

City Attorney's Impartial Analysis

This measure would prohibit any person from sitting on a sidewalk in a commercial zoning district from 7:00 a.m. until 10:00 p.m., subject to the following exceptions:

1. Due to a medical emergency;
2. On a wheelchair or other device that is needed for mobility;
3. On a public bench or bus stop bench that is permanently affixed to the sidewalk; or
4. As authorized by a City-issued permit, such as a permit for a Street Event, or for public benches or outside café seating.

This measure would also provide that it could not be applied or enforced in a manner that violates the United States or California constitutions, and would require the City to develop and adopt rules, regulations and procedures to ensure that it is not applied or enforced in a manner that violates the United States or California constitutions, prior to enforcement.

This measure would provide that a first violation would be an infraction subject to either a \$75 fine or community service, but that subsequent violations could be charged as either an infraction or a misdemeanor.

The measure would require that before a person could be cited he or she would have to be warned by a peace officer and given an opportunity to comply. A single warning would be sufficient for a 30-day period.

The measure would also allow the Council to amend or repeal the prohibition without further voter approval.

If approved, the measure would not go into effect until July 1, 2013.

s/ZACH COWAN
Berkeley City Attorney