

Ballot Question

Shall an ordinance prohibiting sitting on sidewalks in commercial districts from 7:00 am to 10:00 pm, with exceptions for: (a) medical emergencies; (b) wheelchairs and similar mobility devices; (c) bus benches; (d) street events; (e) other furniture placed on the sidewalk pursuant to a permit; requiring the City to ensure that it is applied in a constitutional manner and requiring a warning prior to citation, be approved?

TEXT OF MEASURE

ORDINANCE NO. #,### - N.S.

AN ORDINANCE OF THE CITY OF BERKELEY ADOPTING NEW SECTION 13.36.025 OF THE BERKELEY MUNICIPAL CODE TO PROHIBIT SITTING ON SIDEWALKS IN COMMERCIAL DISTRICTS

THE PEOPLE OF THE CITY OF BERKELEY ORDAIN AS FOLLOWS:

Section 1. Findings

The People of the City of Berkeley find as follows:

A. In FY 2012 the City of Berkeley devoted more than \$2.8 million to services for the homeless, mentally ill, and other disadvantaged residents, including meals, shelters, transitional and permanent housing with supportive services, daytime drop-in centers, health services, employment programs, alcohol and other drug treatment and rehabilitation, case management, and legal services. Residents, taxpayers, and business owners of Berkeley share the consensus that the City should continue to provide this funding subject to resource constraints and taking into account other needs such as public safety and our City's infrastructure.

B. Public spaces in commercial districts have become increasingly inhospitable due to groups of individuals, often with dogs, having created encampments on sidewalk areas on our commercial streets. These encampments obstruct pedestrian access, and result in litter, debris, and waste left on our sidewalks.

C. City parks are open and available during the day for everyone's use.

D. As a result of the sidewalk encampments, residents and visitors tend to avoid some of our commercial areas, which threatens the viability of Berkeley's businesses

that are already struggling. This in turn threatens the City's overall economic health. Reduced economic activity results in fewer resources available for homeless services.

E. Although state and local laws address various specific problematic behaviors and actions associated with encampments of people and dogs on the sidewalks, enforcement of such laws to an extent sufficient to reverse the trend described above is infeasible, as it would require a level of police resources that are simply not available, and would divert public safety resources from more serious crimes.

F. The only practical solution is to limit sitting on sidewalks only in commercial districts at certain hours of the day, and to require a warning before citation.

G. The purpose of this ordinance is solely to address the deleterious impacts of encampments on public sidewalks. Accordingly, it is the intent of the voters that the ordinance be interpreted and applied in a manner that does not discriminate against homeless, mentally ill or other residents of the City based on their status.

H. Because the intent of the voters is not to criminalize persons for sitting on the sidewalk given that other options are available (permanently-affixed public benches, bus stop benches, low walls, etc.), this ordinance shall not take effect until July 1, 2013, so that comprehensive outreach and education can be conducted, involving homeless and youth service providers, merchants, community agencies and City staff including police. Other methods, such as signage, will also be employed.

Section 2. Adoption of Ordinance.

That a new Section 13.36.025 is hereby added to the Berkeley Municipal Code to read as follows:

Section 13.36.025 - Prohibiting Sitting on Commercial Sidewalks at Certain Times - Exceptions.

A. Prohibiting Sitting on Commercial Sidewalks at Certain Times. No person shall sit on a Commercial Sidewalk or on any object brought or affixed to said sidewalk, from 7:00 a.m. until 10:00 p.m., except as provided in this Section.

B. Exceptions. This Section shall not apply to any person sitting on a commercial sidewalk:

1. Due to a medical emergency;
2. On a wheelchair or other device that is needed for mobility;
3. On a public bench or bus stop bench that is permanently affixed to the sidewalk; or

4. As authorized by a City-issued permit, such as a permit for a Street Event, a permit under Sections 14.48.170 or 14.48.200, or other City permit.

This Section shall not be construed to prohibit persons from obtaining such City permits.

These exceptions shall not be construed to allow conduct that is prohibited by other laws.

C. This Section shall not be applied or enforced in a manner that violates the United States or California constitutions. Prior to enforcement of this Section, the City shall develop and adopt rules, regulations and procedures to ensure that it is not applied or enforced in a manner that violates the United States or California constitutions.

D. Necessity of Warning Prior to Citation. No person may be cited for a violation of this Section until a peace officer first warns said person that his or her conduct is unlawful and said person is given a chance to stop said conduct. One warning by a peace officer to a person who is violating this Section is sufficient for a 30-day period as to any subsequent violations of this Section by said person during said period.

E. Commercial Sidewalk - Definition. As used in this Section, "Commercial Sidewalk" means all sidewalks in front of or adjoining property designated on the City's Official Zoning Map with a "C" prefix.

F. Violation - Infraction or Misdemeanor. A first violation of this Section shall be charged only as an infraction subject to either a \$75 fine or community service. Subsequent violations may be charged as either an infraction or a misdemeanor.

Section 3. Amendment of Ordinance.

Section 13.36.025 of the Berkeley Municipal Code as adopted by this Ordinance may be repealed or amended by the City Council without a vote of the people.

Section 4. Severability.

If any section, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining sections, sentences, clauses, phrases, or portions of this ordinance shall nonetheless remain in full force and effect. The people of the City of Berkeley hereby declare that they would have adopted each section, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, sentences, clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable and, to that end, the provisions of this Ordinance are severable.

Section 5. Majority Approval; Effective Date; Execution.

This Ordinance shall be effective only if approved by a majority of the voters voting thereon and shall go into effect on July 1, 2013. The Mayor and City Clerk are hereby authorized to execute this Ordinance to give evidence of its adoption by the voters.