, housing, school, and other areas of daily living.

In New York, the NYCCHR found the contemporary manifestation of racial bias to include discrimination based on characteristics and cultural practices associated with being African American, including prohibitions on natural hair. In the 2019 Enforcement Guide, NYCCHR states current anti-discrimination law should be interpreted to give people of color "the right to maintain natural hair, treated or untreated hairstyles such as locs, cornrows, twists, braids, Bantu knots, fades, Afros, and/or the right to keep hair in an uncut or untrimmed state."

This falls under the range of human rights issues which The Berkeley Municipal Code (BMC) identifies as its mission to solve. As stated in BMC Section 1.22.010, "the City of Berkeley shall promote: (1) Higher standards of living, full employment, and conditions of economic and social progress and development; (2) Solutions of local economic, social, health and related problems; and regional cultural and educational cooperation; and (3) Universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion."

To achieve these goals, the Council should adopt a new ordinance, BMC Chapter 13.23, a draft of which is attached. Chapter 13.23 would prohibit racial, ethnic, cultural, or religious discrimination on the basis of hair, hair styling, or headwear, and enumerate

the rights of all persons to maintain natural, untreated, and traditional hairstyles and headwear in all sectors of employment, housing, and public accommodations. Chapter 13.23 is modeled after other sections of the code dealing with anti-discrimination law under Title 13 (PUBLIC PEACE, MORALS AND WELFARE), including Chapters 13.20, 13.27, 13.28, and 13.30, and as well as Chapter 13.101, the Berkeley Family Friendly and Environment Friendly Workplace Ordinance.

ALTERNATIVE ACTIONS CONSIDERED

An alternative considered was to issue local legislative interpretation guidelines regarding both the illegality of disparate impact grooming or appearance policies under the Fair Employment and Housing Act, and the illegality of refusing public services on the basis of mutable characteristics under California Civil Code Section 51. It was found that adopting new code language to codify these findings would be more enforceable and legally defensible, as City staff have greater leeway in interpreting local statute than state or federal law.

FINANCIAL IMPLICATIONS

Limited Variable. Staff time to implement the program, including crafting exemptions. Enforcement would mostly be done on a complaint basis and by private right of action, limiting staff time required after adoption costs would be dependent on the volume of complaints received by the City, and the level and type of enforcement that the City Manager finds is feasible and necessary.

ENVIRONMENTAL SUSTAINABILITY

None.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170
Mars Svec-Burdick, Intern to Councilmember Rigel Robinson

Attachments:

- 1: Ordinance
- 2: NYC Commission on Human Rights Legal Enforcement Guidance on Race Discrimination on the Basis of Hair
<https://www1.nyc.gov/assets/cchr/downloads/pdf/Hair-Guidance.pdf>
- 3: Unruh Civil Rights Act, California Civil Code Section 51
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CIV§ionNum=51
- 4: Fair Employment and Housing Act
https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=GOV&division=3.&title=2.&part=2.8.&chapter=&article=

ORDINANCE NO. -N.S.

ADOPT BERKELEY MUNICIPAL CODE CHAPTER 13.23 TO PROHIBIT
DISCRIMINATION ON THE BASIS OF HAIRSTYLE IN EMPLOYMENT, HOUSING,
AND PUBLIC ACCOMMODATIONS

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

Section 1. That Berkeley Municipal Code Chapter 13.23 is added to read as follows:

Chapter 13.23
**DISCRIMINATION ON THE BASIS OF HAIRSTYLE IN EMPLOYMENT, HOUSING,
AND PUBLIC ACCOMMODATIONS**

13.23.010 Purpose

~~The purpose of this Chapter is to protect public health, safety and welfare. It does this by seeking~~ It is the policy of the City to eliminate all forms of racial, ethnic, cultural, and religious discrimination within the City. It is the intent of the City Council to make unlawful grooming and appearance policies which have the effective result of discrimination on the basis of racial, ethnic, cultural, or religious identity.

13.23.020 Findings

The City Council of the City of Berkeley finds and determines as follows:

- A) Discrimination against racial, ethnic, cultural, and religious minorities in employment, housing, and public accommodations exists within the City. The council further finds that the existence of such discrimination poses a substantial threat to the economic and social welfare of a sizeable segment of the community, namely, racial minority groups.
- B) Racial, ethnic, cultural, and religion based discriminatory grooming or appearance policies exist in places of employment, housing, and public accommodations within the City. These policies exacerbate inequality in the workplace and housing market.
- C) The overall effect of grooming or appearance policies which target the natural or traditional hair styles and headwear of racial, ethnic, cultural, and religious minority groups is to require a disproportionate outlay of monetary and time resources from members of these groups in order to participate in daily living, and to restrict these groups from fully and freely participating in public life.
- D) Discrimination through grooming and appearance policies falls most heavily on low income communities, but cuts across all racial, ethnic, cultural, religious, and economic groups.

13.23.030 Definitions

As used in this chapter, the following words and phrases shall have the meanings ascribed to them in this subsection:

A) "Department" means the City of Berkeley's Health, Housing, and Community Services Department, or any successor department, or any other Department as designated by the City Manager.

B) "Grooming or appearance policies" or "appearance policies" means any code of dress, grooming, or appearance, written or unwritten, under which an individual is in any way penalized for noncompliance.

C) "Natural hair" means all natural patterns of hair growth across all racial and ethnic groups, including but not limited to treated or untreated hairstyles such as locs, cornrows, twists, braids, Bantu knots, fades, Afros, and/or the right to keep hair in an uncut or untrimmed state. This shall include all hair grown on the head and face.

D) "Place of public accommodation" or "public accommodations" means providers, whether licensed or unlicensed, of goods, services, facilities, accommodations, advantages or privileges of any kind, and places, whether licensed or unlicensed, where goods, services, facilities, accommodations, advantages or privileges of any kind are extended, offered, sold, or otherwise made available. This unambiguously includes schools, due to the historical proliferation of racially discriminatory grooming and appearance policies in educational settings.

E) "Traditional hair" means styles of maintaining hair of cultural or religious significance to any racial, ethnic, cultural, or religious group, including keeping hair uncut or completely shaven. This shall include all hair grown on the head and face.

F) "Traditional headwear" means clothing that is worn on the head that is culturally or religiously significant to any racial, ethnic, cultural, or religious group.

13.23.040 Unlawful activities

It is unlawful for any employer, business owner, property owner, provider of public accommodation, or any agent or employee thereof to discriminate in the conditions or enforcement of a grooming or appearance policy. Such prohibited discrimination includes but is not limited to the following:

A) Publish, verbally state, or otherwise communicate an explicitly or implicitly mandatory appearance policy which includes any condition prohibiting natural or traditional hair or headwear, either textually or in practice;

B) Require, in order to access employment opportunities, housing accommodations, public accommodations, or the negotiation or carrying out thereof, individual adherence to a grooming or appearance policy which explicitly or implicitly bans any natural or traditional hair style or headwear.

C) Refuse to enter into negotiations regarding hiring, employment, compensation, lease or rental of property, or otherwise withhold from any person any provision of public accommodations because of their natural or traditional hair style or headwear;

D) Represent to any person because of their natural or traditional hair style or headwear that employment opportunities, housing accommodations, or public accommodations are not available when such opportunities or accommodations are in fact available;

E) Include a clause or provision in any legal document or agreement that the employee, tenant, or recipient of public accommodations shall adhere to a grooming or appearance policy which compromises their ability to maintain a natural or traditional hair style or headwear;

F) Penalize an employee, tenant, or recipient of public accommodations for violating an appearance policy which unlawfully bans natural or traditional hair or headwear, in any manner including financial penalties, termination, withholding of wage increases, or denial of services, housing or access.

G) Enforce grooming or appearance policies inconsistently between different employees, tenants, or recipients of public accommodations or groups of employees, tenants, or recipients of public accommodations ~~members of different groups,~~ to the effect of enacting unequal and discriminatory grooming standards.

13.23.050 Exemptions – Health and Safety

~~The Department, in consultation with the Director of Human Resources, may exempt non-City Employees upon request of their non-City Employers, shall draft and maintain a list of exemptions from this ordinance based upon operational requirements related to health and safety according to criteria developed by the Agency and the Director of Human Resources. Such The criteria for exemption shall be limited to only the advancement of public safety or public health, and exemptions shall be eliminated when the public health or public safety basis for the exemption no longer exists.~~

~~A) Department Directors may request an exemption from this Chapter from the Director of Human Resources for certain classifications of City employees based upon operational requirements related to health and safety according to criteria developed by the Director of Human Resources. Such criteria shall advance public safety or public health.~~

13.23.060 Enforcement

A) Any aggrieved person may enforce the provisions of this chapter by means of a civil action.

B) Any person who commits, or proposes to commit, an action in violation of this chapter may be enjoined therefrom by any court of competent jurisdiction.

C) Action for injunction under this subsection may be brought by any aggrieved person, by the Ceity Aattorney, by the district attorney, or by any person or entity which will fairly and adequately represent the interests of the protected class.

D) Any person who alleges violation of any provision of the requirements of this chapter may report such acts to the City. The City Manager may establish a procedure for the Department to receive and investigate such complaints and take appropriate enforcement action, or may select another department or agency.

E) Any complaints received shall be treated as confidential matters, to the extent permitted by law. Any complaints received and all investigation documents related thereto shall be deemed exempt from disclosure pursuant to California Government Code, Sections 6254 and 6255.

13.23.070 Liability for costs and damages

Any person who violates the provisions of this chapter shall be liable to each person injured by such violation for reasonable attorney's fees and costs as determined by the court, plus damages equaling three times the amount of actual damages or a minimum of five hundred dollars.

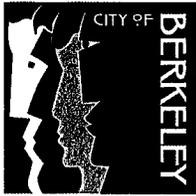
13.23.080 Criminal penalties

Any person who is found by a court of competent jurisdiction to be guilty of a willful violation of the provisions of this chapter shall be guilty of a misdemeanor as set forth in Chapter 1.20 of this code.

13.23.090 Limitation on action.

Actions under this chapter must be filed within one year of the alleged discriminatory acts.

Section 3. 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.



CITY COUNCILMEMBER
RIGEL ROBINSON
DISTRICT 7

RECEIVED AT
COUNCIL MEETING OF:
MAY 13 2019

OFFICE OF THE CITY CLERK
CITY OF BERKELEY
March 26, 2019

To: Honorable Mayor and Members of the City Council
From: Councilmembers Rigel Robinson, Cheryl Davila, and Ben Bartlett, and Sophie Hahn
Subject: Ban Racial, Ethnic, Cultural, and Religious Discrimination on the Basis of Hairstyle or Headwear

RECOMMENDATION

~~Ban racial discrimination on the basis of a person's natural hairstyle by either:~~

- ~~Adopt a new Section of the Berkeley Municipal Code: Chapter 13.23 RACIAL DISCRIMINATION ON THE BASIS OF HAIRSTYLE OR HEADWEAR IN EMPLOYMENT, HOUSING, AND PUBLIC ACCOMMODATIONS, prohibiting grooming or appearance policies which target natural or traditional hair, or hairstyles, or headwear.~~

~~Or~~

- ~~Issue local legislative interpretation guidelines regarding both the illegality of disparate impact grooming or appearance policies under the Fair Employment and Housing Act, and the illegality of refusing public services on the basis of mutable characteristics under California Civil Code Section 51.~~

BACKGROUND

~~In February 2019, the New York City Commission on Human Rights (NYCCHR) issued new Legal Enforcement Guidance on Race Discrimination on the Basis of Hair, under the New York City Human Rights Law (NYCHRL). The City of Berkeley should follow in New York's footsteps, and take similar action to expressly prohibit racially discriminatory hair styling and appearance requirements in the areas of employment, housing, school, and other areas of daily living. In doing so, the Council should consider a number of approaches.~~

In New York, the NYCCHR found the contemporary manifestation of racial bias to include discrimination based on characteristics and cultural practices associated with being African American, including prohibitions on natural hair. In the 2019 Enforcement Guide, NYCCHR states current anti-discrimination law should be interpreted to give people of color "the right to maintain natural hair, treated or untreated hairstyles such as locs, cornrows, twists, braids, Bantu knots, fades, Afros, and/or the right to keep hair in an uncut or untrimmed state."

OFFICE OF THE CITY CLERK
CITY OF BERKELEY

0105 5 1 YAM

This falls under the range of human rights issues which The Berkeley Municipal Code (BMC) identifies as its mission to solve. As stated in BMC Section 1.22.010, "the City of Berkeley shall promote: (1) Higher standards of living, full employment, and conditions of economic and social progress and development; (2) Solutions of local economic, social, health and related problems; and regional cultural and educational cooperation; and (3) Universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion."

~~In To achieving achieve~~ these goals, the Council has ~~multiple potential legislative routes to consider.~~ Firstly, Berkeley could should adopt a new ordinance, BMC Chapter 13.23, a draft of which is attached. Chapter 13.23 would prohibit racial, ethnic, cultural, or religious discrimination on the basis of hair, or hair styling, or headwear, and enumerate the rights of all persons to maintain natural, untreated, and traditional hairstyles and headwear in all sectors of employment, housing, and public accommodations. Chapter 13.23 is modeled after other sections of the code dealing with anti-discrimination law, including Chapters 13.20, 13.28, and 13.30, as well as Chapter 13.101, the Berkeley Family Friendly and Environment Friendly Workplace Ordinance.

~~Modeling a different approach, the NYCCHR 2019 Enforcement Guide is written as a statutory interpretation document, under the NYCHRL. Similarly, the Council could issue local interpretation guidelines for two comparable California State laws: The 1959 Fair Employment Housing Act (FEHA) to cover discrimination in employment, and the 1959 Unruh Civil Rights Act (Unruh Act) to cover discrimination in places of public accommodation.~~

~~One component of FEHA's ban on discriminatory workplace practices covers disparate impact discrimination, which implicates rules that apply to all employees but have a disproportionate impact on members of a protected class. Any hair styling rule that permits members of some groups to wear their hair naturally, but requires others to use more extensive procedures, could be interpreted to be in violation of FEHA.~~

~~The Unruh Act, California Civil Code sections 51 through 52, states that a broad range of protected demographic categories "are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever." According to settled legal precedent, the Unruh Act is understood broadly to prohibit public businesses from refusing service based on arbitrary or appearance-based characteristics. Thus, any denial of access to a place of public accommodation based on hairstyle is a clear violation of the Unruh Act.~~

ALTERNATIVE ACTIONS CONSIDERED

An alternative considered was to issue local legislative interpretation guidelines regarding both the illegality of disparate impact grooming or appearance policies under the Fair Employment and Housing Act, and the illegality of refusing public services on the basis of mutable characteristics under California Civil Code Section 51. It was found

that adopting new code language to codify these findings would be more enforceable and legally defensible, as City staff have greater leeway in interpreting local statute than state or federal law.

FINANCIAL IMPLICATIONS

Limited. Enforcement would mostly be done on a complaint basis and by private right of action, limiting staff time required after adoption. None.

ENVIRONMENTAL SUSTAINABILITY

None.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170
Mars Svec-Burdick, Intern to Councilmember Rigel Robinson

Attachments:

1: Ordinance

2: NYC Commission on Human Rights Legal Enforcement Guidance on Race
Discrimination on the Basis of Hair

<https://www1.nyc.gov/assets/cchr/downloads/pdf/Hair-Guidance.pdf>

3: Unruh Civil Rights Act, California Civil Code Section 51

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CIV§ionNum=51

4: Fair Employment and Housing Act

https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=GOV&division=3.&title=2.&part=2.8.&chapter=&article=

ORDINANCE NO. -N.S.

ADOPT BERKELEY MUNICIPAL CODE CHAPTER 13.23 TO PROHIBIT RACIAL DISCRIMINATION ON THE BASIS OF HAIRSTYLE IN EMPLOYMENT, HOUSING, AND PUBLIC ACCOMMODATIONS

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

Section 1. That Berkeley Municipal Code Chapter 13.23 is added to read as follows:

Chapter 13.23
RACIAL DISCRIMINATION ON THE BASIS OF HAIRSTYLE IN EMPLOYMENT, HOUSING, AND PUBLIC ACCOMMODATIONS

Chapter-13.23.010 Purpose

The purpose of this Chapter is to protect public health, safety and welfare. It does this by seeking to eliminate all forms of racial, ethnic, cultural, and religious discrimination within the City.

Chapter-13.23.020 Findings

The City Council of the City of Berkeley finds and determines as follows:

A) Discrimination against racial, ethnic, cultural, and religious minorities in employment, housing, and public accommodations exists within the City. The council further finds that the existence of such discrimination poses a substantial threat to the economic and social welfare of a sizeable segment of the community, namely, racial minority groups.

B) Racial, ethnic, cultural, and religion based by discriminatory grooming or appearance policies exist in places of employment, housing, and public accommodations within the City. These policies exacerbate inequality in the workplace and housing market.

C) The overall effect of grooming or appearance policies which target the natural or traditional hair styles and headwear of racial, ethnic, cultural, and religious minority groups is to require a disproportionate outlay of monetary and time resources from members of these groups in order to participate in daily living, and to restrict these groups from fully and freely participating in public life.

D) Discrimination through grooming and appearance policies falls most heavily on low income communities, but cuts across all racial, ethnic, cultural, religious, and economic levelsgroups.

Chapter-13.23.030 Definitions

As used in this chapter, the following words and phrases shall have the meanings ascribed to them in this subsection:

A) "Department" means the City of Berkeley's Health, Housing, and Community Services Department, or any successor department, or any other Department as designated by the City Manager.

A)B) "Grooming or appearance policies" or "appearance policies" means any code of dress, grooming, or appearance, written or unwritten, under which an individual is in any way penalized for noncompliance.

B)C) "Natural hair" means all natural patterns of hair growth across all racial and ethnic groups, including but not limited to treated or untreated hairstyles such as locs, cornrows, twists, braids, Bantu knots, fades, Afros, and/or the right to keep hair in an uncut or untrimmed state.

C)D) "Place of public accommodation" or "public accommodations" means providers, whether licensed or unlicensed, of goods, services, facilities, accommodations, advantages or privileges of any kind, and places, whether licensed or unlicensed, where goods, services, facilities, accommodations, advantages or privileges of any kind are extended, offered, sold, or otherwise made available. This unambiguously includes schools, due to the historical proliferation of racially discriminatory grooming and appearance policies in educational settings.

E) "Traditional hair" means styles of maintaining hair of cultural or religious significance to any racial, ethnic, cultural, or religious group, including keeping hair uncut or completely shaven.

F) "Traditional headwear" means clothing that is worn on the head that is culturally or religiously significant to any racial, ethnic, cultural, or religious group.

Chapter 13.23.040 Unlawful activities

It is unlawful for any employer, business owner, property owner, provider of public accommodation, or any agent or employee thereof to discriminate in the conditions or enforcement of a grooming or appearance policy. Such prohibited discrimination includes but is not limited to the following:

A) Publish, verbally state, or otherwise communicate an explicitly or implicitly mandatory appearance policy which includes any condition prohibiting natural or traditional hair or headwear, either textually or in practice;

B) Require, in order to access employment opportunities, housing accommodations, public accommodations, or the negotiation or carrying out thereof, individual adherence to a grooming or appearance policy which explicitly or ~~implicitly~~ implicitly bans any natural or traditional hair style or headwear.

C) Refuse to enter into negotiations regarding hiring, employment, compensation, lease or rental of property, or otherwise withhold from any person any provision of public accommodations because of their natural or traditional hair style or headwear;

D) Represent to any person because of their natural or traditional hair style or headwear that employment opportunities, housing accommodations, or public accommodations are not available when such opportunities or accommodations are in fact available;

E) Include a clause or provision in any legal document or agreement that the employee, tenant, or recipient of public accommodations shall adhere to a grooming or appearance policy which compromises their ability to maintain a natural or traditional hair style or headwear;

F) Penalize an employee, tenant, or recipient of public accommodations for violating an appearance policy which unlawfully bans natural or traditional hair or headwear, in any manner including financial penalties, termination, withholding of wage increases, or denial of services, housing or access.

G) Enforce grooming or appearance policies inconsistently between members of different groups, to the effect of enacting unequal and discriminatory grooming standards.

13.23.050 Exemptions – Health and Safety

A) The Department, in consultation with the Director of Human Resources, may exempt non-City Employees upon request of their non-City Employers, based upon operational requirements related to health and safety according to criteria developed by the Agency and the Director of Human Resources. Such criteria shall advance public safety or public health.

B) Department Directors may request an exemption from this Chapter from the Director of Human Resources for certain classifications of City employees based upon operational requirements related to health and safety according to criteria developed by the Director of Human Resources. Such criteria shall advance public safety or public health.

Chapter 13.23.0650 Enforcement

A) Any aggrieved person may enforce the provisions of this chapter by means of a civil action.

B) Any person who commits, or proposes to commit, an action in violation of this chapter may be enjoined therefrom by any court of competent jurisdiction.

C) Action for injunction under this subsection may be brought by any aggrieved person, by the city attorney, by the district attorney, or by any person or entity which will fairly and adequately represent the interests of the protected class.

~~Chapter~~ 13.23.0760 Liability for costs and damages

Any person who violates the provisions of this chapter shall be liable to each person injured by such violation for reasonable attorney's fees and costs as determined by the court, plus damages equaling three times the amount of actual damages or a minimum of five hundred dollars.

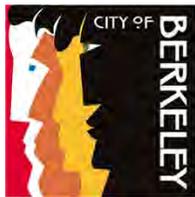
~~Chapter~~ 13.23.0870 Criminal penalties

Any person who is found by a court of competent jurisdiction to be guilty of a willful violation of the provisions of this chapter shall be guilty of a misdemeanor as set forth in Chapter 1.20 of this code.

~~Chapter~~ 13.23.0980 Limitation on action.

Actions under this chapter must be filed within one year of the alleged discriminatory acts.

Section 3. 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.



CITY COUNCILMEMBER
RIGEL ROBINSON
DISTRICT 7

CONSENT CALENDAR
March 26, 2019

To: Honorable Mayor and Members of the City Council
From: Councilmembers Rigel Robinson, Cheryl Davila, and Ben Bartlett
Subject: Ban Racial Discrimination on the Basis of Hairstyle

RECOMMENDATION

Ban racial discrimination on the basis of a person's natural hairstyle by either:

- Adopt a new Section of the Berkeley Municipal Code: Chapter 13.23 RACIAL DISCRIMINATION ON THE BASIS OF HAIRSTYLE IN EMPLOYMENT, HOUSING, AND PUBLIC ACCOMMODATIONS, prohibit grooming or appearance policies which target natural hair or hairstyles.

Or

- Issue local legislative interpretation guidelines regarding both the illegality of disparate impact grooming or appearance policies under the Fair Employment and Housing Act, and the illegality of refusing public services on the basis of mutable characteristics under California Civil Code Section 51.

BACKGROUND

In February 2019, the New York City Commission on Human Rights (NYCCHR) issued new Legal Enforcement Guidance on Race Discrimination on the Basis of Hair, under the New York City Human Rights Law (NYCHRL). The City of Berkeley should follow in New York's footsteps, and take similar action to expressly prohibit racially discriminatory hair styling requirements in the areas of employment, housing, school, and other areas of daily living. In doing so, the Council should consider a number of approaches.

In New York, the NYCCHR found the contemporary manifestation of racial bias to include discrimination based on characteristics and cultural practices associated with being African American, including prohibitions on natural hair. In the 2019 Enforcement Guide, NYCCHR states current anti-discrimination law should be interpreted to give people of color "the right to maintain natural hair, treated or untreated hairstyles such as locs, cornrows, twists, braids, Bantu knots, fades, Afros, and/or the right to keep hair in an uncut or untrimmed state."

This falls under the range of human rights issues which The Berkeley Municipal Code (BMC) identifies as its mission to solve. As stated in BMC Section 1.22.010, "the City of Berkeley shall promote: (1) Higher standards of living, full employment, and conditions of economic and social progress and development; (2) Solutions of local economic,

social, health and related problems; and regional cultural and educational cooperation; and (3) Universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.”

In achieving these goals, the Council has multiple potential legislative routes to consider. Firstly, Berkeley could adopt BMC Chapter 13.23, a draft of which is attached. Chapter 13.23 would prohibit racial discrimination on the basis of hair or hair styling, and enumerate the rights of all persons to maintain natural, untreated hairstyles in all sectors of employment, housing, and public accommodations.

Modeling a different approach, the NYCCHR 2019 Enforcement Guide is written as a statutory interpretation document, under the NYCHRL. Similarly, the Council could issue local interpretation guidelines for two comparable California State laws: The 1959 Fair Employment Housing Act (FEHA) to cover discrimination in employment, and the 1959 Unruh Civil Rights Act (Unruh Act) to cover discrimination in places of public accommodation.

One component of FEHA’s ban on discriminatory workplace practices covers disparate impact discrimination, which implicates rules that apply to all employees but have a disproportionate impact on members of a protected class. Any hair styling rule that permits members of some groups to wear their hair naturally, but requires others to use more extensive procedures, could be interpreted to be in violation of FEHA.

The Unruh Act, California Civil Code sections 51 through 52, states that a broad range of protected demographic categories “are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.” According to settled legal precedent, the Unruh Act is understood broadly to prohibit public businesses from refusing service based on arbitrary or appearance-based characteristics. Thus, any denial of access to a place of public accommodation based on hairstyle is a clear violation of the Unruh Act.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

None.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170
Mars Svec-Burdick, Intern to Councilmember Rigel Robinson

Attachments: [Delete if there are NO Attachments]

1: Ordinance

2: NYC Commission on Human Rights Legal Enforcement Guidance on Race
Discrimination on the Basis of Hair

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ORDINANCE NO. -N.S.

ADOPT BERKELEY MUNICIPAL CODE CHAPTER 13.23 TO PROHIBIT RACIAL DISCRIMINATION ON THE BASIS OF HAIRSTYLE IN EMPLOYMENT, HOUSING, AND PUBLIC ACCOMMODATIONS

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

Section 1. That Berkeley Municipal Code Chapter 13.23 is added to read as follows:

Chapter 13.23 RACIAL DISCRIMINATION ON THE BASIS OF HAIRSTYLE IN EMPLOYMENT, HOUSING, AND PUBLIC ACCOMMODATIONS

Chapter 13.23.010 Purpose

The purpose of this Chapter is to protect public health, safety and welfare. It does this by seeking to eliminate all forms of racial discrimination within the City.

Chapter 13.23.020 Findings

The City Council of the City of Berkeley finds and determines as follows:

- A) Discrimination against racial minorities in employment, housing, and public accommodations exists within the City. The council further finds that the existence of such discrimination poses a substantial threat to the economic and social welfare of a sizeable segment of the community, namely, racial minority groups.
- B) Racially discriminatory grooming or appearance policies exist in places of employment, housing, and public accommodations within the City. These policies exacerbate inequality in the workplace and housing market.
- C) The overall effect of grooming or appearance policies which target the natural hair styles of racial minority groups is to require a disproportionate outlay of monetary and time resources from members of these groups in order to participate in daily living.
- D) Discrimination through grooming and appearance policies falls most heavily on low income communities, but cuts across all racial, ethnic and economic levels.

Chapter 13.23.030 Definitions

As used in this chapter, the following words and phrases shall have the meanings ascribed to them in this subsection:

- A) "Grooming or appearance policies" or "appearance policies" means any code of dress, grooming, or appearance, written or unwritten, under which an individual is in any way penalized for noncompliance.

B) "Natural hair" means all natural patterns of hair growth across all racial and ethnic groups, including treated or untreated hairstyles such as locs, cornrows, twists, braids, Bantu knots, fades, Afros, and/or the right to keep hair in an uncut or untrimmed state.

C) "Place of public accommodation" or "public accommodations" means providers, whether licensed or unlicensed, of goods, services, facilities, accommodations, advantages or privileges of any kind, and places, whether licensed or unlicensed, where goods, services, facilities, accommodations, advantages or privileges of any kind are extended, offered, sold, or otherwise made available. This unambiguously includes schools, due to the historical proliferation of racially discriminatory grooming and appearance policies in educational settings.

Chapter 13.23.040 Unlawful activities

It is unlawful for any employer, business owner, property owner, provider of public accommodation, or any agent or employee thereof to discriminate in the conditions or enforcement of a grooming or appearance policy. Such prohibited discrimination includes but is not limited to the following:

A) Publish, verbally state, or otherwise communicate an explicitly or implicitly mandatory appearance policy which includes any condition prohibiting natural hair, either textually or in practice;

B) Require, in order to access employment opportunities, housing accommodations, public accommodations, or the negotiation or carrying out thereof, individual adherence to a grooming or appearance policy which explicitly or implicitly bans any natural hair style.

C) Refuse to enter into negotiations regarding hiring, employment, compensation, lease or rental of property, or otherwise withhold from any person any provision of public accommodations because of their natural hair style;

D) Represent to any person because of their natural hair style that employment opportunities, housing accommodations, or public accommodations are not available when such opportunities or accommodations are in fact available;

E) Include a clause or provision in any legal document or agreement that the employee, tenant, or recipient of public accommodations shall adhere to a grooming or appearance policy which compromises their ability to maintain a natural hair style;

F) Penalize an employee, tenant, or recipient of public accommodations for violating an appearance policy which unlawfully bans natural hair, in any manner including financial penalties, termination, withholding of wage increases, or denial of services, housing or access.

G) Enforce grooming or appearance policies inconsistently between members of different groups, to the effect of enacting unequal and discriminatory grooming standards.

Chapter 13.23.050 Enforcement

A) Any aggrieved person may enforce the provisions of this chapter by means of a civil action.

B) Any person who commits, or proposes to commit, an action in violation of this chapter may be enjoined therefrom by any court of competent jurisdiction.

C) Action for injunction under this subsection may be brought by any aggrieved person, by the city attorney, by the district attorney, or by any person or entity which will fairly and adequately represent the interests of the protected class.

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Any person who violates the provisions of this chapter shall be liable to each person injured by such violation for reasonable attorney's fees and costs as determined by the court, plus damages equaling three times the amount of actual damages or a minimum of five hundred dollars.

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Any person who is found by a court of competent jurisdiction to be guilty of a willful violation of the provisions of this chapter shall be guilty of a misdemeanor as set forth in Chapter 1.20 of this code.

Chapter 13.23.080 Limitation on action.

Actions under this chapter must be filed within one year of the alleged discriminatory acts.

Section 3. 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.



Housing Advisory Commission

4a

ACTION CALENDAR

June 11, 2019

To: Honorable Mayor and Members of the City Council
From: Housing Advisory Commission
Submitted by: Xavier Johnson, Chairperson, Housing Advisory Commission
Subject: Recommendations Related to Code Enforcement Actions and Leonard Powell Fact Finding

RECOMMENDATION

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.

FISCAL IMPACTS OF RECOMMENDATION

Staff time.

CURRENT SITUATION AND ITS EFFECTS

Several years ago, the City of Berkeley's code enforcement department was alerted to possible code violations at 1911 Harmon St. owned by Leonard Powell. The City requested that Mr. Powell address these violations. Although Mr. Powell arranged for some work to be done (and received a \$100,000 loan from the City's Senior and Disabled Home Rehabilitation Program) to do this work, not all of the violations cited by the City were addressed. Since Mr. Powell did not correct all the violations, the City petitioned the court to appoint a receiver to bring the house into code compliance. However, many more repairs were made, bringing the total costs to over \$600,000.

The house is now certified by the City for occupancy. However, Mr. Powell faces additional costs which exceed the amount that was provided to him through public loans.

BACKGROUND

Mr. Powell, a veteran and retired U.S. Postal worker had purchased the house at 1911 Harmon Street over forty years ago as a home for himself and family. Since purchasing the duplex house, which Mr. Powell converted to a single family home, there had been no major repairs made by him. The conversion from a duplex to a single family home was done without permits and inspections.

Mr. Powell's situation has triggered public concern that he has not been treated fairly, and concerns of inequitable treatment of a Berkeley resident have been raised. The HAC believes that more fact finding will be very beneficial for the Berkeley community for three main reasons. (1) What triggered the code enforcement actions specifically against Mr. Powell, when in fact, there are many single family homes in various neighborhoods throughout the City (including the hills) that lack code compliance? (2) How did costs increase so quickly, so that the costs of repair are almost equivalent to the costs of new construction (excluding land)? (3) How can lower- and moderate-income households be protected from displacement if similar code enforcement actions are taken by the City and if these owners do not have access to financing to address these violations?

The Housing Advisory Action adopted the following motion at its March 7, 2019 meeting:

Action: M/S/C (Tregub/Wolfe) to recommend to City Council that it set in place the policies that would 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. In addition, the HAC recommends that the City Council commission a formal fact-finding process to ascertain what occurred in the matter of Mr. 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.

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

ENVIRONMENTAL SUSTAINABILITY

This recommendation to undertake fact finding into what happened at 1911 Harmon Street does not impact the environment directly. However, if this recommendation ultimately reduces displacement, then this could contribute to reductions in vehicle miles traveled and greenhouse gas emission reductions.

RATIONALE FOR RECOMMENDATION

This recommendation is an important complement to ongoing local, regional, and state efforts to prevent displacement due to code violations that exceed households' abilities to pay. Both renters and homeowners can be negatively impacted by these code violations. Therefore efforts to address them in a constructive and expeditious manner would be consistent with the HAC's and City of Berkeley's other ongoing priorities.

ALTERNATIVE ACTIONS CONSIDERED

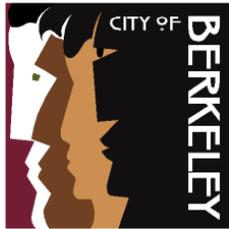
The Housing Advisory Commission will be examining ways to assist lower- and moderate-income homeowners in the future whose homes have code violations, but who lack the financing to abate all the violations in a timely manner.

CITY MANAGER

See companion report.

CONTACT PERSON

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



Peace and Justice Commission

4b

ACTION CALENDAR

June 11, 2019

To: Honorable Mayor and Members of the City Council
From: Peace and Justice Commission
Submitted by: Igor Tregub, Chairperson, Housing Advisory Commission
Subject: Recommendation to Bring Justice to Mr. Leonard Powell and to Change Certain Policies to Ensure Housing Stability for Homeowners and Tenants

RECOMMENDATION

The Peace and Justice (PJC) recommends that the Berkeley City Council take the following actions:

The Peace and Justice Commission (PJC) recommends that the City Council 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 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.

FISCAL IMPACTS OF RECOMMENDATION

Staff time and up to \$68,000 if recommendation (5) above is adopted.

CURRENT SITUATION AND ITS EFFECTS

Several years ago, the City of Berkeley’s code enforcement department was alerted to possible code violations at 1911 Harmon St. owned by Leonard Powell. The City requested that Mr. Powell address these violations. Although Mr. Powell arranged for some work to be done (and received a \$100,000 loan from the City’s Senior and Disabled Home Rehabilitation Program) to do this work, not all of the violations cited by the City were addressed. Since Mr. Powell did not correct all the violations, the City petitioned the court to appoint a receiver to bring the house into code compliance. However, many more repairs were made, bringing the total costs to over \$600,000.

The house is now certified by the City for occupancy. However, Mr. Powell faces additional costs which exceed the amount that was provided to him through public loans.

BACKGROUND

At its regularly scheduled March 4, 2019 meeting, the PJC took the following action:

Action: To authorize the Chair to draft proposed letter from the Council to the judge and adopt recommendations to council as amended

Motion by: Lippman

Seconded by: Bohn

Ayes: al-Bazian, Bohn, Chen, Gussmann, Lippman, Maran, Meola, Morizawa, Pierce, Rodriguez, Tregub

Noes: None

Abstain: None

Absent: Han, Pancoast

Mr. Powell, a veteran and retired U.S. Postal worker had purchased the house at 1911 Harmon Street over forty years ago as a home for himself and family. Since purchasing the duplex house, which Mr. Powell converted to a single family home, there had been no major repairs made by him. The conversion from a duplex to a single family home was done without permits and inspections.

Mr. Powell's situation has triggered public concern that he has not been treated fairly, and concerns of inequitable treatment of a Berkeley resident have been raised. The PJC believes that more fact finding will be very beneficial for the Berkeley community for three main reasons. (1) What triggered the code enforcement actions specifically against Mr. Powell, when in fact, there are many single family homes in various neighborhoods throughout the City (including the hills) that lack code compliance? (2) How did costs increase so quickly, so that the costs of repair are almost equivalent to the costs of new construction (excluding land)? (3) How can lower- and moderate-income households be protected from displacement if similar code enforcement actions are taken by the City and if these owners do not have access to financing to address these violations? Further, the PJC feels that adoption of these recommendations would ensure that the City take steps to make Mr. Powell whole and allow him to recover possession of his property upon the abatement of any remaining code violations.

ENVIRONMENTAL SUSTAINABILITY

These recommendations do not impact the environment directly. However, if the application of these recommendations ultimately reduces displacement, then this could contribute to reductions in vehicle miles traveled and greenhouse gas emission reductions.

RATIONALE FOR RECOMMENDATION

These recommendations are an important complement to ongoing local, regional, and state efforts to prevent displacement due to code violations that exceed households' abilities to pay. They are also consistent with the Peace and Justice Commission's charter and goals.

ALTERNATIVE ACTIONS CONSIDERED

Several additional recommendations were also suggested to the PJC by community members. The PJC elected to focus only on those recommendations that it deemed to be most constructive toward the achievement of the goals enumerated above and resulting in interests that further equity and justice for Berkeley homeowners and tenants.

CITY MANAGER

See companion report.

CONTACT PERSON

Breanne Slimick, Associate Management Analyst, 981-7018

Attachments:

1. Letter to Judge Brand

**RESOLUTION
IN SUPPORT OF BRINGING JUSTICE TO MR. LEONARD POWELL AND TO
CHANGE CERTAIN POLICIES TO ENSURE HOUSING STABILITY FOR
HOMEOWNERS AND TENANTS**

Whereas Mr. Powell, a veteran and retired U.S. Postal worker had purchased the house at 1911 Harmon Street over forty years ago as a home for himself and family; and

Whereas since purchasing the duplex house, which Mr. Powell converted to a single family home, there had been no major repairs made by him; and

Whereas the conversion from a duplex to a single family home was done without permits and inspections; and

Whereas several years ago, the City of Berkeley's code enforcement department was alerted to possible code violations at 1911 Harmon St. owned by Leonard Powell; and

Whereas although Mr. Powell arranged for some work to be done (and received a \$100,000 loan from the City's Senior and Disabled Home Rehabilitation Program) to do this work, not all of the violations cited by the City were addressed; and

Whereas since Mr. Powell did not correct all the violations, the City petitioned the court to appoint a receiver to bring the house into code compliance; and

Whereas many more repairs were made than were requested, bringing the total costs to over \$600,000; and

Whereas the house is now certified by the City for occupancy; and

Whereas Mr. Powell faces additional costs which exceed the amount that was provided to him through public loans; and

Whereas Mr. Powell's situation has triggered public concern that he has not been treated fairly, and concerns of inequitable treatment of a Berkeley resident have been raised; and

Whereas at its regularly scheduled March 4, 2019 meeting, the Berkeley Peace and Justice Commission (PJC) took the following action:

Action: To authorize the Chair to draft proposed letter from the Council to the judge and adopt recommendations to council as amended

Motion by: Lippman

Seconded by: Bohn

Ayes: al-Bazian, Bohn, Chen, Gussmann, Lippman, Maran, Meola, Morizawa, Pierce, Rodriguez, Tregub

Noes: None

Abstain: None

Absent: Han, Pancoast; and

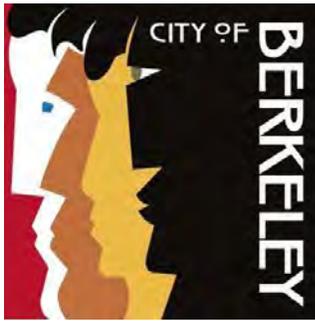
; and

Whereas the Peace and Justice Commission (PJC) recommends that the City Council 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; and

Whereas 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 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; and

Now, Therefore, Be it Resolved that the Berkeley City Council adopt the actions recommended by the PJC.



Councilmember Ben Bartlett

City of Berkeley, District
2180 Milvia Street, 5th Floor
Berkeley, CA 94704
PHONE: 510-981-7130
EMAIL: bbartlett@cityofberkeley.info

05

CONSENT CALENDAR

July 9, 2019

To: Honorable Mayor and Members of the City Council

From: Councilmembers Ben Bartlett and Cheryl Davila

Subject: Pilot Cannabis Event at Cesar Chavez Park.

RECOMMENDATION

That the City Council permit a pilot cannabis event at Cesar Chavez Park. Adopt an ordinance amending BMC Chapter 12.22 to permit temporary cannabis events for a period of one-year after the effective date of the ordinance.

CURRENT SITUATION

This would be a pilot event that addresses the Cannabis event request that was removed from the previously approved Cannabis Ordinance. This pilot event acts as a model to revisit the possibility of three cannabis events per year in the future. This event would allow on-site sales and consumption of cannabis, and would be required to apply for a special event permit from the City as well as a permit from the State of California. Such event would be organized and licensed as required by the State of California. The ordinance shall: 1) reference Resolution No. 68,326-N.S., declaring that Berkeley is a sanctuary for adult use cannabis, 2) specify procedures for such events that replicate similar alcohol-related event protocols.

FINANCIAL IMPLICATIONS

Staff time.

BACKGROUND

The Berkeley Marijuana Initiative was passed in 1979, this called for more support towards reform of Marijuana laws and prevented further persecution of Marijuana use. The city recognized the negative impacts of this persecution and the Berkeley Police Department agreed to make enforcement of Marijuana laws the lowest priority.

Berkeley has also permitted medical cannabis dispensaries, authorized under state Proposition 215 and local law, to safely deliver medicine to patients, for over 20 years. This has had a positive impact on the community, and encouraged further support, which led to the City Council adopting Resolution No. 63,966-N.S. in 2008, declaring the City of Berkeley a sanctuary for medical cannabis patients and providers. This also helped to combat attempts by the U.S. Drug Enforcement Administration (DEA) to close medical marijuana dispensaries.

In the 2016 statewide ballot, 83% of Berkeley residents voted in favor of Proposition 64, the initiative to legalize adult recreational cannabis for persons over 21 years old. In addition, in June 2017, Governor Brown signed SB94, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). This bill created the framework for state regulations and enforcement of the cannabis industry.

The City Council has been developing ordinance modifications to allow Berkeley businesses to operate in accordance with state law. These documents were reviewed by the Cannabis Commission, Planning Commission, and Community Health Commission in early 2018. In compliance with the objective to create safe access to and decriminalized cannabis, on February 13, 2018, the City Council passed Resolution No. 68,326-N.S., declaring that Berkeley will be a sanctuary city for adult-use cannabis customers, businesses, providers, and landlords.

In 2018 the California legislature passed AB 2020, which expanded locations where cannabis related events can occur beyond county fairgrounds. It requires that the event organizer obtain a cannabis event organizer permit from the state of California and acquire a temporary event permit from the State for each event, in addition to any needed local permits.

A previous request for allowing Cannabis events at Cesar Chavez Park was made in Cannabis Ordinance Revisions submitted to City Council March 2019. All Ordinances passed except the allowance for temporary Cannabis events, which previously requested up to three events per calendar year. Most recently, as of February 2019, the Berkeley City Council approved a recommendation for a Short-Term Referral to the City Manager. This would develop ordinance amendments permitting up to three cannabis events per year in Berkeley and designating Cesar Chavez Park as the sole approved location for cannabis events.

RATIONALE FOR RECOMMENDATION

Amending our Municipal Code to permit this pilot event as authorized by state law will provide a safe and regulated location for these types of events and provide significant economic benefits to the City of Berkeley. There will be no alcohol, and only state licensed approved vendors. The event will only permit those 21 and over. It would serve as a model for similar future events, helping to identify further regulation needed for such events to occur and issues that may arise from these events. Since the city already allows alcohol-related events in city parks, permitting this event would further the progressive cannabis direction that Berkeley and California have been promoting. It would be another step forward in the process of decriminalization. Oakland has also recently permitted the allowance for cannabis events, and allows cannabis event organizers to apply for temporary permits on their website.

ENVIRONMENTAL SUSTAINABILITY

Complies with City of Berkeley sustainability goals

CONTACT PERSON

Councilmember Ben Bartlett

510-981-7130

