



Office of the Mayor

Date: January 16, 2018
To: City Council Ad-Hoc Subcommittee on Homelessness
From: Mayor Jesse Arreguin
Subject: Proposed Policy on Encampments and Objects on Sidewalks

RECOMMENDATION

Take public testimony and refer to the City Council the proposed policy on encampments and regulations regarding objects on sidewalks.

BACKGROUND

The housing affordability crisis impacting our region has greatly contributed to an increase in homelessness. According to the 2017 Everyone Home Count, Berkeley's homeless population has increased to 972 individuals without permanent housing. Of the 972 individuals identified as homeless, 664 (68%) were unsheltered. As a result, a growing number of people are now living in encampments and congregating on sidewalks and other public spaces. While encampments are inevitable given the limited number of shelter beds available, and the serious shortage of permanent housing, they also create impacts in parks, neighborhoods and business districts. Sidewalks and public spaces were never intended for human habitation. In light of these challenges, it is critical to develop clear and humane standards regarding objects on sidewalks and regulating encampments.

In December 2015, the City Council adopted new regulations, entitled the Civil Sidewalks Ordinance, prohibiting individuals from having more than two square feet of personal possessions on sidewalks commercial districts throughout the City. Council also directed the Traffic Engineer to adopt regulations that would specify what and where objects may be permitted, and to identify procedures and limitations to implementing these regulations.

At the time of adoption, the City Council stipulated that enforcement of any new regulations should be done only after the City established a program that would allow individuals to store their personal possessions. These regulations were never enforced because secure storage was never established. Since then conditions on sidewalks have not improved, and there is a clear need for a policy regulating objects on sidewalks throughout Berkeley.

On December 13, 2016, the Council unanimously approved creating an Ad-Hoc Subcommittee on Homelessness as part of Item #29, "Emergency Measures to Address Homelessness". The Ad Hoc Subcommittee was then directed to develop an

encampment policy that would provide clear direction to staff and to homeless residents on how to address encampments, and the conditions in which they would be removed.

On April 4, 2017, the City Council discussed information submitted by the Public Works Department, "Traffic Engineer Regulations for Objects on Sidewalks" and referred the development of a policy to the Ad-Hoc Subcommittee on Homelessness.

The Ad-Hoc Subcommittee has met numerous times throughout 2017, considered both issues, and developed the attached policy after receiving additional input from staff and members of the public.

FINANCIAL IMPLICATIONS

Unknown. Implementation of sidewalk regulations and the new Encampment Policy would require additional staff resources to provide outreach to the homeless, to enforce regulations, remove encampments and store unattended items.

ENVIRONMENTAL SUSTAINABILITY

Policy is consistent with the City's environmental and sustainability goals.

CONTACT PERSON

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Attachments:

1. Proposed Encampment Resolution and Sidewalk Policy

Policy on Encampments and Objects on City Sidewalks

A. Purpose

This policy framework attempts to synthesize the needs and rights of the City's unsheltered population as well as the rights and concerns of residents and businesses, while grappling with three seemingly incompatible realities:

1. Encampments are illegal under a variety of state and local ordinances, and may create negative health, safety and economic impacts – both on the encampment residents themselves and on surrounding neighborhoods and businesses.
2. Sidewalks and public spaces were created for pedestrian passage and for the use and enjoyment of the entire community. They were not intended for human habitation.
3. In the absence of enough shelter and affordable housing, encampments are born of the necessity to address basic human needs such as shelter, sleep and community.

This policy recognizes the lack of shelter and housing available for our unsheltered population, and the humanitarian crisis this presents, seeking to humanely manage encampments and objects on sidewalks, so long as they do not unreasonably obstruct access to sidewalks and public spaces, or present health or safety concerns.

B. History

Prior to 2015, enforcement of laws about objects on sidewalks in Berkeley was inconsistent, and regulations were unclear. While staff enforced Penal Code Section 647(c) and 647 (e) as appropriate, as well as B.M.C. Section 14.48.020, there was an identified need by Police and the business community for a clear standard regarding which objects and how much space could occupy a sidewalk.

In response to substantial accumulation of objects obstructing sidewalks, rendering access difficult for pedestrians and wheelchair users, the City Council proposed regulations to limit the footprint of objects, and to implement a storage program.

On November 17, 2015, the City Council amended Section 14.48.170 of the Berkeley Municipal Code to authorize the Traffic Engineer to issue regulations governing the placement of objects on sidewalks. The Council also referred to the City Manager the establishment of secure storage with posted hours, the number of storage bins/lockers to be determined at a later date based on usage, and conditioned enforcement of any Traffic Engineer regulations on the availability of lockers; and

On December 13, 2016, the City Council amended Section 14.48.170 to remove the requirement that lockers be in place before a Traffic Engineer (TE) regulation could be enforced; and

On April 4, 2017, City Council discussed information submitted by the Public Works Department, “Traffic Engineer Regulations for Objects on Sidewalks” and referred the development of a sidewalk policy to the Ad-Hoc Subcommittee on Homelessness; and

Additionally, On December 13, 2016, City Council unanimously approved creating an Ad-Hoc Subcommittee on Homelessness and directed the Subcommittee to develop an Encampment Policy that would provide clear direction to staff and to homeless residents, and would protect our most vulnerable and their possessions; and

The Ad-Hoc Subcommittee has met, conferred and developed the following Encampment and Sidewalk Policy, after receiving input from staff and members of the public.

C. Overview of Existing Restrictions Affecting Encampments on Public or Private Property

- California Penal Code Section 647(e) prohibits lodging on public property without permission of the property owner.
- Measure L (B.M.C. Section 6.42) prohibits the use of parks and open space for any other purpose without voter approval.
- State Public Trust Doctrine does not allow encampments on public trust land (i.e. the Marina) because residential uses are generally excluded.
- Trespassing on private property is not permitted.

Due to the region’s lack of affordable housing, encampments currently exist in the public right-of-way, in parks and other open spaces and, in some instances, on private property.

D. General Restrictions Against Obstruction of Sidewalks

California Law

California Penal Code Section 647(c): this section states that any person who “willfully and maliciously” obstructs the free movement of any person on any street, sidewalk, or other public place or on or in any place open to the public is guilty of a misdemeanor. This is the law that generally governs obstructing streets and sidewalks in California.

However, this section does permit counties or cities to “regulate conduct” upon any street, sidewalk or other public place, thus allowing for local governments to adopt their own standards regarding obstructing sidewalks and behavior on public sidewalks.

Berkeley Municipal Code

- B.M.C. Section 14.48.020 prohibits any person to place or cause to be placed anywhere upon any sidewalk or roadway, any object which obstructs, restricts, or prevents the use of any portion of such sidewalk or roadway, except as set forth in this Chapter or a regulation adopted by the Traffic Engineer.
- B.M.C. Section 13.36.010, Obstructing free passage of persons or vehicles in public ways prohibited: No person can “intentionally” stand, sit or lie in or upon any street, sidewalk or crosswalk so as to prevent the free passage of persons or vehicles.
- B.M.C. Section 13.36.015: This code section establishes restrictions on stationary dogs and persons lying on public sidewalks in commercial districts between 7 a.m. and 10 p.m. Monday through Saturday and 10 a.m. and 6 p.m. on Sundays and holidays. No more than two stationary dogs are allowed within a ten-foot area on a commercial sidewalk, except for guide dogs, signal dogs, or service dogs. This law requires that a warning be issued prior to citing for violating the ordinance.
- B.M.C. Section 14.48.210 permits the City to remove any unpermitted objects on sidewalks or roadways in violation of Section 14.48.020 (above). Such obstructions constitute a nuisance.
- B.M.C. Section 13.36.040: prohibits any person to lie in or on the walls of a City-owned planter in the right of way. It also prohibits a person to place any object in or on any city owned planter or tree well, or to affix any object other than a bicycle or pet leash to any tree guard, newspaper rack, planter, parking meter or parking pay station in the public right of way. It also makes unlawful any person to affix anything other than a bicycle to a bike rack.

E. Regulations Regarding Objects on City Sidewalks

History

In December 2015, the Berkeley City Council adopted Ordinance No. 7,449-N.S. to amend city regulations regarding the use of sidewalks. This Ordinance gave the Traffic Engineer authority to develop regulations specifying what objects may be permitted on sidewalks. It explicitly protected freedom of expression, allowed dogs of any size, and allowed for insulating material used for sitting such as blankets, cushions or mats.

Regulations adopted by the Traffic Engineer would not be enforced until the City provided 50 storage lockers in a secure location for use by homeless individuals.

No person could be cited unless they were first warned and given a reasonable opportunity to comply. Violations would be charged as infractions.

The policy has never been enforced because lockers for personal storage were never made available.

Council intended to adopt a regulation limiting the size of objects to 2 square feet of sidewalk space. However, this limitation was never put in place.

Current Conditions and Need for New Sidewalk Regulations

Since adoption of the December 2015 Ordinance, conditions on sidewalks throughout Berkeley have not improved. Substantial accumulations of objects obstruct sidewalks, making accessibility difficult for pedestrians and wheelchair users.

Existing regulations are unclear, making both compliance and enforcement difficult. There is a need for clear regulations governing how much sidewalk space objects can occupy, recognizing the reality of a regional homeless crisis and the lack of shelter and storage available for individuals living on the street.

It is the intent of the City Council to implement a secure storage program at multiple locations throughout the city simultaneous with the implementation of a new Encampment and Sidewalks Ordinance.

Funding has already been appropriated for secure storage in the Downtown area. Storage will also be available at the STAIR Center at Second and Cedar Streets. The City is exploring creating secure storage at additional locations convenient for the homeless.

The proposed Encampment and Sidewalk Regulations seek to balance (1) Constitutional Rights, (2) use of sidewalks and other public spaces for passage and enjoyment, and (3) provision of a reasonable amount of space on sidewalks for individuals to place objects.

REGULATIONS FOR OBJECTS ON SIDEWALKS AND OTHER CITY OF BERKELEY PROPERTY

1. Regulations shall apply to all sidewalks in the City of Berkeley;
2. Suitcases and other objects *in transit* shall be exempted;
3. Regulations shall contain protective provisions and be applied in a manner so as not to deprive any person of rights protected by the State and Federal Constitutions, including freedom of expression;
4. A minimum continuous 4-foot wide path of travel shall be maintained, and objects shall not impede the flow of pedestrian traffic;
5. Objects shall not expand beyond a 9-square foot footprint (alternatively, 3 x 3 and 4 x 2);
6. Any size limitation shall not apply to dogs or to insulating or cushioning material being used to sit on such as folded blankets, cushions or mats. Such seating material shall not expand beyond what is reasonably needed while seated, and shall be removed when not in use;
7. Under current city law, lying is prohibited on commercial sidewalks between the hours of 7 a.m. and 10 p.m. Monday through Saturday, and between 10 a.m. and 6 p.m. Sundays and holidays. During hours when lying is allowed on commercial sidewalks, sheltering or insulating materials may exceed the 9-square foot footprint limitation, but must also maintain the required 4-foot wide path. Lying is

prohibited on all other sidewalks in Berkeley and camping is not allowed overnight in City parks;

8. Objects cannot obstruct traffic or pedestrian, park or other municipal signs;
9. No objects shall be placed on any sidewalk area directly in front of a building entrance, from the entrance face to the edge of the sidewalk. In addition, no object shall be placed on any sidewalk area three feet to either side of a building entrance, from the building wall to the edge of the sidewalk;
10. Objects must not interfere with normal access to or use of bicycle racks, parking meters, pay stations, driveways, sidewalk entrances, fire hydrants, public art, transit benches, mailboxes, utility boxes, police/fire call boxes, trap doors, display windows, public kiosks or other fixed items;
11. No person may be cited for a violation of this policy unless the person has first been asked by authorized city staff to comply, and provided with a reasonable opportunity for compliance;
12. Violations shall be charged as infractions and not as misdemeanors.

F. Encampment Policy

Encampment: Definition

One or more individuals or households:

- Who have been inhabiting a specific public location not meant for human habitation for three or more consecutive days; and
- Who meet at least one of the following conditions:
 - Use temporary sheltering accommodations such as tents, vehicles, or improvised structures that they leave attended or unattended at such public location and/or
 - Have accumulated materials or personal belongings that they leave attended or unattended at such location.

Encampment Resolution: Definition

A continuum of actions to resolve one or more conditions at an Encampment, ranging from abatement of a specific violation or condition to removal of an Encampment.

Encampment Resolution does not take the place of or in any way preclude normal investigation and prosecution of suspected or actual criminal activity. Such activity at an Encampment shall be addressed through normal law enforcement procedures applicable throughout Berkeley.

Encampment Resolution: Protocols

1. Abatement after 72 Hour Notice:

After the City has provided notice, the following must be resolved within 72 hours or the Encampment may be subject to removal:

- Accumulation of trash and/or debris
- Excessive accumulation of objects and/or belongings
- Significant economic or other impacts, other than health or safety, on individual businesses, residents and/or business districts, based on documented complaints

2. Immediate Abatement:

After the City has provided notice, the following must be resolved immediately or the Encampment may be subject to removal

- Problematic behavior
- Fires or cooking using open flames
- Violations of certain Health and Safety Codes or other public health concerns

3. Immediate Encampment Removal:

Conditions which may be subject to immediate Encampment removal (no notice or opportunity to abate required):

- Unsafe location (e.g. traffic medians, close proximity to vehicular travel, slide area or other significant safety concerns)
- Location interfering with youth facilities (e.g. pitcher's mound, children's play yard) or posing other negative impacts to youth or youth facilities
- Location posing unusual or extreme impacts
- Criminal or other activity which poses a threat to the safety of the Encampment or to the broader community
- Significant violations of certain Health and Safety Codes or other significant public health concerns

Encampment Abatement: Notice

1. 72-Hour Abatement Process
 - a. Verbal and Written Notice

2. Immediate Abatement Process
 - a. Verbal Notice

Encampment Removal: Process

Unless health and safety conditions require immediate Encampment removal, after the City provides the required official notice of conditions requiring abatement, and those conditions are not addressed, the City will issue a written notice that Encampment removal will occur in 72 hours. Individuals must move their belongings before the conclusion of the 72-hour noticed period or their possessions will be removed and stored according to City's policies.

Notice of requirement to abate and/or of impending Encampment removal shall include information on shelters, storage and other services and facilities. In addition, if possible given staffing considerations, homeless outreach staff should visit such Encampments to provide additional information and encourage individuals to access homeless services and facilities.

At the conclusion of a 72-hour notice period, city staff will inform any remaining individuals that they must move or their belongings will be subject to removal.

If encampment residents do not remove their property, the city may remove and store property consistent with Administrative Regulation 10.1 "Temporary Storage of Unattended Property". Individuals must be provided at least one full hour during Resolution to gather their possessions. To the extent feasible, specific shelter and housing alternatives will be offered to individuals prior to relocation or removal of an Encampment.

After removing an Encampment, the City will post a written notice in the area where the encampment was located. The notice will describe how and where to pick up unattended items, pursuant to Administrative Regulation 10.1.