

Office of the City Manager

ACTION CALENDAR

July 8, 2008

To:  Honorable Mayor and Members of the City Council
From: Phil Kamlarz, City Manager
Submitted by: Deanna Despain, Acting City Clerk
Subject: Initiative Petition: Initiative Ordinance Requiring Voter Approval of Exclusive Transit-Only and HOV/Bus-Only Lanes

RECOMMENDATION

Take one of the following actions as provided by Sections 92(3) and (4) of the Charter of the City of Berkeley:

1. Adopt the Ordinance without alteration within 10 days after the attachment of the City Clerk's certificate of sufficiency to the petition (it will still be subject to referendum, under the provision of Article XIV of the Charter); or
2. Adopt a Resolution submitting the Ordinance, without alteration, to a vote of the People at the November 4, 2008 General Municipal Election and provide comments on the City Attorney's analysis of the initiative and the ballot title.

FISCAL IMPACTS OF RECOMMENDATION

The cost of placing a measure on the ballot is estimated at \$15,000. Funding for placing measures on the ballot is available in the City Clerk Department FY 2008 and FY 2009 budget.

Staff has prepared a report on the effect of the proposed initiative under Election Code section 9212, including the financial implications of adopting this ordinance. This report is attached below.

CURRENT SITUATION AND ITS EFFECTS

An initiative petition entitled "Initiative Ordinance Requiring Voter Approval of Exclusive Transit-Only and HOV/Bus-Only Lanes" was filed with the City Clerk on May 28, 2008.

This ordinance would require voter approval before the City of Berkeley could dedicate a public street or lane of traffic to "bus-only, transit-only, or high-occupancy vehicle-only use". Voter approval would not be required for minor changes such as creating a new bus stop or temporary changes for special street events or "unique" circumstances. The proposed ordinance would only apply to streets that were in such use as of April 15, 2008. The voter approval process would include preparation of a "designation plan", which is defined as a comprehensive plan for the creation of the transit-only, or high-occupancy vehicle/bus-only lanes. The designation plan would include information

concerning physical features and fiscal impacts of each proposed lane or street designation, and specify how the designation plan could be modified. Designation plans would be guided by the Planning Commission and such other commissions as the City Council deems appropriate, and would involve substantial public input, including public hearings. The proposed ordinance would also purport to require amendment of the City's General Plan Transportation Element to conform to the proposed ordinance

As provided under Article XIII, section 92 (3 and 4) of the Berkeley Charter, the Council may either adopt the ordinance within 20 days after the attachment of the City Clerk's Certificate of Sufficiency or must submit the ordinance, without alteration, to a vote of the People at the November 4, 2008 General Municipal Election.

BACKGROUND

Article XIII, section 92 (4) of the City Charter requires that the petition contain at a minimum 2,037 valid voter registration signatures (5% of the entire votes cast for all candidates for mayor at the last general municipal election at which a mayor was elected).

The submitted petition contained 3,240 unverified signatures. The signatures were verified against Alameda County Voter Registration Rolls as required under Election Code sections 9211 and 9115. The random sample process provided for in the code resulted in a sufficiency rate of 127%. The required threshold in the code for sufficiency using the random sample is 110%. On July 2, 2008 the petition was certified as sufficient and containing the signatures of electors in excess of 5% of the total votes cast for mayor in the 2006 Berkeley General Municipal Election.

The City Council may either adopt the ordinance, without alteration, or must adopt a resolution submitting the initiative ordinance to the electorate on November 4, 2008.

If the Council chooses to adopt the ordinance, Article VIII, section 44 (6) of the Charter requires that the ordinance be posted for a minimum of two days after the first reading prior to voting on the second reading. The ordinance would become effective 30 days after final adoption.

ADDITIONAL ACTIONS REQUIRED:

If the Council chooses to place the initiative on the ballot, the City Council may review the ballot question provide any final comments at this time.

CONTACT PERSON:

Deanna Despain, Acting City Clerk, 981-6900

Attachments:

1. Resolution with Exhibit A
2. Certificate of Sufficiency
3. Impact Report

RESOLUTION NO. -N.S.

SUBMITTING TO THE BERKELEY ELECTORATE AN INITIATIVE
ORDINANCE REQUIRING VOTER APPROVAL OF EXCLUSIVE TRANSIT-
ONLY AND HOV/BUS-ONLY LANES

WHEREAS, the Berkeley City Council has elected to submit to the voters at the November 4, 2008 General Municipal Election, an initiative ordinance, which would Require Voter Approval of Exclusive Transit-Only and HOV/Bus-Only Lanes; and

WHEREAS, the Council has requested that the Alameda County Board of Supervisors consolidate the General Municipal Election with the Presidential General Election; and

WHEREAS, the Council desires to submit all measures to be placed upon the ballot at said consolidated election.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Board of Supervisors of Alameda County is hereby requested to include on the ballots and sample ballots the measure enumerated above to be voted on by the voters of the qualified electors of the City of Berkeley.

BE IT FURTHER RESOLVED, that full text of the measure shall be printed in the Voter Information Pamphlet mailed to all voters in the City of Berkeley.

BE IT FURTHER RESOLVED, that the above enumerated measure requires a majority vote threshold for passage.

BE IT FURTHER RESOLVED, that the City Clerk is hereby directed to cause the posting, publication and printing of notices, pursuant to the requirements of the Charter of the City of Berkeley, the Government Code and the Elections Code of the State of California.

BE IT FURTHER RESOLVED, that the Registrar of Voters of Alameda County is required to perform necessary services in connection with said election.

BE IT FURTHER RESOLVED, that the City Clerk is hereby directed to obtain printing, supplies and services as required.

BE IT FURTHER RESOLVED, that the City Clerk is hereby authorized to provide such other services and supplies in connection with said election as may be required by the Statutes of the State of California and the Charter of the City of Berkeley.

BE IT FURTHER RESOLVED, that said proposed initiative ordinance shall appear and be printed upon the ballots to be used at said election as follows:

| CITY OF BERKELEY INITIATIVE ORDINANCE | |
|---|-----|
| Shall the initiative ordinance Requiring Voter Approval of Exclusive Transit-Only and HOV/Bus-Only Lanes be adopted? <u>Financial Implications:</u> Approximately \$250,000 - \$500,000, including staff time for preparing a designation plan for the currently proposed Bus Rapid Transit project, plus the cost of placing a designation plan on the ballot (\$15,000), and potentially, holding a special election (about \$350,000 if conducted by mail, and more than \$700,000 if conducted in a standard fashion with polling places). | YES |
| | NO |

BE IT FURTHER RESOLVED, that the text of the initiative ordinance be shown as Exhibit A, attached hereto and made a part hereof.

TEXT OF INITIATIVE ORDINANCE

SUBMITTING TO THE BERKELEY ELECTORATE AN INITIATIVE ORDINANCE REQUIRING VOTER APPROVAL OF EXCLUSIVE TRANSIT-ONLY AND HOV/BUS-ONLY LANES.

The People of the City of Berkeley hereby ordain as follows:

Section 1: Title

The title of this ordinance shall be "Voters' Right to Approve Certain Major Transportation Changes."

Section 2: Findings and Purpose

The purpose of this measure is to enable the people of the City of Berkeley, by majority vote, to decide whether City streets or portions thereof shall be converted to transit-only or HOV/bus-only lanes, prior to dedication of such lanes.

The first goal of the City of Berkeley's General Plan is to "preserve Berkeley's unique character and quality of life."

Among competing visions for Berkeley's future, there is dispute over what policies or changes will best preserve our unique character and quality of life, especially in the areas of land use and transportation.

When a change is modest or uncontroversial, it is appropriate to rely on elected representatives to make these decisions, but if the change is significant or potentially harmful, the citizens should have the opportunity to decide their own future directly through the ballot.

Section 3. Provisions

- A. No public street, or portion thereof, owned or controlled by the City, or agency thereof, shall be dedicated to a bus-only, transit-only, or high-occupancy vehicle (HOV)-only use without the Berkeley City Council first having submitted a designation plan (as defined herein) to the citizens for approval by a majority of registered Berkeley voters voting in a general or special election.
- B. Exceptions:
 - 1. Voter approval is not required to dedicate space reasonably needed for bus stops for the loading and unloading of passengers.

2. Voter approval is not required for temporary dedication of lanes for special events or unique circumstances.

Section 4. Definitions

For purposes of this ordinance, the following terms are defined:

- A. "Designation" or "designation plan" refers to a comprehensive plan involving creation of transit-only or HOV/bus-only lanes on streets or portions of streets that were available to automobile, pedestrian, or bicycle use, or used for street plantings, prior to April 15, 2008. This plan shall include information by which a reasonable person can assess how the designation and use will affect them. The plan shall include but not be limited to specific information on such items as the physical features that will impact drivers, transit riders, pedestrians, bicyclists, parking, neighborhoods, businesses, and emergency access, and the estimated fiscal impacts of the designation and use on the City and its taxpayers. The plan shall also specify legislative, administrative, and/or electoral methods for modifying the plan and its accompanying dedicated lanes.
- B. "Dedication" refers to the transfer of rights for exclusive use of high-occupancy vehicles, buses, or other transit on portions of streets that were available to automobile, pedestrian, bicycle, or street-planting use prior to April 15, 2008.

Section 5. Implementation

- A. The plan for the designation of lanes shall be guided by the Planning Commission and other commissions as the City Council deems appropriate, and shall be approved by the City Council. The designation planning process shall permit frequent and significant public input, including public hearings before the involved commissions and the City Council.
- B. Any City approval of transit-only or HOV/bus-only lanes, exclusive of the exceptions above, approved on or after April 15, 2008 that does not comply with this ordinance shall be declared null and void.
- C. The Berkeley General Plan Transportation Element shall be modified to be consistent with this ordinance.
- D. The terms of this ordinance shall be interpreted liberally to give full effect to the foregoing policies adopted by the people of Berkeley.

Section 6. Severability

If any part or provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application and, to this end, the provisions of this ordinance are severable.

CITY ATTORNEY'S IMPARTIAL ANALYSIS

SUBMITTING TO THE BERKELEY ELECTORATE AN REQUIRING VOTER APPROVAL OF EXCLUSIVE TRANSIT-ONLY AND HOV/BUS-ONLY LANES.

The proposed ordinance would require voter approval before the City of Berkeley could dedicate a public street or lane of traffic to “bus-only, transit-only, or high-occupancy vehicle-only use”. Voter approval would not be required for minor changes such as creating a new bus stop or temporary changes for special street events or “unique” circumstances.

The voter approval process would include preparation of a “designation plan”, which is defined as a comprehensive plan for the creation of the transit-only, or high-occupancy vehicle/bus-only lanes. The designation plan would be required to include information on the impacts of lane designation on drivers, pedestrians, bicyclists, businesses, parking and emergency access, and the fiscal impacts of each proposed lane or street designation, and specify how the designation plan could be modified.

Designation plans would be guided by the Planning Commission and such other commissions as the City Council deems appropriate, and would involve substantial public input, including public hearings.

The proposed ordinance would also purport to require amendment of the City’s General Plan Transportation Element to conform to the proposed ordinance.

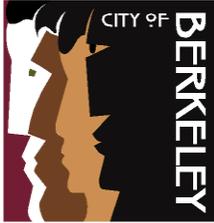
The requirements for preparation of a designation plan and subsequent voter approval would increase the amount of time needed to approve exclusive lanes for the use of buses (also known as Bus Rapid Transit or BRT) which could place time-sensitive outside funding sources at risk or prevent the City or other agencies from applying for available funding. The initiative would lead to increased costs to prepare the required plan, to place it on the ballot, and potentially to hold a special election if necessary to meet funding deadlines. The initiative would increase uncertainty in the BRT planning process and reduce flexibility in regard to project implementation should the voters approve a designation plan.

The proposed ordinance is a significant impediment to implementing General Plan goals and policies relating to promoting alternatives to automobiles and improving public transit.

It is not clear whether the voter approval requirement of the ordinance is lawful because it appears to conflict with California Vehicle Code section 21655.5, which delegates the authority to create HOV lanes on City streets to the City Council.

Financial Implications: Preparation of a designation plan for the currently proposed Bus Rapid Transit project could cost approximately \$250,000 - \$500,000, inclusive of staff time. In addition, the cost of placing a designation plan on the ballot would be

approximately \$15,000. If necessary to accommodate external funding deadlines, the cost of a special election would be about \$350,000 if conducted by mail, and more than \$700,000 if conducted in a standard fashion with polling places.



Planning and Development
Office of the Director

June 27, 2008

To: Phil Kamlarz, City Manager
From: Dan Marks, Director, Planning and Development
Subject: Elections Code Section 9212 Analysis of Initiative Requiring
Voter Approval of Transit-only Lanes

INTRODUCTION

Under Elections Code Section 9212, the City may undertake an analysis of certain impacts of a proposed initiative. This analysis addresses an initiative that would require voter approval prior to dedication of streets or rights of way exclusively for buses or high occupancy vehicles in the City of Berkeley.

SUMMARY

The proposed initiative would require approval by Berkeley voters prior to the dedication of streets, existing travel lanes, or portions of streets used for landscaping for the exclusive use of buses or high-occupancy vehicles (HOV). Any such proposal would be included in a "designation plan" that would be prepared in advance of the vote and submitted to voters for their approval. That plan must include information on the impacts of lane designation on drivers, pedestrians, bicyclists, businesses, parking and emergency access.

In summary, staff analysis finds that the Initiative would increase the amount of time needed to approve exclusive lanes for the use of buses (also known as Bus Rapid Transit or BRT), which could place time-sensitive outside funding sources at-risk or prevent the City or other responsible agencies from applying for available funding. The initiative could lead to increased costs related to preparing the required plan and potentially for a special election if necessary to meet funding deadlines. The initiative would increase uncertainty in the BRT planning process and potentially reduce flexibility in regard to project implementation should voters choose to approve the lane dedication.

Staff believes that the voter-approval requirement is a significant enough impediment to implementing some policies of the General Plan that its adoption would require the City to amend its General Plan to be consistent with the initiative.

Elections Code Section 9212 Analysis of Initiative
Requiring Voter Approval of Transit-only Lanes

CURRENT SITUATION AND ITS EFFECTS

One of the key goals of the Transportation Element of the City's General Plan is to promote alternatives to the automobile, and encourage public transit. For example, the first goal in the Transportation Element of the City's General Plan is:

Maintain and improve public transportation services

Policy T-2 states that the City should “*encourage regional and local efforts to maintain and enhance public transportation services . . .*” Action 3 under this policy states that the City should “*Add transit-only or transit/HOV-only lanes where appropriate on any streets or portions of streets that are part of the city’s transit network.*”

Policy T-4 states that the City should “*Give priority to alternative transportation and transit over single occupant vehicles on Transit Routes . . .*” and Policy T-5 states that the City should “*Support regional efforts to develop light rail or bus rapid transit service connecting East Bay cities.*”

Action C under T-5 states that the City should “*consider bus rapid transit, with bus priority signals and bus priority lanes on transit corridors, as an interim and low-cost alternative to a new light rail system.*”

Under existing law, the City Council has the authority to make decisions regarding the disposition of city streets, including dedicating portions of right of way for bus transit or other high occupancy vehicles. The proposed initiative would modify this authority.

In May 2007, AC Transit issued a Draft Environmental Impact Report/Environmental Impact Statement (DEIR/EIS) for a proposed Bus Rapid Transit system extending from San Leandro into Berkeley along Telegraph Avenue, terminating in Downtown Berkeley. Bus Rapid Transit (BRT) is a type of bus system that is considered intermediate between light-rail systems that operate on fixed rails in streets, and a standard bus system, in that the buses operate on an exclusive right of way in the street and include developed stations along the route. BRT generally requires dedication of two lanes of street-right of way and is considerably less expensive to implement than light-rail systems.

The proposed BRT system was included as a specified project within the last Alameda County transportation bond measure, but insufficient funding was included to fully fund the development of the system. AC Transit is proposing to leverage the local bond funds with Federal and regional transportation funding to build the system. Prior to proceeding to prepare a Final EIR/EIS, AC has requested that local jurisdiction work with it to define a “locally preferred alternative”. In order to allow for an exclusive bus lane on city streets, each city along the route would have to grant such authority to AC Transit for its buses.

Elections Code Section 9212 Analysis of Initiative Requiring Voter Approval of Transit-only Lanes

Since release of the DEIR, there has been much discussion in Berkeley about the proposed BRT line. In September 2007 the Council directed that the Planning Commission take the lead in considering a possible “locally preferred alternative” (with the “no project” option to be fully considered), in consultation with the Transportation Commission. The Planning Commission is currently part way through its consideration of various alternatives and has come to no conclusion regarding a locally preferred alternative or the advisability of BRT as proposed by AC Transit.

In regard to other locations for exclusive bus or HOV lanes, there has been some informal public discussion that BRT be extended on University Avenue from Downtown to the waterfront to accommodate a possible ferry terminal at the Marina and link various north/south transit lines. However, this is not currently under any kind of formal consideration and would require a separate EIR. In the past, there was some public discussion of the possibility of exclusive bus lanes on College Avenue, although that was rejected some years ago and is not currently being formally considered. Staff is unaware of any such serious proposal for Solano Avenue, either now or in the past. Staff is also unaware of any other serious proposal, now or in the past few years, to reserve street lanes or right-of-way exclusively for other types of high-occupancy vehicles (HOV).

BACKGROUND/ANALYSIS

As described above, the City’s underlying transportation strategy is to improve transit, bicycle and pedestrian access to and around the City, and discourage automobiles, and especially single occupant autos. In staff’s view, the initiative, if passed, would be a significant impediment to achieving some of the goals and policies set forth earlier in this report.

The primary impact of the proposed initiative would be to add additional steps to the process of BRT consideration (and similar consideration for HOV or bus lanes in the future), thereby potentially jeopardizing potential funding sources that can be time-sensitive, or requiring a special election (should the City wish to try and meet a deadline), with significant associated costs.

The initiative sets forth certain required steps prior to placing a proposal on the ballot, and then voter approval of the dedication of lanes. In particular, the initiative would

- Require that a “designation plan” be prepared. The designation plan would have certain required analytical sections, including a comprehensive assessment of impacts, and a fiscal impact assessment. While much of this analysis would be undertaken as part of any normal planning/environmental assessment prior to making a decision regarding dedicating right of way for BRT, some of the requirements are more extensive than might normally be undertaken and some of the terms and requirements in the initiative as to what would be expected and sufficient in such a plan are ambiguous. If prepared by the City, the costs of preparing the “designation plan” could be significant. Staff estimates that preparing this plan for the currently proposed BRT project would be in the range of \$250,000 - \$500,000 (inclusive of staff time).

Elections Code Section 9212 Analysis of Initiative Requiring Voter Approval of Transit-only Lanes

- Require voter approval of the “designation plan”. Depending on the election schedule and the timing of the completion of the designation plan, a commitment on making lanes available for BRT could be delayed for over a year, and would be highly uncertain until an election is held. Because federal and state funds are generally allocated competitively and are often based at least in part on readiness, AC Transit or the City may have significant difficulty being competitive for federal and state funds, or may miss out on funds that become available on relatively short notice. In order to meet a funding deadline, the City may choose to undertake a special election. A special election is currently estimated to cost about \$350,000 if conducted by mail, and more than double that amount if conducted in a standard fashion with polling places.
- Increased Uncertainty and Reduced Flexibility. As noted above, there is some ambiguity in the meaning of some of the terms in the initiative, especially in regard to the proposed designation plan. For example, the initiative calls for enough information so that a “reasonable person can assess how the designation and use will affect them”. It also calls for analysis of the “estimated fiscal impacts of the designation and use on the City and its taxpayers”. These terms and others are not fully defined. If the initiative passes, whether the “designation plan” put forward meets the intent of the initiative would be subject to challenge, and ultimately subject to court determination, further increasing uncertainty and extending timeframes. Second, unless the designation plan itself includes significant flexibility to address unforeseen circumstances that invariably arise between the planning process and the actual design and implementation of a major project, it is entirely possible that modifications to a BRT project would be subject to the preparation of a new designation plan and vote. This could mean many months of delay after the project has been funded and is in the design and/or construction process.

The significant delay, potential negative impact on funding, increased uncertainty and reduced flexibility would all be significant impediments to a transit option that could help achieve key transit-first goals of the General Plan. Staff believes that the General Plan would need to be amended to reflect the impacts of the initiative and clarify that one particular approach to improving public transit would require additional scrutiny and a vote of the public.

CONTACT PERSON

Dan Marks, Director, Planning and Development Department, 981-7400