



Office of the City Manager

ACTION CALENDAR

June 30, 2015

To: Honorable Mayor and Members of the City Council

From:  Christine Daniel, City Manager

Submitted by: Matthai Chakko, Assistant to the City Manager

Subject: Ordinances Regulating Sidewalks and Public Spaces

RECOMMENDATION

1. Adopt first reading of an Ordinance amending Berkeley Municipal Code Section 13.37.020 to add a provision that it is unlawful for any person to solicit another who is making a payment at a parking meter.
2. Adopt first reading of an Ordinance adding Section 13.36.040 to the Berkeley Municipal Code Regulating Lying in City-Owned Planters.
3. Adopt first reading of an Ordinance amending Berkeley Municipal Code Chapter 14.48 to ensure that public streets, and especially sidewalks, are fully accessible and usable for the purposes for which they were constructed and are intended, specifically the movement of pedestrian and vehicular traffic and goods.
4. Adopt first reading of an Ordinance adding Section 13.36.085 to the Berkeley Municipal Code prohibiting urination and defecation in public places.

FISCAL IMPACTS OF RECOMMENDATION

The proposed ordinances would create additional regulations for sidewalks and public spaces. These ordinances would require staff time to enforce.

CURRENT SITUATION AND ITS EFFECTS

On March 17, 2015, the City Council directed staff to return with several ordinances regarding sidewalks and public spaces in Berkeley. In addition, Council also requested that staff clarify or review other regulations. Council also asked for an assessment of sidewalk width sufficient for pedestrian and wheelchair passage in high-traffic area. This report, including the attached ordinances, responds to that referral.

**Proposed Ordinances**

1. This item recommends adoption of an ordinance amending Berkeley Municipal Code Section 13.37.020 to add a provision making it unlawful for any person to solicit another who is making a payment at a parking meter.

The proposed ordinance is Attachment 1. It prohibits soliciting a person while he or she is making a payment at a parking meter. A 10 foot zone around all pay stations, as was suggested in the original referral, could potentially prohibit soliciting in large areas of the City's commercial districts, especially as pay stations become more common. In addition, the issues posed by soliciting are not related to proximity to pay stations themselves as much as by the circumstances when a person is removing money in order to pay at the pay station. Thus, the prohibition is more narrowly tailored to address the problem than a buffer zone around all pay stations.

2. This item recommends adoption of an ordinance adding regulating lying in City-owned planters

The proposed ordinance is Attachment 2. The ordinance makes it unlawful for any person to lie in or on the walls of a City-owned planter that is located in the right of way except where a person is lying down due to a medical emergency or a person is utilizing an object, placed on a commercial sidewalk by the City or other public agency, in the manner in which it is intended, such as sitting on a bus stop bench or downtown plaza benches.

3. This item recommends adoption of an ordinance amending Berkeley Municipal Code Chapter 14.48 to ensure that public streets, and especially sidewalks, are fully accessible and usable for the purposes for which they were constructed and are intended, specifically the movement of pedestrian and vehicular traffic and goods

The proposed ordinance is Attachment 3. Several items included in the referral are encompassed within the proposed amendments to Chapter 14.48, and its implementing Traffic Engineer regulation, which generally regulates objects on sidewalks in order to preserve accessibility and secondarily aesthetic and economic vitality. See in particular Section 14.48.020. Further information regarding Berkeley Municipal Code Chapter 14.48 is provided in the Background section below.

The referral requested an ordinance preventing deployment of bedding, tenting, sleeping pads, mattresses, blankets, etc. on sidewalks and plazas from 7 a.m. to 10 p.m. Placement of these objects is addressed more generally in Chapter 14.48 and the implementing Traffic Engineer regulation, through limitations on where objects may be placed on sidewalks.

The referral also requested an ordinance preventing personal items from being affixed to public fixtures including poles, bike racks (except bikes), planters, trees, tree guards, newspaper racks, parking meters and pay stations. This is already prohibited by BMC Section 14.48.020, Obstructions on streets and sidewalks, which states "...It is unlawful for 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; provided that this section shall not apply to any object permitted by or pursuant to Sections 14.48.030 through 14.48.200. (Ord. 6471-NS § 3, 1999: Ord. 4709-NS § 1, 1974: Ord. 3262-NS § 12.1, 1952).”

4. This item recommends adoption of an ordinance prohibiting urination and defecation in public places.

The proposed ordinance is Attachment 4. The ordinance provides that no person may urinate or defecate:

1. In a public place;
2. In a place open to the public or exposed to public view;
3. In a private place entered without consent of the owner, his agent, or the person in lawful possession thereof.

The ordinance defines “public place” as any street, park, pier, beach, restaurant, café, theater, store, building playground, school ground recreational area or other place to which the public is invited or has access or any place open to the public view.

The Council requested information regarding how other jurisdictions address this issue. Two jurisdictions in Southern California have ordinances that prohibit public urination and defecation.

Manhattan Beach Code of Ordinances 4.102.010 (Public Excretion) (March 1, 1977):

- A. No person shall urinate or defecate:
  1. In a public place;
  2. In a place open to the public or exposed to public view;
  3. In a private place entered without consent of the owner, his agent, or the person in lawful possession thereof.
- B. This section shall not apply to urination or defecation in any fixture provided for such purposes in any bathroom, restroom, dressing room, or similar facility.

Long Beach Municipal Code 9.25.010 (Misdemeanor to urinate or defecate in public) (1982)

- A. No person shall urinate or defecate in or at any “public place” as defined in Section 9.02.090 except at regularly provided toilet facilities. Violation hereof shall be a misdemeanor.

Long Beach Municipal Code Section 9.02.090 (Public Place)

“Public place” means and includes, but is not limited to, any street, park, pier, beach, restaurant, café, theater, store, building playground, school ground recreational area or other place to which the public is invited or has access or any place open to the public view.

**Additional Information**

This section provides information addressing several other issues raised in the referral.

The referral requested an ordinance preventing unpermitted cooking on public sidewalks. This is already prohibited by BMC Chapter 6.15, the purpose of which is:

“... to prohibit certain fires and barbecues on public property, including City parks, facilities, streets, sidewalks, median strips, parking strips, and rights-of-way in order to (1) reduce risks of fire, (2) prohibit inappropriate uses of public property, and (3) lessen the public nuisance associated with smoke emissions. (Ord. 6701-NS § 1, 2002)”

The referral requested that staff survey merchant associations about enforcement. The issue of problematic behavior on sidewalks is particularly acute downtown and on Telegraph Avenue, but it does flare up on occasion in other areas. In a survey conducted on behalf of the Downtown Berkeley Association, 46% percent of stakeholders described their top concern as the need to “reduce homelessness and problematic street behaviors.” The next highest percentage for a concern was 9% -- “fill vacant storefronts; support local businesses.” The Police Department meets regularly with merchant associations to address various issues, including problematic street behavior. If the ordinances are adopted, BPD will work with merchant associations to disseminate information to their members about how to share or report information that would be relevant to enforcement.

The referral requested clarification regarding whether “no trespass” signs on private property extend to sitting against buildings. The City Attorney researched this question and concluded that leaning part of one’s body against a structure would likely not constitute “entering upon and occupying” a building or structure, especially one that is immediately adjacent to a sidewalk that is open to the public. Thus, it is unlikely that sitting against a building would be construed as “trespass.”

Penal Code 602(f) prohibits posting or affixing anything on private or public property without permission of the owner. That is the only subsection that addresses trespassing in relation to the exterior walls of a building or structure. Other subsections of Penal Code 602, such as 602(h), 602(g) and 602(m), require “entering upon and occupying” real property or structures without the consent of the owner. Leaning part of one’s body against a structure would likely not constitute “entering upon and occupying” a building

or structure, especially one that is immediately adjacent to a sidewalk that is open to the public. Additionally, Penal Code 602(m) has been interpreted to apply only to long term squatters, which provides another indication that leaning upon an exterior wall of a structure from a public sidewalk would not be interpreted as “entering and occupying.”

BMC Section 13.36.020 would apply to anyone leaning against the entrance or exit of a commercial business, but it would not apply to persons leaning against walls that are not part of the entrance way:

**13.36.020 Obstructing entrance to or exit from public or private buildings prohibited when.**

It is unlawful for any person to intentionally stand, sit or lie in, on or at any driveway, entrance or exit of any church, hall, theater, place of public assembly, store, business, plant, industry, private residence or private property so as to prevent the free passage of persons or vehicles to or from the same. (Ord. 2795-NS § 2, 1946)

The referral requested that staff assess the adequacy of a six-foot clearance to enable sufficient pedestrian and wheelchair passage particularly in high-traffic areas. The Americans with Disabilities Act and Caltrans guidelines require a 5-foot minimum. BMC Section 16.18.080.E, regarding encroachment permits, requires a minimum of six feet for clear passage. As part of the City’s Sidewalk Seating requirements, the City has also required six foot minimum clear width. Areas of extremely high pedestrian volumes, such as BART Plaza may require more width. The City is granted authority under the BMC to require additional width if determined by the Engineering Division of the Department of Public Works.

To date, the only area where both the Traffic Engineer and City Engineer have deemed six-foot inadequate is the block at BART plaza between Center and Allston. The “path of travel” in this area is at the frontage of the storefronts, and the remainder of the plaza is not completely accessible.

**BACKGROUND**

BMC Chapter 14.48 plays a critical role in understanding the regulation of City sidewalks. The former Traffic Ordinance (now BMC Chapters 14.04 to 14.66) regulates the use of the City’s streets and sidewalks. Chapter 14.48, which regulates the use of sidewalks, dates from 1952. Although a few provisions in Chapter 14.48 have been amended since that time, as a whole it is out of date and has needed to be updated for some time. Certain aspects of Chapter 14.48 are not fully consistent with rules promulgated by courts during the past 50+ years with respect to the use of sidewalks for expressive activities, especially Section 14.48.170. Since the late 1990s, the City has been able to address these concerns through the adoption and periodic revision of a Traffic Engineer administrative regulation that interprets and implements Section

14.48.170. Aspects of this regulation however, should also be included in the ordinance itself.

The proposed amendments make various amendments to Chapter 14.48. Section 14.48.020 generally prohibits placing objects on sidewalks, unless specifically authorized by permit. Specific sections of Chapter 14.48 authorize by permit placing certain types of objects on the sidewalk, e.g. tables, chairs and umbrellas associated with eating establishments; newsracks (in certain locations); A-frame signs (in certain locations); vending tables and carts (in certain locations); and other specified types of encroachments. (Chapter 14.48 does not apply to leafleting, hawking, peddling and similar activities to the extent those activities do not involve the placement of physical objects on the sidewalk. It would also not apply to objects placed on the sidewalks pursuant to existing street vending ordinances (i.e., BMC Chapter 9.48 and 9.49.) As currently drafted, Section 14.48.170 regulates the temporary placement of objects used for non-commercial, expressive purposes on the sidewalk. Section 14.48.170 as currently drafted allows on the sidewalks:

Such items not otherwise prohibited by law designed for temporary noncommercial use at such locations and such times as may be permitted by the Social Planning Department[1 ] under the following rules and regulations. (a) Any person desiring such permission shall make application therefor to the Social Planning Department specifying the object or thing to be used, the proposed time and place and the purpose for which it is intended to be used, and such other information as may be required by the Social Planning Department....

A major purpose of the proposed amendments is to replace the broad discretion granted by the current provision with specific, ministerial rules for the placement of objects on sidewalks, consistent with the First Amendment and correlative provisions of the California Constitution, as well as case law interpreting those provisions. At the same time, the proposed amendments are designed to protect the City's substantial interests in pedestrian safety, access for persons with disabilities, an aesthetically pleasing streetscape, and vital commercial areas, which are critical to the City's economic well-being.

In general, the amendments define the types of objects that may be placed or displayed on sidewalks, where they may be located, and for how long.

To begin with, Section 14.48.020 would clarify that certain types of objects are exempt from all regulations regarding objects on the sidewalk. These are:

1. objects owned or placed on the sidewalk by the City;
2. objects permitted under other Chapters of this Code (newsracks, encroachments, tables for licensed street vendors, sidewalk café seating, benches and planters, etc.);

3. mobility devices being used by pedestrians; or
4. personal baggage, such as suitcases or similar items, no piece of which has a cumulative footprint of more than 2 square feet, which are in a person's immediate custody and control, placed on the sidewalk for not more than 1 hour while the person is in transit, and which can be readily moved by that person or an assisting person.

Other types of objects are generally prohibited without a permit. Objects associated with noncommercial expression are allowed with a ministerial permit, subject only to size, location, and durational limitations, as described below. Objects used for noncommercial expression are authorized by permit under Section 14.48.170, but may not have a cumulative footprint larger than 15 square feet, any horizontal dimension greater than 5 feet, or be 7 feet or more in height, and must be stationary and not have any moving parts or flashing lights, except those required for safety as determined by the Traffic Engineer. In order to protect pedestrian and traffic safety and accessibility, the permit requires there be adequate clear space for wheelchairs. Further, the object cannot create unreasonable obstructions to pedestrian flow, impede access to and from buildings, curb ramps, or bus stops, and cannot reduce visibility of pedestrians or drivers in a manner that creates a hazard.

Section 14.48.170 also authorizes the Traffic Engineer to adopt implementation regulations for major commercial corridors where additional protections are required to ensure accessibility and public use of the sidewalk.

The amendments to Chapter 14.48 also eliminate obsolete language and provisions, and content-based distinctions that are not permitted under modern First Amendment law. Obsolete provisions such as those relating to gasoline pumps (§ 14.48.080), recruiting signs (§ 14.48.100), taxicab telephones (§ 14.48.110), vending machines (§ 14.48.150) and milk boxes (§ 14.48.150) would be repealed. Further, provisions specifically allowing barber poles (§ 14.48.060) and prohibiting vending of racing forms (§ 14.48.230) or soliciting magazine or other product sales (§ 14.48.240) would be repealed, since they are content-based.

#### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

#### RATIONALE FOR RECOMMENDATION

The proposed ordinances respond to the Council referral.

ALTERNATIVE ACTIONS CONSIDERED

The City Council could choose to not adopt the attached ordinances, or could request alternatives to the proposed ordinances.

CONTACT PERSON

Matthai Chakko, Assistant to the City Manager, 981-7000

Attachments:

1. Ordinance: Amending Section 13.37.020 of the Berkeley Municipal Code Regulating Soliciting.
2. Ordinance: Adding Section 13.36.040 to the Berkeley Municipal Code Regulating Lying in City-Owned Planters
3. Ordinance: Amending Berkeley Municipal Code Chapter 14.48
4. Ordinance: Adding Section 13.36.085 to the Berkeley Municipal Code Prohibiting Urination and Defecation in Public Places.

ORDINANCE NO.       – N.S.

AMENDING SECTION 13.37.020 OF THE BERKELEY MUNICIPAL CODE  
REGULATING SOLICITING

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

Section 1. That Section 13.37.020 of the Berkeley Municipal Code in amended to read as follows:

**13.37.020 Prohibited acts.**

A. It is unlawful for any person to solicit another in any public place at the times, locations and in the manner specified below:

1. In any manner which coerces, threatens, hounds, or intimidates the person solicited;

2. Within ten feet of any automatic teller machine in the City.

B. [It is unlawful for any person to solicit another who is making a payment at a parking meter.](#)

C. Nonexclusivity. Nothing in this chapter shall limit or preclude the enforcement of other applicable laws.

Section 2. Copies of this Bill shall be posted for two days prior to adoption in the glass case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within fifteen 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.

ORDINANCE NO.      –N.S.

ADDING SECTION 13.36.040 TO THE BERKELEY MUNICIPAL CODE REGULATING  
LYING IN CITY-OWNED PLANTERS

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

Section 1.    That Section 13.36.040 is added to the Berkeley Municipal Code to read as follows:

**13.36.040    Obstructing City-owned planters.**

A. It is unlawful for any person to lie in or on the walls of a City-owned planter that is located in the right of way.

B. The prohibition in this Section shall not apply under the following circumstances:

1. To any person lying down due to a medical emergency.
2. To any person utilizing an object, placed on a commercial sidewalk by the City or other public agency, in the manner in which it is intended, such as sitting on a bus stop bench or downtown plaza benches.

Nothing in these exceptions shall be construed to permit any conduct which is prohibited by any other provision of law.

Section 2.    Copies of this Bill shall be posted for two days prior to adoption in the glass case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within fifteen 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.

## ORDINANCE NO. – N.S.

## AMENDING BERKELEY MUNICIPAL CODE CHAPTER 14.48 REGULATING USE OF SIDEWALKS; AND ADDING BERKELEY MUNICIPAL CODE SECTION 14.12.045 REGARDING ONE-WAY STREETS

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

Section 1. That Section 14.12.045 is added to the Berkeley Municipal Code to read as follows:

**Section 14.12.045 One-way streets.**

The City Traffic Engineer is authorized and directed to suitably indicate by appropriate signs those streets or portion of streets designated by resolution of the Council as one-way streets.

Section 2. That Chapter 14.48 of the Berkeley Municipal Code 14.48 is amended to read as follows:

**Chapter 14.48**

**MISCELLANEOUS USE OF STREETS AND SIDEWALKS**

**Sections:**

- 14.48.010 ~~Purposes of chapter~~ One-way streets.
- 14.48.020 Obstructions on streets and sidewalks.
- 14.48.030 Goods in transit.
- 14.48.040 Construction materials and barricades.
- 14.48.050 Trees and shrubs.
- 14.48.060 Poles, hydrants, signs, etc.
- 14.48.070 Bicycle racks.
- 14.48.080 ~~Reserved~~ Gasoline pumps.
- 14.48.090 Bus benches and bus shelters.
- 14.48.100 Mail boxes ~~and armed forces recruiting signs.~~
- ~~14.48.110 Taxicab telephones.~~
- 14.48.120 Newspaper racks and newspapers.
- 14.48.140 ~~Reserved~~ Vending machines.
- 14.48.150 ~~Reserved~~ Milk cases and boxes.
- 14.48.170 Temporary objects used for noncommercial expression ~~noncommercial uses.~~
- 14.48.180 Decorative noncommercial installations.
- 14.48.190 Public telephones.
- 14.48.200 Sidewalk cafe seating.
- 14.48.210 Removal of obstructions on streets and sidewalks.
- 14.48.220 Use of streets and sidewalks by ~~peddlers or~~ vendors.
- 14.48.230 ~~Reserved~~ Use of streets and sidewalks by vendors of racing forms.

- 14.48.240 Reserved~~Soliciting on streets prohibited.~~
- 14.48.250 Trap~~D~~oors in sidewalks.
- 14.48.260 Interpretation and severability.

**Section 14.48.010**—~~Purposes of chapter.~~**One-way streets.**

~~The City Traffic Engineer is authorized and directed to suitably indicate by appropriate signs those streets or portion of streets designated by resolution of the Council as one-way streets.~~

A. The primary purpose of this Chapter is to ensure that public streets, and especially sidewalks, are fully accessible and usable for the purposes for which they were constructed and are intended, specifically the movement of pedestrian and vehicular traffic and goods.

B. The City has for many years recognized the appropriateness of certain other, incidental uses of its streets and sidewalks, such as temporary storage of goods in transit, mailboxes, directional signs, kiosks, expressive activity, etc. This Chapter has for many years permitted such uses subject to appropriate regulation.

C. The City also recognizes that various other uses of sidewalks have become accepted, subject to various limiting standards and issuance of appropriate permits, since this Chapter was first adopted, such as the placement of tables, chairs and umbrellas associated with eating establishments; newsracks; vending tables and carts; and other specified types of objects and encroachments.

D. Accordingly, a secondary purpose of this Chapter is to regulate all of these incidental uses (except where otherwise regulated in this Code) in a manner that ensures that pedestrians and vehicles will continue to be able to have access to and use the streets and sidewalks for their intended use, while still allowing various incidental uses in a manner that protects public safety and enhances the public welfare.

E. The regulations set forth in this Chapter are intended to protect the City's substantial interests in pedestrian safety, access for persons with disabilities, an aesthetically pleasing streetscape and vital commercial areas, all of which are critical to the City's economic well-being, in a manner consistent with the First Amendment of the United States Constitution and correlative provisions of the California Constitution, as well as case law interpreting those provisions.

**Section 14.48.020**      **Obstructions on streets and sidewalks.**

A. It is unlawful for any person to place or cause to be placed anywhere upon any sidewalk, ~~or~~ roadway, or sidewalk planter or tree well, any object which obstructs, restricts, or prevents the use of any portion of such sidewalk, ~~or~~ roadway, or sidewalk planter or tree well, except as set forth in this Chapter.

B. This Chapter does not apply to:

1. objects owned or placed on the sidewalk by the City;
2. objects permitted under other Chapters of this Code (newsracks, encroachments, tables for licensed street vendors, sidewalk café seating, benches and planters, etc.);
3. mobility devices being used by pedestrians; or
4. personal baggage, such as suitcases or similar items, no piece of which has a cumulative footprint of more than 2 square feet, which are in a person's immediate

custody and control, placed on the sidewalk for not more than 1 hour while the person is in transit, and which can be readily moved by that person or an assisting person.  
~~.; provided that this section shall not apply to any object permitted by or pursuant to Sections 14.48.030 through 14.48.200.~~

**Section 14.48.030 Goods in transit.**

Goods, wares, merchandise or containers may be allowed on the outer one-third of the sidewalk for not to exceed one hour while in the actual course of receipt, delivery or removal.

**Section 14.48.040 Construction materials and barricades.**

Materials used in the construction or repair of any building or structure, together with the necessary pedestrian walkways, barricades and warning signs, when permission has been obtained from the proper City departments.

**Section 14.48.050 Trees and shrubs.**

Trees, shrubs and flowers with the necessary barricades when planted or maintained either by the City or by private parties under rules and regulations of the Public Works ~~ark~~ Department or authority of the Council expressed by resolution or ordinance.

**Section 14.48.060 Poles, hydrants, signs, etc.**

Poles, fire and police boxes, lamp posts, parking, street directional or warning signs, parking meters, drinking fountains, poster kiosks, hydrants, flag poles or standards, decorations for public events, sidewalk clocks, ~~barber poles~~, refuse cans, book return receptacles, barriers and any other similar installation; provided, however, that any such installation belongs to the City or is authorized by ordinance or resolution of the Council.

**Section 14.48.070 Bicycle racks.**

Bicycle racks of a type and at locations approved by and under such conditions as may be imposed by the Public Works ~~office~~ Department.

**Section 14.48.080 ReservedGasoline pumps.**

~~Gasoline pumps that were installed in the sidewalk area prior to July 1, 1932, and were in use on the 1st day of May 1952.~~

**Section 14.48.090 Bus benches and bus shelters.**

Bus benches and bus shelters at such locations and in accordance with such rules and regulations as may be prescribed by the City Manager and approved by the City Council.

**Section 14.48.100 Mail boxes ~~and armed forces recruiting signs.~~**

Mail boxes ~~and armed forces recruiting signs~~ that are placed in such locations that they do not interfere with the normal use of the sidewalk by pedestrians.

**Section 14.48.110 ReservedTaxicab telephones.**

~~Taxicab telephones of a type and at locations approved by and under such conditions as may be imposed by the Police Department, and in accordance with the provisions of the Taxicab Ordinance of this City.~~

**Section 14.48.120 Newspaper racks and newspapers.**

Newspaper racks ~~that which~~ are installed and maintained in accordance with Chapter 16.40 or Chapter 16.44 of the Berkeley Municipal Code.

**Section 14.48.140 ReservedVending machines.**

~~Vending machines, when they do not extend onto the sidewalk area more than twelve inches from the property line.~~

**Section 14.48.150 ReservedMilk cases and boxes.**

~~Milk cases and boxes when located on an unimproved portion of the sidewalk area at locations approved by and under such conditions as may be imposed by the Police Department.~~

**Section 14.48.160 Authorized retail displays.**

Objects such as, but not limited to, tables, chairs, umbrellas and canopies that are permitted pursuant to Chapter 9.48.

**Section 14.48.170 Temporary objects used for noncommercial expression noncommercial uses.**

~~Such items not otherwise prohibited by law designed for temporary noncommercial uses at such locations and at such times as may be permitted by the social planning department under the following rules and regulations:~~

~~A. Any person desiring such permission shall make application therefor to the social planning department specifying the object or thing to be used, the proposed time and place and purpose for which it is intended to be used, and such other information as may be required by the social planning department.~~

~~B. If there are no prior applications for such time and place and the use of such object or thing at such time and place will not create a traffic hazard, the permit shall be issued.~~

A. Background.

1. Former section 12.1-o of the Traffic Ordinance, adopted in 1952, permitted objects “designed for temporary non-commercial use” to be placed on sidewalks subject to approval by the City on a first come/first served basis if “the use of such object or thing at such time and place will not create a traffic hazard ... .” The original purpose of this provision, which was subsequently recodified as section 14.48.170, was to prevent the use of sidewalks for activities that would foreseeably result in clutter and impede access. Since this provision was first adopted, however, the City has enacted ordinances permitting street vending in certain areas (these ordinances were enacted in

1973 and 1981) as well as other commercial-related objects (i.e., sidewalk café seating).

2. Although all of these ordinances permit the placement of commercial objects on the sidewalk, they also regulate commercial activities in a manner that protects the aesthetic quality of the City's streetscape and the resulting economic vitality. For instance, the street vending ordinance permits only sales of merchandise that is hand crafted; the food vending ordinance is intended to allow the sale of diverse foods from attractive food carts, thereby adding to the vitality of the sidewalks and the surrounding area; and the sidewalk café seating ordinance is designed to allow the extension of desirable commercial uses which add to the liveliness and vitality of the City's streetscape and commercial areas.

3. The City also recognizes that the First Amendment may protect the distribution of certain goods which are inextricably intertwined with speech, and that such distribution, whether for sale, exchange or otherwise, may be entitled to protection as "non-commercial" under the First Amendment.

4. This Section, as comprehensively revised in 2015, regulates the temporary placement of objects used for expressive purposes on the sidewalk. Its general purpose is to provide specific, ministerial regulations for such objects, consistent with constitutional protections, while at the same time protecting the City's substantial interests in pedestrian safety, access for persons with disabilities, and an aesthetically pleasing streetscape and vital commercial areas, all of which are critical to the City's economic well-being.

5. In addition, a particular purpose of this Section is to define the term "temporary" so as to ensure that any given area of the sidewalk that is occupied for expressive purposes - and thereby withdrawn from public use - be only temporarily so withdrawn.

#### B. Definitions.

Except when otherwise specified in this Section, the following terms shall have the following meanings:

1. "Distribute" means to sell, exchange for anything of value, give away or allow to be taken or picked up for free, any object.

2. "Noncommercial expression" when applied to an object means that such object is used and placed on the sidewalk in support of the communication of ideas, whether verbally, in writing, through music or visual art or other means or media, but not solely for the purpose of proposing or entering into a financial transaction. Such objects include books, printed literature, CDs and DVDs, posters, bumper stickers and buttons, where such goods are inextricably intertwined with expression or communication of the person distributing the object, as well as small items of personal property that are integral to the act of speech or communication because they are themselves expressive or communicative, or used in the course of speech or communication. The purpose of this definition is to balance the public interest in free speech with the public interest in attractive, safe and accessible sidewalks and a vital and sustainable local economy, by permitting distribution and display of goods or objects that are inextricably intertwined with noncommercial expression, but limiting the type of such goods to those that themselves essentially constitute speech and do not unduly interfere with other public uses or the general aesthetic appearance of the sidewalk.

3. "Pedestrian" includes all persons defined in Vehicle Code section 467.

4. "Sidewalk" includes both publicly owned property designed for and devoted to pedestrian use, including the planting strip as defined in section 16.04.070, and all privately owned property adjacent to the sidewalk which is subject to an implied easement for public access.

5. "Temporary" means a duration of no greater than 14 calendar days.

C. Permit process for objects used for noncommercial expression.

1. In order to accomplish the purposes of this Section, no object used for noncommercial, expression may be placed on the sidewalk without a permit from the Traffic Engineer.

2. The following process will be employed in considering and acting on applications for permits under this Section.

3. The Traffic Engineer will provide a copy of this Section and of a blank (i.e., unissued) "Permit to Place Object on Sidewalk" to all persons who wish to apply for a permit.

4. Applicants shall fill in the form and submit it to the Traffic Engineer. Applications should normally be submitted to the Traffic Engineer no later than five (5) working days prior to the proposed effective date of the permit, but the Traffic Engineer may waive this requirement if quicker processing is feasible. Applicants shall also show compliance with all applicable ordinances and laws, including the payment of all applicable license taxes and fees.

5. The Traffic Engineer will review all applications. For locations other than those specified in a regulation promulgated by the Traffic Engineer for Telegraph Avenue between Bancroft Way and Dwight Way and Shattuck Avenue between Center Street and Kittredge Street in downtown Berkeley, the Traffic Engineer may, if necessary, conduct a field evaluation to determine a suitable location for the object(s). The field review will be based on the requirements of this Section as well as the Traffic Engineer regulation promulgated pursuant to this Section. The Traffic Engineer shall consult with the Finance Department as necessary.

6. In evaluating applications, the Traffic Engineer will not and shall not consider the content of any speech associated with or any other communicative aspect of the object(s) for which the permit is sought.

7. The Traffic Engineer shall approve applications that meet the criteria of this Section, subject to compliance with all laws and ordinances.

8. The Traffic Engineer shall indicate the effective date of the permit and file the signed original of the approved permit and provide an official copy to the applicant. The Traffic Engineer will also provide a copy of any permits issued to the Finance Department and the Police Department.

9. Permits will be issued on a first-come/first-served basis, and the Traffic Engineer shall maintain a waiting list of applicants.

10. It is the applicant's responsibility to apply for renewal of the permit, if desired.

D. Location requirements.

Objects used for noncommercial expression that are placed on the sidewalk under this Section pursuant to a permit must comply with all of the following location criteria, which are intended to maintain the sidewalks of the City as safe, useful and accessible means of pedestrian travel. No such object may be located or placed:

1. where there is less than 6 feet of clearance on the sidewalk for pedestrians to pass or so as to reduce pedestrian clearance to less than 6 feet;
2. where it would reduce the clear space for the passage of pedestrians passing between the roadway and the sidewalk to less than 8 linear feet along the curb;
3. where it would obstruct, restrict, or prevent the use of any portion of the sidewalk by pedestrian users beyond the authorized area specified in the permit;
4. within any building entrance (defined as the area the same width as a building doorway and extending from a building doorway 10 feet towards the curb, but not including sidewalk areas at the bottom of stairways that are wider than building doorways);
5. within 6 feet directly in front of any display window of any building abutting the sidewalk;
6. in the portion of the sidewalk closest to a building, if it interferes with access to buildings;
7. in front of or within 3 feet of a bus bench;
8. within 5 feet of any public or private driveway, fire hydrant, police or fire call box or other emergency facility, traffic signal controllers, mail boxes, utility boxes, or any fixed object legally placed in the City right-of-way;
9. within 2 feet of the edge of any tree well;
10. within 3 feet of any raised planter in the City right-of-way;
11. within 10 feet of any installation of public art installed pursuant to a program or plan approved by the City Council, except as may be permitted in that program or plan;
12. within 10 feet to the front or rear of any bicycle rack, or 3 feet to either side of a bicycle rack;
13. within 18 inches of any curb (this measurement includes space for persons minding the object as well as the object itself);
14. within 10 feet of any crosswalk (marked or unmarked);
15. within 5 feet of any wheelchair ramp;
16. in a location that interferes with access for persons with disabilities to the sidewalk;
17. at the curb when the curb is yellow, red, white, blue; or when it will interfere with access to a transit stop or bus bench or fire hydrant operations;
18. where it would obstruct, restrict or hinder visibility of traffic control signs; or
19. within 5 feet of any trap door in the sidewalk permitted pursuant to Section 14.48.250, or between such a trap door and the curb.

E. Size limits and attendance requirement.

The following objects are prohibited under this section:

1. objects or collections of objects with a cumulative footprint larger than 15 square feet and any horizontal dimension greater than 5 feet;
2. objects 7 feet or more in height;
3. objects that are not stationary or move in the wind;
4. objects with moving parts or parts that move in the wind, or flashing lights, except those required for safety as determined by the Traffic Engineer;
5. unattended objects.

F. Permit lapse.

A permit issued under this Section that is not exercised within 2 working days of its effective date (if different than its issuance date) shall be deemed to have lapsed and

shall be null and void and of no effect, and shall not constitute permission to place an object on the sidewalk. Upon a showing of good cause, such as serious illness, unusual weather, personal or public emergency or other similar circumstance, the Traffic Engineer may waive the lapse of such a permit and allow it to be exercised for the remainder of its term, if the location that is the subject of the permit has not already been allocated pursuant to another permit for the same period of time.

G. Permit duration.

1. Permits issued under this Section may be granted for a period from 1 to 14 consecutive days and shall automatically lapse at the end of the permit period.

2. No permit issued under this Section may be extended or renewed for the same location beyond 14 days, and no such permit may be issued if it would result in a single location being allocated to the same individual or organization for more than 14 days during any 28-day period.

3. A permittee may apply for a new permit for the same location only after his/her existing permit has expired. No application for the same location will be accepted from an applicant who has either a permit or a pending application for that location.

H. Permit posting.

Permits issued pursuant to this Section shall be posted or maintained in a conspicuous location on the permitted object, at all times during which the permittee is maintaining it on the sidewalk.

I. Additional regulations.

The Traffic Engineer may establish additional procedures and limitations to implement this Section where additional protections are needed to ensure accessibility and public use of the sidewalk.

**Section 14.48.180 Decorative noncommercial installations.**

Decorative noncommercial installations subject to the following regulations and requirements:

A. At least seven feet of improved sidewalk area measured at right angles to the curb shall be kept open and unobstructed.

B. Such decorative noncommercial installations shall be placed and maintained in the portion of the sidewalk area farthest from the curb; provided, however, that subject to all other conditions herein specified, such installations may be placed and maintained in the portion of the sidewalk area adjacent to the curb if such installations will not interfere with access to or from any parked vehicle and is:

1. Not closer than twenty-five feet to any curb return or fire hydrant;
2. Not located adjacent to any commercial or passenger loading zone;
3. Not closer to the curb than eighteen inches;
4. Not affixed to any City or utility company-owned poles or appurtenances;
5. Not mounted in or affixed to the sidewalk;
6. Not inconsistent with safety, development in the area, or other decorative noncommercial installations.

C. No decorative noncommercial installation shall be placed or maintained in the sidewalk area without a permit therefor. Application for such permit shall be made to the office of the City Manager; such application shall contain such information as may be required by him. The application shall be referred to the Public Works Department and

the Civic Art Commission for review to determine that it is in the public interest to grant the permit, and that the granting thereof will not be detrimental to the public health, safety or general welfare. The permit shall not be granted without the approval of both the Public Works Department and the Civic Art Commission. If such approval is given and the City Manager concurs, the permit shall be granted subject to the conditions hereinabove set forth, and such additional conditions as may reasonably be imposed. Such permit shall be subject to revocation by the City Manager without cause and revocation, the decorative noncommercial installation for which the permit has been given shall be removed within ten days after notice.

D. Anyone granted a permit for a decorative noncommercial installation shall agree to indemnify and hold harmless the City, its officers and employees of and from any and all claims, damages or suits that may arise or in any way be occasioned by the granting of the permit or the maintenance of the decorative noncommercial installation permitted thereby.

**Section 14.48.190 Public telephones.**

Telephones for public use of a type and at locations approved by and under such conditions as may be imposed by the City Manager.

**Section 14.48.200 Sidewalk cafe seating, benches and planters.**

A. Notwithstanding anything to the contrary in this Chapter, the City of Berkeley Engineering Division of the Department of Public Works, or its successor, may approve Sidewalk Cafe Seating, Benches and/or Planters on sidewalks as set forth in, and in compliance with, this Section.

1. No permit may be issued under this Section for any sidewalk area in front of a single parcel if there are any current violations of this Chapter in that sidewalk area.

2. A permit for Sidewalk Cafe Seating may not be issued except for a Food Service Establishment that is in compliance with all applicable requirements of Title 23 and any Permit issued thereunder.

3. A permit for Benches and/or Planters may not be issued unless the business for which the Benches and/or Planters is/are proposed is in full compliance with Title 23 and any Permit issued thereunder.

B. For purposes of this Chapter, the following terms shall be defined as follows:

1. "Bench" means a seat designed for two or more persons.

2. "Bus Bench" means a bench installed and maintained under an agreement between the City, A.C. Transit and Lamar Transit Advertising or another public or semi-public transit provider.

3. "District-wide Sidewalk Bench/Planter Area Plan" means a City-approved plan for a specific commercial district as defined in said plan, that establishes area-specific regulations for benches, planters and/or plant material, and establishes general regulations for the placement of benches and planters in the public right-of-way, for the designated district.

4. "District-wide Sidewalk Cafe Seating Area Plan" means a City-approved plan for a specific commercial district as defined in said plan, that establishes area-specific regulations for sidewalk cafe seating, and establishes general regulations for the placement of sidewalk cafe seating in the public right-of-way, for the designated district.

5. "Food Service Establishment" means, and is limited to, a Quick Service Restaurant or Full Service Restaurant, as set forth in Chapter 23F.04.

6. "Planter" means a container that is designed or used for growing plants.

7. "Sidewalk" has the same meaning as set forth in the Vehicle Code.

8. "Sidewalk Cafe Seating" means tables and/or chairs (including benches) and umbrellas associated with lawfully operating Food Service Establishments, in or on the public right-of-way or resting on, or projecting into, the sidewalk area, which are not physically or structurally attached to a building, retaining wall or fence.

9. "Transit Stop" means an AC Transit bus stop, UC Berkeley bus stop, a paratransit bus stop, Bay Area Rapid Transit station entrance, or another public transit provider.

10. "Window Box Planter" means a box, designed to hold soil for growing plants, attached at or on a windowsill.

C. Sidewalk Cafe Seating, Benches and Planters shall fully conform to the following requirements of this subdivision:

1. Any object permitted under this Section shall leave a minimum horizontal clear space of six feet, or such greater amount of clear space as the Engineering Division finds necessary to protect and enhance pedestrian and vehicle traffic for public use in the sidewalk area, as that space is determined by the City of Berkeley Engineering Division of the Department of Public Works, or its successor.

2. Objects permitted under this Section shall not:

a. Unduly interfere with access by public employees and utility workers to meters, fire hydrants or other objects (street hardware) in the right-of-way;

b. Block or obstruct the view of necessary authorized traffic devices;

c. Unduly interfere with pedestrian traffic on the sidewalk, pedestrian safety, access to public or private parking, traffic circulation, and/or vehicular safety;

d. Be closer than 25 feet to any curb return or fire hydrant;

e. Be located adjacent to any commercial or passenger loading zone;

f. Be closer to the curb than 18 inches;

g. Be affixed to any City or utility company-owned poles or appurtenances;

h. Be adjacent to sidewalk vending equipment permitted under Chapter 9.48;

i. Be adjacent to a transit stop, or an area with high pedestrian traffic volume due to proximity to a transit stop; or

j. Be located in the right-of-way of a California state highway.

3. All sidewalk cafe seating shall be subject to the following additional standards and requirements:

a. At least half of the tables shall be wheelchair accessible. Accessible tables shall have clear floor space with minimum dimensions of 30 inches by 48 inches, maximum height of 34 inches, and minimum knee space of 27 inches high, 30 inches wide and 19 inches deep.

b. All Sidewalk Cafe Seating components shall be stored in a secure location on private property when not in use.

c. The permittee shall regularly inspect and clean the Sidewalk Cafe Seating and that portion of the public sidewalk adjacent to the establishment. A waste receptacle shall be placed immediately inside the entrance of the establishment.

4. All benches and planters shall be subject to the following additional standards and requirements:

a. All proposals shall comply with any design requirements adopted by the City for benches, planters and/or plant material.

b. Benches and planters shall not be allowed at the curb except to the extent that a District-wide Sidewalk Bench/Planter Area Plan provides to the contrary.

D. All permits issued under this Section shall be subject to the following conditions:

1. The permittee shall be responsible for, and exercise reasonable care in the inspection, maintenance, and cleanliness of the area affected by any object(s) permitted by this Section, including any design requirements hereafter enacted, from the building frontage to the curb.

2. The permittee shall restrict any objects permitted under this Section to the approved location(s) and configuration, and ensure compliance with all applicable laws, and the number of tables and chairs shall not be increased without prior approval of the Public Works Department.

3. When any objects permitted under this Section are found to be in conflict with existing or proposed facilities or improvements owned, maintained, or operated by the City, or any existing or proposed City design plans, those objects shall, upon written demand of the City Manager or his or her designee, be removed or relocated in such a way as to eliminate the conflict, at the sole expense of the permittee. Should the permittee fail to comply with said written demand within a reasonable period of time, the City may cause such relocation of the placement at the expense of the permittee. Any such non-compliance shall also be a violation of this Section.

4. Permits issued under the Section shall be posted in plain view within the food service establishment for which the permit has been issued.

5. By accepting a permit under this Section, the permittee explicitly agrees to hold the City, its officers and employees harmless from any liability, claims, suits or actions for any and all damages alleged to have been suffered by any person or property by reason of the permittee's installation, operation, maintenance or removal of Sidewalk Cafe Seating, Benches and/or Planters.

6. Prior to permit approval, the permittee shall demonstrate possession of liability insurance in the amount of \$500,000 for Benches and Planters, and/or \$1,000,000 for Sidewalk Cafe Seating. Said insurance shall name the City of Berkeley as additionally insured and shall be in a form acceptable to the City Attorney.

7. The permittee shall monitor and control the use of the Sidewalk Cafe Seating so as to prevent disturbance of the surrounding neighborhood.

8. No alcoholic beverages shall be served to the Sidewalk Cafe Seating at any time.

E. Permits under this Section are not transferable, and must be renewed annually.

F. Sidewalk Cafe Seating, Benches and/or Planters that are not permitted under this Section are prohibited encroachments under Chapter 16.18, and shall constitute public nuisances subject to the remedies in Chapter 1.26.

G. The City Council may by resolution establish fees for the implementation and administration of this Section.

**Section 14.48.200 Sidewalk cafe seating.**

Sidewalk cafe seating as defined in Section 22.41-2a of the Zoning Ordinance, Ordinance No. 3018-N.S., if the person who constructs, maintains, places or causes to be used sidewalk cafe seating has obtained a use permit for such use under the terms of the Zoning Ordinance.

**Section 14.48.210 Removal of obstructions on streets and sidewalks.**

Anything placed or permitted to remain upon any sidewalk or roadway in violation of Section 14.48.020 of this ~~e~~Chapter, is declared to constitute a nuisance and the ~~City Police Department~~ is authorized and empowered to abate such nuisance by removing ~~it the same to the custodian of lost property in the Police Department or the Corporation Yard of the City.~~

**Section 14.48.220 Use of streets and sidewalks by ~~peddlers or vendors.~~**

Any properly licensed ~~peddler or~~ vendor may use the public streets of the City in commercial or industrial zones for the sale of goods, wares, merchandise, or food when conducted under the conditions stated in this ~~s~~Section.

A. Sidewalk vending is permitted as regulated by Chapter 9.48 of the Berkeley Municipal Code.

B. ~~Vending form~~ ~~from Other streets~~ vending is permitted only from vehicles that ~~which~~ are lawfully parked upon streets which that are not regulated by parking meters or other posted parking time limits, except as may be permitted by state law.

C. It is unlawful for any person to vend in violation of this ~~S~~Section.

**Section 14.48.230 ~~Reserved Use of streets and sidewalks by vendors of racing forms.~~**

~~Any vendor of racing forms who is properly licensed and has the required permit from the Police Department of the City may use the public streets and sidewalks of the City for selling, offering for sale, distributing or giving away racing forms.~~

**Section 14.48.240 ~~Reserved Soliciting on streets prohibited.~~**

~~It is unlawful for any person to solicit, on any public street or sidewalk, park or other public place or in any doorway or entrance way immediately abutting thereon, the sale of any subscription to any magazine, periodical or other publication, or the sale of any tangible personal property for delivery at a subsequent time.~~

**Section 14.48.250 Trap Ddoors in sidewalks.**

A. Trap ddoors in sidewalks used to cover an opening for an elevator, stairway or chute must be kept in such a condition that they will not endanger persons or property, and it is unlawful for any person owning or being in charge or control of any such doors in sidewalks used for covering entrances to elevators, stairways or chutes, or other openings in the sidewalk leading to the basement, to allow said doors to remain open, except when such elevator, stairway or chute is being used for loading or unloading or transferring of merchandise or material.

B. The requirements of this section shall be in addition to and not in lieu of any other ordinance of the City having to do with doors or other openings in sidewalks.

**Section 14.48.260 Interpretation and severability.**

A. This Chapter is intended to be consistent with the United States and California constitutions, and in the event a patent or latent ambiguity in this Chapter requires interpretation by the City or a Court, such interpretation shall, to the extent permissible, be consistent with relevant constitutional provisions.

B. If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this Chapter. The City Council hereby declares that it would have passed this chapter and each section, subsection, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

Section 3. Copies of this Bill shall be posted for two days prior to adoption in the glass case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within fifteen 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.

ORDINANCE NO. – N.S.

ADDING SECTION 13.36.085 TO THE BERKELEY MUNICIPAL CODE PROHIBITING  
URINATION AND DEFECATION IN PUBLIC PLACES

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

Section 1. That section 13.36.085 is added to the Berkeley Municipal Code to read as follows:

**13.36.085 Urination and defecation in public places.**

A. No person may urinate or defecate:

1. In a public place;
2. In a place open to the public or exposed to public view;
3. In a private place entered without consent of the owner, his agent, or the person in lawful possession thereof.

B. For purposes of this Section, “public place” means and includes, but is not limited to, any street, park, pier, beach, restaurant, café, theater, store, building playground, school ground recreational area or other place to which the public is invited or has access or any place open to the public view.

C. This Section shall not apply to urination or defecation in any fixture provided for such purposes in any bathroom, restroom, dressing room, or similar facility.

Section 2. Copies of this Bill shall be posted for two days prior to adoption in the glass case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within fifteen 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.