



Berkeley City Council

ACTION CALENDAR

April 26, 2018

To: Honorable Mayor and Members of the City Council
From: Mayor Jesse Arreguin and Councilmember Sophie Hahn
Subject: Proposed Policies on Sidewalks and Encampments

RECOMMENDATION

Direct the City Manager to return to Council with (1) an Ordinance codifying Regulations for Sitting, Lying, Dogs and Objects on Sidewalks and in Parklets, (2) a final Encampment Response Policy, and (3) necessary amendments, if any, to existing policies, Administrative Regulations and/or code sections impacted by the proposed Ordinance and Policy, for Council adoption.

FINANCIAL IMPLICATIONS

Staff time to finalize language for Council adoption.

BACKGROUND

Homelessness is on the rise. According to the 2017 Everyone Home Count, Berkeley's homeless population has increased to almost 1,000 individuals, with approximately 665 unsheltered. As a result, a growing number of people are forced to survive on sidewalks and in other public spaces that were never intended for human habitation. Encampments are inevitable given the limited number of shelter beds available and the shortage of affordable housing, and impact Berkeley's parks, neighborhoods and business districts. In light of these challenges, it is important to develop balanced, clear and humane standards.

These proposed policies seek to balance the needs and rights of the City's unsheltered population with the needs and concerns of businesses and other residents, while grappling with three seemingly incompatible realities:

1. 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.
2. Sidewalks and public spaces were created for personal and commercial passage and for the use and enjoyment of the entire community. They were not intended for human habitation.
3. 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.

These policies recognize the lack of shelter and housing available for our unsheltered population, and the humanitarian crisis this presents, seeking to humanely manage impacts to ensure the entire community can access sidewalks and public spaces. The draft policies presented here represent the core concepts of what the ordinances are proposed to contain. However, language and concepts remain in draft form and are being presented for input and improvement. Based on Council and community discussion, Council will direct City Staff to create final versions for adoption.

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 (Obstructions on streets and sidewalks), there was a need by Police and the business community for a clear standard regarding which objects and how much space can be occupied on a sidewalk.

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

On November 17, 2015, the City Council adopted Ordinance No. 7,449-N.S., amending 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.

This Ordinance 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 also intended to adopt a regulation limiting the footprint of objects on sidewalks to 2 square feet of space. However, this limitation was never put in place.

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.

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

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

The Ad-Hoc Subcommittee met and discussed encampment and sidewalk policies numerous times throughout 2017, and received input from City of Berkeley staff and members of the public. These proposals are based on input received through the Subcommittee process.

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.

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.

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 secure storage at one location, at a minimum, simultaneous with the implementation of a new Encampment and Sidewalks Ordinance.

Funding has already been appropriated for secure storage in the Downtown area. The City is exploring creating secure storage at additional locations convenient for the homeless.

The proposed policies on encampments and objects on city sidewalks build upon the work of the Ad-Hoc Subcommittee on Homelessness, and seek to balance (1) Constitutional Rights, (2) use of sidewalks and other public spaces for passage and enjoyment, (3) provision of a reasonable amount of space on sidewalks for individuals to place objects, and (4) the basic human needs of the homeless.

Proposed Regulations for Sitting, Lying, Dogs and Objects on Sidewalks and in Parklets

The proposed Regulations for Sitting, Lying, Dogs and Objects on Sidewalks and in Parklets seek to:

- Ensure that everyone has access to, free passage through, and use and enjoyment of Sidewalks and Parklets in Berkeley;
- Protect the Constitutional Rights of all individuals, including freedom of expression;
- Provide public storage facilities to securely store personal belongings for homeless individuals;
- Create space for sitting or lying down on sidewalks at all times, without unduly impacting the regular use of sidewalks or parklets, and preserving a path of travel on sidewalks that can be accessed by all members of the public; and
- Clarify existing, potentially conflicting sections of the Berkeley Municipal Code regarding sidewalks, objects on sidewalks, and sitting or lying on sidewalks;

Current Conditions and Need for Encampment Regulations

Recently Berkeley has seen an increase in the number of encampments. These vary from one individual inhabiting a location for an extended period of time, to large encampments with multiple tents.

Because sidewalks and other public spaces were never intended for human habitation, encampments will inevitably create health, safety and economic impacts on businesses and residents. In addition, encampments can create negative impacts on the health and safety of the homeless.

The City Manager's existing policy prioritizes response to those encampments where there are multiple complaints of health and safety violations. However, the city lacks a formal policy to address encampments. In fact there is no clear definition of what constitutes an encampment.

Proposed Encampment Response Policy

The proposed Encampment Response Policy seeks to promote a balanced approach to addressing potential impacts of encampments, while respecting the need for shelter, safety, and community. Specifically, the Encampment Response Policy aims to:

- Acknowledge that encampments are born of the necessity to address basic human needs such as shelter, sleep, and community;
- Address health, safety and other conditions or impacts of encampments in a humane way;
- Create a single applicable definition of encampments;
- Enumerate a continuum of response options, emphasizing proportionality of response in relation to totality of circumstances or impacts present at an encampment; and
- Ensure that encampment response does not preclude or replace normal investigation and prosecution of unlawful activity at an encampment.

ENVIRONMENTAL SUSTAINABILITY

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

CONTACT PERSON

Mayor Jesse Arreguin, (510) 981-7100

Councilmember Sophie Hahn, District 5, (510) 981-7150

ATTACHMENTS

1. Proposed Regulations for Sitting, Lying, Dogs and Objects on Sidewalks and in Parklets
2. Proposed City of Berkeley Encampment Response Policy

P R O P O S E D

**REGULATIONS FOR SITTING, LYING, DOGS and OBJECTS
ON SIDEWALKS AND IN PARKLETS**

1) **Purposes:**

The purpose of these regulations is to ensure that everyone has access to, free passage through, and use and enjoyment of Sidewalks and Parklets in Berkeley.

2) **Protection of Constitutional Rights:**

These Regulations shall be applied in such a manner that does not deprive any person of rights protected by the California or Federal Constitutions, including freedom of expression.

3) **Definitions:**

a) **BART Access Corridor** is a Sidewalk, including a wide plaza area, on the same side of the street as a BART Station entrance, within 120 feet of such entrance.

b) **Sidewalk** is defined as provided in BMC Section 9.49.020 (I).
["Sidewalk" is that area of improved real property between any curb face and the property line of adjoining real property.]

c) **Parklet** is an improved area within the dedicated public right-of-way with seating, tables, landscaping and other amenities, being used temporarily for the enjoyment and use of all citizens.

d) **Objects** include any item or thing, attended or unattended, but does not include animals or persons.

e) **Objects in Transit** are Objects placed temporarily on a Sidewalk, for up to an hour, in the actual course of receipt, removal or delivery, and include, but are not limited to, goods, wares, merchandise, containers, and suitcases.

f) **Authorized Objects** are Objects the Berkeley Municipal Code specifically permits on Sidewalks or in other public locations. [These include newspaper racks, parking meters, bike racks, bus benches and shelters, mail boxes, etc.]

g) **Path of Travel** is an area that must be kept unobstructed for free passage, as follows:

- i) For Sidewalks which measure 14 feet or less in width, the Path of Travel is 6-foot wide;
- ii) For Sidewalks which measure greater than 14 feet in width, the Path of Travel is 10-foot wide.

- h) **Commercial Districts** are Districts designated on the City of Berkeley's official Zoning Map with a "C" prefix.
- i) **Residential Districts** are Districts designated on the City of Berkeley's official Zoning Map with an "R" prefix.
- j) **Manufacturing Districts** are Districts designated on the City of Berkeley's official Zoning Map with an "M" prefix.

4) Storage Facilities:

The City shall provide one or more public storage facilities to securely store personal belongings in an area or areas with concentrations of unhoused individuals.

5) Information:

The City shall ensure that fliers, posters or other materials are available for dissemination in Commercial Zones, informing the public of rules and regulations for Sidewalks and Parklets. These materials may be produced by the City or by community partners, and shall be periodically updated. The City may also post fixed signage informing the public of these regulations.

6) Objects – Residential Districts:

- a) Except for Authorized Objects and Objects in Transit, Objects are prohibited on Sidewalks in Residential Districts.

7) Objects - Commercial and Manufacturing Districts:

- a) Objects, other than Authorized Objects:
 - i) May not be placed in Parklets
 - ii) May not be placed in the Path of Travel
- b) Other than Objects in Transit or Authorized Objects, Objects on Sidewalks shall not expand beyond a 9-square foot footprint (measured as 3 x 3, 4 x 2.25, 9x1, etc.).
- c) Objects on Sidewalks cannot obstruct traffic, pedestrian or other signs authorized by law.
- d) Other than Authorized Objects or Objects in Transit, no Objects shall be placed on any Sidewalk directly in front of a building entrance, from the entrance face to the edge of the Sidewalk, except between the hours of 10:00 pm and 7:00 am.
- e) Other than Authorized Objects or Objects in Transit, no objects 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, except between 10:00 pm and 7:00 am.

f) Objects must not interfere with normal access to or use of Authorized Objects or with wheelchair ramps, driveways, or crosswalks.

8) Sitting:

Sitting is allowed on all Sidewalks and in Parklets at all times, except in the Path of Travel.

9) Lying:

Sleep is a fundamental human right and necessity, and Berkeley must provide space for individuals to lie down at all times. Lying is permitted in all City of Berkeley Parks during open hours, which are posted at each park.

Except in the case of a medical emergency, lying is prohibited:

- i) In BART Access Corridors. The City shall post signage announcing restrictions on lying in BART Access Corridors.
- ii) On Sidewalks in all Residential and Mixed Use Residential (MUR) Districts;
- iii) On Sidewalks in all Commercial Districts and in the Manufacturing (M), Mixed Manufacturing (MM) and Mixed-Use Light Industrial Zones (MULI) between the hours of 7:00 a.m. and 10:00 p.m. Monday through Saturday, and 10 a.m. and 6:00 p.m. on Sundays and holidays. (Lying is permitted in these locations from 10:00 p.m. and 7:00 a.m. Monday through Saturday, and 6:00 p.m. Sunday to 7:00 a.m. Monday.)
- iv) Within the Path of Travel.

10) Cushioning Material:

- a) Cushioning Material for sitting or lying in compliance with this ordinance is limited to pads, folded blankets, mats or other material providing insulation or cushioning while an individual is seated or lying.
- b) Cushioning Material shall not expand beyond what is reasonably needed while seated or lying, and shall be removed when not in use.
- c) When being used for sitting or lying in compliance with this ordinance, Cushioning Material may exceed or be non-contiguous with the allowed 9 square foot footprint for Objects, but must maintain the Path of Travel.

11) Dogs:

No more than two stationary dogs shall be permitted in any 10-foot area on Commercial Sidewalks or in Parklets, except for guide dogs, signal dogs or service dogs, as provided by state law. [Same as current]

12) Enforcement:

Ensuring broad public access to and use of Sidewalks and Parklets is the purpose of these regulations. Enforcement must support this purpose while minimizing the potential for criminalization.

a) Objects and Cushioning Materials:

- i) If, based on complaints, direct observation or referrals, City staff become aware that Objects or Cushioning Materials are placed in a location or manner in violation of these or other regulations, notice shall be provided stating the City's regulations and the corrective action requested. If Objects or Cushioning Materials are unattended notice shall be posted on or directly adjacent to such Objects or Cushioning Materials.
- ii) Depending on the impacts of the violation, notice shall state whether corrective action must be taken immediately, or may specify any time period, up to 1 hour, for Objects or Cushioning Material to be moved and brought into compliance with these regulations.
- iii) Failure to comply with actions requested in the notice within the time period specified will result in Objects or Cushioning Material being moved by the City to either:
 - (1) Conform with the City's regulations (moved out of the Path of Travel, for example); or
 - (2) For later retrieval, according to the protocols for Storage of Unattended Property specified in the City of Berkeley's Administrative Regulation 10.1.
- iv) If Objects have been in the same location for more than 3 days and other applicable criteria, if any, are met, Berkeley's Encampment Response Policy may apply. [Encampment Response Policy will be concurrently adopted]

b) Sitting and Lying Down:

- i) If, based on complaints, direct observation, or referrals, City staff become aware that an individual is sitting in the Path of Travel or lying at a location or time that is not permitted by these or other regulations, notice shall be provided to such individual, stating the City's regulations and the corrective action requested.
- ii) If the individual does not come into compliance after being provided with notice and a reasonable opportunity to comply, a Citation may be issued.
- iii) Violations shall be charged as infractions, and not as misdemeanors.
- iv) Fines for an infraction charged under this Section shall not exceed \$100.

- v) [Concept in development] The City may waive fines for an infraction charged under this Section if the individual fined elects to access and receive specified homeless services or to perform specified community service [program to be determined]. For fines to be waived and the infraction to be cleared, written verification of performance is required.
 - vi) If an individual has been inhabiting a specific Sidewalk location for more than 3 days and other applicable criteria, if any, are met, Berkeley's Encampment Response Policy may apply.
- c) **Dogs:**
- i) If more than two stationary dogs are within a ten-foot area on a Sidewalk in a Commercial District or in a Parklet, notice shall be provided to the individual or individuals in control of such dogs, stating the City's regulations and the corrective action requested.
 - ii) If an individual does not comply, after being provided with notice and a reasonable opportunity, a Citation may be issued.
 - iii) Violations shall be charged as infractions, and not as misdemeanors.
 - iv) Fines for an infraction charged under this Section shall not exceed \$100.

PROPOSED
CITY OF BERKELEY
ENCAMPMENT RESPONSE POLICY

Unfortunately, the City does not currently have the capacity to house all homeless individuals in permanent housing or shelters. Encampments therefore will continue to exist, born of the necessity to address basic human needs such as shelter, sleep and community. This policy is designed to address health, safety and other conditions or impacts of Encampments as humanely as possible.

1. Definitions

Objects: Objects include any item or thing, attended or unattended, but does not include animals or persons. [Same as Sidewalks Policy]

Encampment:

One or more individuals or households:

- 1) Who have been inhabiting a public location for more than three consecutive days; and
- 2) Who meet at least one of the following conditions:
 - a) Use temporary sheltering accommodations such as tents or improvised structures that they leave at such public location;
 - b) Have accumulated Objects that they leave at such public location.

2. Encampment Response Options

Where an Encampment exists, the City Manager may respond by taking any of the following actions:

- 1) If applicable, enforce the provisions of the City's Regulations for Sitting, Lying, Dogs and Objects on Sidewalks and in Parklets, pursuant to BMC Section X
- 2) Request Abatement of one or more conditions pursuant to this Section
- 3) Issue a Request to Move pursuant to this Section
- 4) Initiate Immediate Removal pursuant to this Section

Encampment Response shall not take the place of or in any way preclude normal investigation and prosecution of suspected or actual unlawful activity. Such activity at an Encampment shall be addressed through normal law enforcement procedures.

3. Proportionality of Response Actions

Response Actions shall be proportional to the totality of circumstances present at the encampment, including the nature, severity, size, duration and other aspects of

encampment conditions or impacts.

When determining the totality of circumstances at an Encampment, considerations may include, but are not limited to:

1. The nature, duration and severity of health and safety concerns
2. Impacts or safety concerns related to the location, size or duration of the Encampment
3. The quantity, nature and condition of accumulated objects and belongings
4. The number and nature of complaints received through the City's 311 system, or in writing by City Staff or Council and Mayoral Offices
5. Proximity to schools, senior centers and youth facilities including playgrounds, parks and sports fields
6. Impacts on businesses and on encampment and other residents
7. Environmental concerns
8. Potential for or actual harm to public infrastructure or private property
9. Criminal or other activity which poses a general threat to the safety of the Encampment or to the broader community
10. Location in an area from which a prior Encampment has been subject to a Request to Move or to Immediate Removal.

While conditions or impacts at an Encampment are often multifaceted, a single condition or impact may form the basis for a Response Action.

3. Abatement Request Protocols

In keeping with the goal of proportionality between conditions or impacts and Response Actions, the City may request Abatement of specific conditions or impacts.

Notice shall be provided stating the applicable laws or regulations that have been violated and the Abatement action(s) requested.

Taking into account the severity of conditions or impacts, notice shall state whether Abatement must take place immediately, or may specify any time period for Abatement, up to 72 hours.

Notice shall include information on shelters, storage, housing resources, and other services available. In addition, if possible given staffing, homeless outreach workers should visit the Encampment to provide additional information and invite individuals to access services.

Failure to Abate as requested may result in issuance of a Request to Move, or Immediate Removal.

4. Request to Move Protocols

- A. A Request to Move may be issued when:
 - a. Written notice of a request to Abate has been delivered and such Abatement has not taken place within the time period specified.
 - b. At the conclusion of a period of Sustained Outreach.
 - c. Taking into account the Proportionality of Response Actions, conditions or impacts are significant enough to warrant a Request to Move.

- B. Notice shall be provided stating the laws or regulations that have been violated and the Request to Move, and must provide adequate time to move, preferably at least 8 hours. No Request to Move may be issued after 5 pm or before 8 am, and any time period specified for removal, if not expired at 5 pm, shall be tolled until 8 am.

Notice shall include information on shelters, storage, housing resources, and other services available. In addition, if possible given staffing, homeless outreach workers should visit the Encampment to provide additional information and invite individuals to access services.

Failure to Move within the specified timeframe may result in Immediate Removal.

5. Immediate Removal Protocols

Immediate Removal may be undertaken when:

- 1. The totality of health or safety conditions or other conditions and impacts are severe enough to warrant Immediate Removal.
- 2. After a failure to Abate or Move in the manner or timeframe specified.

Immediate Removal requires no notice. Except in the case of extreme danger or emergency, individuals shall be given a reasonable opportunity to remove their own Objects during Immediate Removal, or such Objects may be removed and stored according to Administrative Regulation 10.1. Copies of AR 10.1 shall be provided to individuals present at the time of Removal and shall also be posted in the vicinity.