



Office of the Mayor

ACTION CALENDAR
October 16, 2018

To: Members of the City Council

From: Mayor Jesse Arreguin, Councilmember Sophie Hahn, and Councilmember Linda Maio

Subject: Adoption of Administrative Regulations Regarding Temporary Non-Commercial Objects on Sidewalks and Parklets, and Amending BMC Chapter 14.48

RECOMMENDATION

1. Adopt a first reading of an Ordinance amending BMC Chapter 14.48, “Miscellaneous Use of Streets and Sidewalks”
2. Adopt the proposed Administrative Regulation (AR) Regulating Temporary Non-Commercial Objects in Sidewalks and in Parklets, Pursuant to BMC Section 14.48.120.

BACKGROUND

On April 26, 2018, the City Council reviewed “Sidewalks” regulations and directed staff to use the proposal, as modified at that meeting, to bring back (1) an amended Ordinance codifying Regulations for Sitting, Lying, Dogs and Objects on Sidewalks and in Parklets, and (2) other necessary amendments, if any, to existing policies, Administrative Regulations and/or code sections impacted by the proposed Ordinance, including regulations on BART access corridors.

Over the past few months we have collaborated with staff to draft amendments to the referred ordinance. In addition, outside legal counsel was brought in to review the proposed regulations and amendments, as well as the recently issued opinion of the *Martin v City of Boise* case. It was determined that (1) only “objects” should be addressed by this policy at this time due to the need to review the *Martin* case and its impact on rules addressing sitting and lying, and (2) the proposed policy of April 26, 2018 with regard to objects needed further revision.

In light of the above, three related items have been submitted to the October 16, 2018 Agenda for simultaneous review: 1) a referral to the City Manager to develop non-criminal options for the enforcement of Berkeley laws and regulations related to the use of public space; 2) analysis of impacted rules and regulations in light of the *Martin v City of Boise* case, and; 3) Berkeley Municipal Code updates and the Administrative Regulation proposed in this item, which focus narrowly on “objects” on sidewalks and in parklets.

Because *Martin* raises constitutional issues that have not been as clearly articulated by the Courts in the past, it is imperative that any new policy or amendment to existing policy related to sitting or lying be established with renewed caution and consideration. After review of the *Martin* case and consideration of non-criminal enforcement mechanisms, additional elements will be brought forward.

Current Proposal: Objects on Sidewalks and in Parklets

The current proposal focuses narrowly on objects and is in two parts. First, there is a proposed amendment to BMC Section 14.48.170 (Attachment 1) that defines the term “temporary noncommercial objects” as personal belongings. Further, since Chapter 14.48.170 is being

amended, a variety of additional “clean ups” to sections that are now obsolete, e.g. regarding the use of sidewalks for milk cases, vending machines, racing forms, etc. are proposed.

Second, after consultation with staff and outside counsel, an Administrative Regulation (Attachment 2) for placing personal belongings on sidewalks was developed and is hereby proposed for adoption pursuant to BMC 14.48.170.

Under the proposed Administrative Regulation (“AR”), personal belongings left unattended on sidewalks for more than an hour can be removed and stored by the City after providing notice. For personal belongings on sidewalks that are attended, the AR provides, like the prior proposal on April 26, 2018, that such belongings cannot interfere with the “Path of Travel” or use of permitted objects such as fire hydrants, parking payment machines, transit stops, bicycle racks, public art installations, and areas adjacent to blue and white curbs. Further, any enforcement of BMC 14.48.020 for placing smaller accumulations of personal belongings on sidewalks will be a lower priority.

The proposed Administrative Regulation prohibits the placement of TNC Objects within 25 feet of BART Station entrances on the same side of the street. BART Station entrances see thousands of pedestrian trips a day and require an unobstructed passage to facilitate safety and walkability.

Additionally, the new Downtown Berkeley BART Plaza serves as the main gateway for many people arriving to Downtown via BART, AC Transit, or UC Berkeley Bear Transit Shuttle, which combined has a total of 30,000 commuters daily at this location. The new plaza will also have ongoing active uses including café seating, commercial uses and performances and cultural events. TNC objects should be prohibited from being placed in the plaza so as to not obstruct free passage and ensure active use by all.

The current proposal seeks to balance the needs of the homeless, while reserving the City’s discretion to act, if it is necessary to prevent any one location from becoming unduly impacted as a long-term storage place for a large volume of personal belongings.

ENVIRONMENTAL SUSTAINABILITY

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

FINANCIAL IMPLICATIONS

Typical costs of staff time and resources to enforce City Regulations.

CONTACT PERSON

Mayor Jesse Arreguin, (510) 981-7100

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

ATTACHMENTS

1. Ordinance Amending Berkeley Municipal Code Chapter 14.48 (strike-out and clean)
2. Proposed Administrative Regulation Regulating Temporary Non-Commercial Objects on Sidewalks and Parklets

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 14.48, MISCELLANEOUS USE OF STREETS AND SIDEWALKS

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

Section 1. That Berkeley Municipal Code Chapter 14.48 is hereby amended as follows:

Chapter 14.48

MISCELLANEOUS USE OF STREETS AND SIDEWALKS

Sections:

- 14.48.010 One-way streets.
- 14.48.020 Obstructions on streets and sidewalks.
- 14.48.030 ~~Goods~~ Objects 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 Gasoline pumps.~~
- 14.48.080 Bus benches and bus shelters.
- 14.48.090 Mail boxes and armed forces recruiting signs.
- ~~14.48.110 Taxicab telephones.~~
- 14.48.100 Newspaper racks and newspapers.
- ~~14.48.140 Vending machines.~~
- ~~14.48.150 Milk cases and boxes.~~
- 14.48.110 Authorized retail displays.
- 14.48.120 Temporary ~~n~~Noncommercial uses Objects.
- 14.48.130 Decorative noncommercial installations.
- 14.48.140 Public telephones.
- 14.48.150 Sidewalk cafe seating, benches and planters.
- 14.48.160 Removal of obstructions on streets and sidewalks.
- 14.48.170 Use of streets and sidewalks by peddlers or vendors.
- ~~14.48.230 Use of streets and sidewalks by vendors of racing forms.~~
- ~~14.48.240 Soliciting on streets prohibited.~~
- 14.48.180 Trap dDoors in sidewalks.
- 14.48.190 Parklets.

Section 14.48.010 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 14.48.020 Obstructions on streets and sidewalks.

It is unlawful for any person to place or cause to be placed anywhere upon any Ssidewalk, Parklet or roadway, any object which obstructs, restricts, or prevents the use of any portion of such Ssidewalk, Parklet or roadway, except as set forth in this Chapter or in a regulation ~~adopted~~ promulgated by the ~~Traffic Engineer~~ City Manager and adopted by the City Council.

For purposes of this Chapter, Sidewalk is defined as provided in BMC Section 1.04.010(18) as that portion of a street between the curbline and the adjacent property line intended for the use of pedestrians.

Parklet is defined as provided in BMC Section 14.48.190(B)(4).

Section 14.48.030 ~~Goods~~ ~~Objects~~ in transit.

~~Goods, wares, merchandise, or containers, furniture, and suitcases and other similar objects in the immediate custody and control of individuals readily able to move or remove such objects~~ may be allowed on the outer one-third of the sidewalk for ~~up to not to exceed~~ one hour while in the actual course of receipt, delivery, ~~transport, transit~~ 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 ~~required permits have permission has~~ been obtained from the ~~proper City of Berkeley~~ 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 when expressly as allowed by Council action or by the City Manager, by private parties, under rules and regulations of the Park 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~~ action.

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 ~~Police Department~~ City Manager.

~~Section 14.48.080 Gasoline 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. (Ord. 3262-NS § 12.1-f, 1952)~~

Section 14.48.080 ~~90~~ 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 14.48.090 ~~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 Taxicab 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. (Ord. 3262-NS § 12.1-i, 1952)~~

Section 14.48.100 ~~20~~ Newspaper racks and newspapers.

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

~~Section 14.48.140 Vending machines.~~

~~Vending machines, when they do not extend onto the sidewalk area more than twelve inches from the property line. (Ord. 3262-NS § 12.1-l, 1952)~~

Section 14.48.150 Milk 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. (Ord. 3262-NS § 12.1-m, 1952)~~

Section 14.48.110 160 Authorized retail displays.

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

Section 14.48.120 170 Temporary nNoncommercial usesObjects.

A. ~~Temporary Noncommercial Objects ("TNC Objects") are personal belongings:~~

- ~~1. In the immediate custody and control of a person or persons at substantially all times;~~
- ~~2. Not offered for sale or exchange or involved in the solicitation of money for immediate payment;~~
- ~~3. Not otherwise prohibited and of a size, weight and quantity that can be easily moved by the owner.~~
- ~~4. Not furniture. Furniture is only allowed pursuant to BMC Chapter 9.48 or pursuant to BMC § 14.48.030 Objects in Transit.~~

The ~~Traffic Engineer~~City Manager may adopt regulations specifying what TNC Oobjects may be permitted under this Section and where such TNC eObjects may be permitted, as well as procedures and limitations to implement this Section. Any such regulation shall contain provisions and shall be applied in such a manner as to ensure that it ~~is applied in a manner that~~ does not deprive any person of rights protected by the state or federal constitutions, including freedom of expression, and any size limitation contained therein shall not apply to dogs, or to ~~limited cushioninginsulating~~ material ~~being~~ used to sit on such as, but not limited to, blankets, cushions or mats. Regulations adopted by the City Manager under this Section shall not take effect until they have been presented to the City Council for approval at a regularly scheduled meeting.

B. After approval by the City Council, ~~Traffic Engineer~~the City Manager shall ensure that regulations adopted pursuant to this Section ~~shall be are~~ publicized ~~by the City~~ in a manner substantially equivalent to the manner in which ordinances are ~~published~~, and ~~that materials summarizing such regulations are available for dissemination in Commercial and Manufacturing zones. The City may also post fixed signage in Commercial and Manufacturing zones informing the public of such regulations.~~

C. No person may be cited for a violation of this Section or the regulations adopted pursuant to it unless that person has first been warned that his or her conduct is in violation hereof, is allowed a reasonable opportunity to comply but refuses to do so.

D. Violations of this Section or ~~the City Manager~~ regulations adopted pursuant to ~~it~~ this Section shall be charged as infractions, and not as misdemeanors.

Section 14.48.130 180 Decorative noncommercial installations.

Decorative noncommercial installations subject to the following regulations and requirements:

- A. At least six 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 are:
 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, who may require as part of the application such information as may be deemed necessary to determine compliance with this Section and other applicable laws and regulations, including but not limited to a scaled site plan, signature of the fronting property owner and permittee, and agreement to indemnify the City as specified in Subsection D. 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.

1. The permittee shall carry liability insurance in the amount of \$500,000.

E. For purposes of this Chapter, "Decorative Noncommercial Installations" shall include but are not limited to artwork, planters, and other objects that are placed within the public right-of-way by a private party for the purpose of decoration in a residential, commercial, or industrial district, not for the purpose of advertising, commerce or other economic benefit.

F. Decorative Noncommercial Installations that are not permitted under this Section are prohibited encroachments under 16.18 and shall constitute a public nuisance 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. ~~140~~ 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. ~~150~~ 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~~ [BMC 1.04.010\(18\)](#).

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; except in such cases where the geometry of the roadway has been designed to accommodate, or will accommodate, Sidewalk Seating, as determined by City staff. City staff will be defined as the Traffic Engineer, City Engineer, or Fire Marshall as appropriate;

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. A restaurant that proposes to serve alcoholic beverages within an outdoor dining area shall comply with the standards established by the State of California Department of Alcoholic Beverage Control. The dining area shall be:

a. Physically defined and clearly part of the restaurant it serves; and

b. Supervised by a restaurant employee to ensure compliance with laws regarding the on-site consumption of alcoholic beverages.

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 14.48.160 210 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 ~~C~~chapter, is declared to constitute a nuisance and the ~~Police Department~~City is authorized and empowered to abate such nuisance by removing the same to the custodian of lost property in the Police Department or the Corporation Yard of the City, ~~or other location designated by the City.~~

Section 14.48.170 220 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 section.

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

B. Other street vending is permitted from vehicles which are lawfully parked upon streets which are not regulated by parking meters or other posted parking time limits.

C. It is unlawful for any person to vend in violation of this section.

~~Section 14.48.230 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. (Ord. 3262-NS § 12.4, 1952)~~

~~**Section 14.48.240 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. (Ord. 3262-NS § 12.5, 1952)~~

Section 14.48.180 250 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 and monitored for pedestrian safety while 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.

14.48.190 300 Parklets.

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 Parklets, Benches and/or Planters in the public right-of-way (excluding Sidewalks alone, which are subject to and governed by Section 14.48.200) as set forth in, and in compliance with, this Section.

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

2. A permit for a Parklet may not be issued unless the pParklet Host is in full compliance with all applicable requirements of Title 23 and any Permit issued thereunder.

3. A permit for a Parklet may only be issued adjacent to parcels in the following zoning districts: all Commercial (C-prefixed districts), Mixed-Use Light Industrial (MU-LI), Mixed-Use Residential (MU-R), and Mixed Manufacturing (MM).

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. "Bike Parking" means a location with bike racks intended for the secure parking of bicycles.

3. "Furniture" means amenities such as but not limited to tables, chairs, benches, and other equipment that facilitates the stationary use of public space.

4. "Parklet" means a platform or similar level surface extending into the public right-of-way with amenities such as but not limited to tables and/or chairs (including Benches), Bike Parking, and umbrellas, designated as public space, located in or on the public right-of-way or resting on, or projecting into, the sidewalk and parking area, which are not physically or structurally attached to a building, retaining wall or fence.

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

6. "Sidewalk" has the same meaning as set forth in ~~the Section 1.04.010(18) Vehicle Code.~~

7. "Sponsoring Business," "Host," "Permit Holder" or "Permittee" means, and is limited to, any establishment engaged in insuring and caring for the Parklet as set forth in the Parklet maintenance agreement.

8. "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.

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

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

2. Parklets shall comply with applicable Americans with Disabilities Act (ADA) accessibility standards.

3. 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 in the right-of-way, including the Sidewalk, pedestrian safety, traffic circulation, and/or vehicular safety;
 - d. Be closer than 25 feet to any curb return or fire hydrant; except in such cases where the geometry of the roadway has been designed to accommodate, or will accommodate, a parklet, as determined by City staff. City staff will be defined as the Traffic Engineer, City Engineer, or Fire Marshal as appropriate;
 - e. Be affixed to any City or utility company-owned poles or appurtenances;
 - f. Be located in the right-of-way of a California state highway;
 - g. The width of the Parklet must not extend beyond six feet from the curb line, except in such cases where the geometry of the roadway has been designed to accommodate, or will accommodate, a Parklet, as determined by City staff. City staff will be defined as the Traffic Engineer, City Engineer, or Fire Marshal as appropriate.
4. All Parklets shall be subject to the following additional standards and requirements:
- a. Parklets must remain publicly accessible and must include signage posted on site to this effect;
 - b. Parklet construction materials must be of high quality, durable, and suitable for public use;
 - c. A visible edge to the Parklet is required, which may consist of Planters, railing, or cabling. The edges should be visually permeable;
 - d. The Permittee shall regularly inspect and clean the Parklet and that portion of the public sidewalk adjacent to the Parklet;
 - e. Access panels must be included in order to maintain the gutter and area underneath the Parklet and the design must allow for drainage along the gutter to pass underneath the Parklet;
 - f. Safe hit posts and wheel stops, or approved equivalents, may be required. If Bike Parking is provided, the bike racks can be at street grade.
5. All Benches, Furniture, and Planters within the Parklet 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. All non-secured Parklet components shall be stored in a secure location on private property when not in use;
 - c. Any unsecured Furniture must be clearly different from the Furniture used by a Parklet Host in order to emphasize that the Parklet is public space, as determined by City staff.
- 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 right-of-way, including the Parklet area.
 2. The Permittee shall restrict any objects permitted under this Section to the approved location(s) and configuration, ensure compliance with all applicable laws, and the number and configuration of Benches, Furniture and Planters and overall square footage of the Parklet shall not be modified 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 this Section, when under review prior to issuance, shall be posted in plain view within the sponsoring establishment for which the permit has been issued. Public notice, permitting, and appeal for Parklets are set forth in BMC Section 16.18.060 (Permit procedure for minor encroachment) of the Berkeley Municipal Code.
 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 the Parklet, Benches and/or Planters.

6. Prior to permit approval, the Permittee shall demonstrate possession of liability insurance, in the amount not less than \$1,000,000, for the Parklet including any associated Benches, Planters and Furniture. Said insurance shall name the City of Berkeley as an additional insured and shall be in a form acceptable to the City Attorney.

7. The City Manager or his/her designee may require a performance bond to ensure Parklet removal in the event of a permit cancellation.

8. The Permittee shall monitor and control the use of the Parklet to prevent disturbance of the surrounding neighborhood.

9. A Sponsoring Business or other business is not permitted to perform table service at a Parklet or otherwise incorporate a Parklet into its business operations.

10. Commercial signage, smoking, and advertising are prohibited at Parklets.

E. Parklets, 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.

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

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within 15 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, MISCELLANEOUS USE OF STREETS AND SIDEWALKS

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

Section 1. That Berkeley Municipal Code Chapter 14.48 is hereby amended as follows:

Chapter 14.48

MISCELLANEOUS USE OF STREETS AND SIDEWALKS

Sections:

- 14.48.010 One-way streets.**
- 14.48.020 Obstructions on streets and sidewalks.**
- 14.48.030 Objects 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 Bus benches and bus shelters.**
- 14.48.090 Mail boxes and armed forces recruiting signs.**
- 14.48.100 Newspaper racks and newspapers.**
- 14.48.110 Authorized retail displays.**
- 14.48.120 Temporary Noncommercial Objects.**
- 14.48.130 Decorative noncommercial installations.**
- 14.48.140 Public telephones.**
- 14.48.150 Sidewalk cafe seating, benches and planters.**
- 14.48.160 Removal of obstructions on streets and sidewalks.**
- 14.48.170 Use of streets and sidewalks by peddlers or vendors.**
- 14.48.180 Trap doors in sidewalks.**
- 14.48.190 Parklets.**

Section 14.48.010 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 14.48.020 Obstructions on streets and sidewalks.

It is unlawful for any person to place or cause to be placed anywhere upon any Sidewalk, Parklet or roadway, any object which obstructs, restricts, or prevents the use of any portion of such Sidewalk, Parklet or roadway, except as set forth in this Chapter or in a regulation promulgated by the City Manager and adopted by the City Council.

For purposes of this Chapter, Sidewalk is defined as provided in BMC Section 1.04.010(18) as that portion of a street between the curbline and the adjacent property line intended for the use of pedestrians. Parklet is defined as provided in BMC Section 14.48.190(B)(4).

Section 14.48.030 Objects in transit.

Goods, wares, merchandise, containers, furniture, suitcases and other similar objects in the immediate custody and control of individuals readily able to move or remove such objects may be allowed on the outer one-third of the sidewalk for up to one hour while in the actual course of receipt, delivery, transport, transit 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 required permits have been obtained from the City.

Section 14.48.050 Trees and shrubs.

Trees, shrubs and flowers with the necessary barricades when planted or maintained by the City, or by private parties when expressly allowed by Council action or by the City Manager.

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, 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 Council action.

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 City Manager.

Section 14.48.080 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.

Section 14.48.090 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 14.48.100 Newspaper racks and newspapers.

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

Section 14.48.110 Authorized retail displays.

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

Section 14.48.120 Temporary Noncommercial Objects.

- A. Temporary Noncommercial Objects ("TNC Objects") are personal belongings:
1. In the immediate custody and control of a person or persons at substantially all times;
 2. Not offered for sale or exchange or involved in the solicitation of money for immediate payment;
 3. Not otherwise prohibited and of a size, weight and quantity that can be easily moved by the owner.
 4. Not furniture. Furniture is only allowed pursuant to BMC Chapter 9.48 or pursuant to BMC § 14.48.030 Objects in Transit.

The City Manager may adopt regulations specifying what TNC Objects may be permitted under this Section and where such TNC Objects may be permitted, as well as procedures and limitations to implement this Section. Any such regulation shall contain provisions and shall be applied in such a manner as to ensure that it does not deprive any person of rights protected by the state or federal constitutions, including freedom of expression, and any size limitation contained therein shall not apply to dogs, or to limited cushioning material being used to sit on such as, but not limited to, blankets, cushions or mats. Regulations adopted by the City Manager under this Section shall not take effect until they have

been presented to the City Council for approval at a regularly scheduled meeting.

B. After approval by the City Council, the City Manager shall ensure that regulations adopted pursuant to this Section are publicized in a manner substantially equivalent to the manner in which ordinances are published, and that materials summarizing such regulations are available for dissemination in Commercial and Manufacturing zones. The City may also post fixed signage in Commercial and Manufacturing zones informing the public of such regulations.

C. No person may be cited for a violation of this Section or the regulations adopted pursuant to it unless that person has first been warned that his or her conduct is in violation hereof, is allowed a reasonable opportunity to comply but refuses to do so.

D. Violations of this Section or City Manager regulations adopted pursuant to this Section shall be charged as infractions, and not as misdemeanors.

Section 14.48.130 Decorative noncommercial installations.

Decorative noncommercial installations subject to the following regulations and requirements:

A. At least six 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 are:

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, who may require as part of the application such information as may be deemed necessary to determine compliance with this Section and other applicable laws and regulations, including but not limited to a scaled site plan, signature of the fronting property owner and permittee, and agreement to indemnify the City as specified in Subsection D. 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; 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.

1. The permittee shall carry liability insurance in the amount of \$500,000.

E. For purposes of this Chapter, "Decorative Noncommercial Installations" shall include but are not limited to artwork, planters, and other objects that are placed within the public right-of-way by a private party for the purpose of decoration in a residential, commercial, or industrial district, not for the purpose of advertising, commerce or other economic benefit.

F. Decorative Noncommercial Installations that are not permitted under this Section are prohibited encroachments under 16.18 and shall constitute a public nuisance 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 14.48.140 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 14.48.150 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 BMC 1.04.010(18).

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; except in such cases where the geometry

of the roadway has been designed to accommodate, or will accommodate, Sidewalk Seating, as determined by City staff. City staff will be defined as the Traffic Engineer, City Engineer, or Fire Marshall as appropriate;

- 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. A restaurant that proposes to serve alcoholic beverages within an outdoor dining area shall comply with the standards established by the State of California Department of Alcoholic Beverage Control. The dining area shall be:
 - a. Physically defined and clearly part of the restaurant it serves; and
 - b. Supervised by a restaurant employee to ensure compliance with laws regarding the on-site

consumption of alcoholic beverages.

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 14.48.160 Removal of obstructions on streets and sidewalks.

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

Section 14.48.170 Use of streets and sidewalks by vendors.

Any properly licensed 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 section.

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

B. Other street vending is permitted from vehicles which are lawfully parked upon streets which are not regulated by parking meters or other posted parking time limits.

C. It is unlawful for any person to vend in violation of this section.

Section 14.48.180 Trap doors in sidewalks.

A. Trap doors 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 and monitored for pedestrian safety while 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.

14.48.190 Parklets.

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 Parklets, Benches and/or Planters in the public right-of-way (excluding Sidewalks alone, which are subject to and governed by Section 14.48.200) as set forth in, and in compliance with, this Section.

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

2. A permit for a Parklet may not be issued unless the Parklet Host is in full compliance with all applicable requirements of Title 23 and any Permit issued thereunder.

3. A permit for a Parklet may only be issued adjacent to parcels in the following zoning districts: all Commercial (C-prefixed districts), Mixed-Use Light Industrial (MU-LI), Mixed-Use Residential (MU-R), and Mixed Manufacturing (MM).

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. "Bike Parking" means a location with bike racks intended for the secure parking of bicycles.

3. "Furniture" means amenities such as but not limited to tables, chairs, benches, and other equipment that facilitates the stationary use of public space.

4. "Parklet" means a platform or similar level surface extending into the public right-of-way with amenities such as but not limited to tables and/or chairs (including Benches), Bike Parking, and umbrellas, designated as public space, located in or on the public right-of-way or resting on, or projecting into, the sidewalk and parking area, which are not physically or structurally attached to a building, retaining wall or fence.

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

6. "Sidewalk" has the same meaning as set forth in Section 1.04.010(18).

7. "Sponsoring Business," "Host," "Permit Holder" or "Permittee" means, and is limited to, any establishment engaged in insuring and caring for the Parklet as set forth in the Parklet maintenance agreement.

8. "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.

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

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

2. Parklets shall comply with applicable Americans with Disabilities Act (ADA) accessibility standards.

3. 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 in the right-of-way, including the Sidewalk, pedestrian safety, traffic circulation, and/or vehicular safety;

d. Be closer than 25 feet to any curb return or fire hydrant; except in such cases where the geometry of the roadway has been designed to accommodate, or will accommodate, a parklet, as determined by City staff. City staff will be defined as the Traffic Engineer, City Engineer, or Fire Marshal as appropriate;

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

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

g. The width of the Parklet must not extend beyond six feet from the curb line, except in such cases where the geometry of the roadway has been designed to accommodate, or will accommodate, a Parklet, as determined by City staff. City staff will be defined as the Traffic Engineer, City Engineer, or Fire Marshal as appropriate.

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

a. Parklets must remain publicly accessible and must include signage posted on site to this effect;

b. Parklet construction materials must be of high quality, durable, and suitable for public use;

c. A visible edge to the Parklet is required, which may consist of Planters, railing, or cabling. The edges should be visually permeable;

d. The Permittee shall regularly inspect and clean the Parklet and that portion of the public sidewalk adjacent to the Parklet;

e. Access panels must be included in order to maintain the gutter and area underneath the Parklet and the design must allow for drainage along the gutter to pass underneath the Parklet;

f. Safe hit posts and wheel stops, or approved equivalents, may be required. If Bike Parking is provided, the bike racks can be at street grade.

5. All Benches, Furniture, and Planters within the Parklet 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. All non-secured Parklet components shall be stored in a secure location on private property when not in use;

c. Any unsecured Furniture must be clearly different from the Furniture used by a Parklet Host in order to emphasize that the Parklet is public space, as determined by City staff.

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 right-of-way, including the Parklet area.

2. The Permittee shall restrict any objects permitted under this Section to the approved location(s) and configuration, ensure compliance with all applicable laws, and the number and configuration of Benches, Furniture and Planters and overall square footage of the Parklet shall not be modified 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 this Section, when under review prior to issuance, shall be posted in plain view within the sponsoring establishment for which the permit has been issued. Public notice, permitting, and appeal for Parklets are set forth in BMC Section 16.18.060 (Permit procedure for minor encroachment) of the Berkeley Municipal Code.

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 the Parklet, Benches and/or Planters.

6. Prior to permit approval, the Permittee shall demonstrate possession of liability insurance, in the amount not less than \$1,000,000, for the Parklet including any associated Benches, Planters and Furniture. Said insurance shall name the City of Berkeley as an additional insured and shall be in a form acceptable to the City Attorney.

7. The City Manager or his/her designee may require a performance bond to ensure Parklet removal in the event of a permit cancellation.

8. The Permittee shall monitor and control the use of the Parklet to prevent disturbance of the surrounding neighborhood.

9. A Sponsoring Business or other business is not permitted to perform table service at a Parklet or otherwise incorporate a Parklet into its business operations.

10. Commercial signage, smoking, and advertising are prohibited at Parklets.

E. Parklets, 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.

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

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within 15 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.

A.R. NUMBER:		
ORIGINAL DATE:		10/16/18
POSTED DATE:		10/17/18
PAGE	1 OF 5	PAGES

CITY OF BERKELEY

ADMINISTRATIVE REGULATION

Subject: Regulating Temporary Non-Commercial Objects on Sidewalks and in Parklets, Pursuant to BMC § 14.48.120

PURPOSE

This Regulation is intended to protect the City's substantial interests in access and safety on Sidewalks and Parklets for pedestrians and for persons with disabilities, aesthetically pleasing streetscapes, and vital commercial areas, all of which are critical to the City's economic and social well-being, in a manner consistent with the United States and California Constitutions.

This Regulation provides policy and procedures regarding placing Temporary Noncommercial (TNC) Objects on Sidewalks and Parklets, pursuant to Berkeley Municipal Code (BMC) § 14.48.120.

DEFINITIONS

"BART Access Corridor" is a Sidewalk, including a wide plaza area, on the same side of the street as a BART Station entrance, within 25 feet of such entrance. In the downtown area, the BART Access Corridor includes all sidewalk and plaza areas on the west side of Shattuck Avenue from Addison Street to Allston Way.

"Parklet" is defined as provided in BMC § 14.48.190.

"Path of Travel" is defined as:

- For Sidewalks which measure less than fourteen (14) feet in width, the Path of Travel is six (6) feet wide; this 6-foot wide strip is parallel to the curb and the sides of this strip are equidistant from the curb edge of the sidewalk and the edge of private property abutting such sidewalk.
- For Sidewalks which measure 14 feet or greater in width, the Path of Travel is ten (10) feet wide; This 10-foot strip is parallel to the curb and the sides of this strip are equidistant from the curb edge of the sidewalk and the edge of private property abutting such sidewalk.

"Sidewalk" is defined as provided in BMC § 1.04.010(18) as that portion of a street between the curbline and the adjacent property line intended for the use of pedestrians.

"TNC Objects" are defined as provided in BMC § 14.48.120 as personal belongings:

1. In the immediate custody and control of a person or persons at substantially all times;

2. Not offered for sale or exchange or involved in the solicitation of money for immediate payment;
3. Not otherwise prohibited and of a size, weight and quantity that can be easily moved by the owner.
4. Not furniture. Furniture is only allowed pursuant to BMC Chapter 9.48 or pursuant to BMC § 14.48.030 for Objects in Transit or BMC § 14.48.150 for Sidewalk Café permits and City-installed furniture.

POLICY

A. Objects Subject to this Regulation

This Regulation applies to all Temporary Noncommercial (TNC) Objects. It 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, or to TNC or other objects expressly permitted by the Berkeley Municipal Code.

B. TNC Objects Exempt from this Regulation:

The following categories of TNC Objects are exempt from this Regulation:

1. Mobility devices in use by pedestrians or individuals in wheelchairs; or
2. Blankets, cushions, mats, or other material providing cushioning (“Cushioning Material”) while an individual is seated on such an item, which does not expand beyond 2’ x 2’ in size and is outside of the Path of Travel.

C. Time and Location Requirements for TNC Objects

1. **TNC Objects - Residential Districts:**

TNC Objects are prohibited on Sidewalks in Residential Districts, except Objects in Transit pursuant to BMC § 14.48.030 or as otherwise specifically authorized by the BMC.

2. **TNC Objects - Commercial and Manufacturing Districts**

- a. TNC Objects shall not be left unattended for more than 1 hour.
- b. TNC Objects may not be placed in Parklets.
- c. TNC Objects must not interfere with access to and use of driveways, crosswalks, bus benches, bus stops, transit stops, bicycle racks, tree wells, planters, fire hydrants, faucet bibs, utility boxes, utility poles, public art installations, street

lamp poles, mailboxes, ATM machines, embedded trap doors, parking meters, parking payment machines, refuse or recycling cans, any other fixed object legally placed in the City right-of-way, or any other object authorized by the Berkeley Municipal Code.

- d. TNC Objects may not be placed in a location that interferes with access for individuals with disabilities such as curb and wheelchair ramps, or other features for disability access.
- e. TNC Objects may not be placed in a location where they would obstruct, restrict, or hinder visibility of traffic devices or signs.
- f. TNC Objects may not be placed at or adjacent to any blue or white curb.
- g. TNC Objects may not be placed on a Sidewalk directly in front or within three feet of either side of a building entrance, from the building face to the curb edge of the Sidewalk, except between the hours of 10:00 p.m. and 7:00 a.m., if the building entrance will not be used during that period (i.e., not an apartment building entrance where people may be expected to enter and exit 24/7, and not the entrance to a restaurant or business that is open for customers or deliveries).
- h. TNC Objects may not be placed within a BART Access Corridor.

D. ENFORCEMENT PROCEDURES

Pursuant to BMC § 14.48.120(C), no person may be cited for violation of BMC Chapter 14.48 or these Regulations, unless that person has first been warned by an enforcement officer that their conduct is in violation hereof, and is allowed a reasonable opportunity to comply, but refuses to do so.

Pursuant to BMC § 14.48.120(D), violations of these regulations shall be charged solely as infractions.

To further implement BMC §§ 14.48.120(C) and (D), the City hereby adopts the following procedures:

1. If TNC Objects or Cushioning Material are located within the Path of Travel or in a BART Access Corridor, they must be immediately moved out of the Path of Travel or BART Access Corridor by their owner upon request of the enforcement officer. Should TNC objects not be immediately moved, such objects can be removed and stored by the City pursuant to BMC § 14.48.160 and Administrative Regulation 10.1, and/or a citation may be issued.

2. For TNC Objects or accumulations of TNC Objects with a 9-square-foot footprint or less, (measured as 3' x 3', 4' x 2.25', 9' x 1', etc.) and less than 5 feet in height, enforcement of this Regulation shall be a lower priority, except when:
 - TNC Objects have been in the same approximate location for 24 hours or more, or
 - More than two accumulations of TNC Objects occupy a single blockface.

Enforcement officers may, at their discretion:

- Request that TNC Objects be moved to another location,
 - Remove and store TNC Objects pursuant to BMC § 14.48.160 and Administrative Regulation 10.1, and/or
 - Issue a citation.
3. For TNC Objects or accumulations of TNC Objects with a footprint larger than 9-square-foot (measured as 3' x 3', 4' x 2.25', 9' x 1', etc.) or more than 5 feet in height, enforcement officers may, at their discretion:
 - Request that TNC Objects be reduced to a 9-square-foot footprint and/or less than 5 feet in height,
 - Request that TNC Objects be moved to another location,
 - Remove and store TNC Objects pursuant to BMC § 14.48.160 and Administrative Regulation 10.1, and/or
 - Issue a citation.
 4. If TNC Objects are unattended, notice shall be posted on or directly adjacent to such TNC Objects and, after one hour, they may be removed and stored as specified in Administrative Regulation 10.1.

INTERPRETATION

This Regulation 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.

<p>RESPONSIBLE DEPARTMENT: City Manager</p> <p>TO BE REVISED: As needed</p>	<p>Approved by:</p> <p>BERKELEY CITY COUNCIL on October 16, 2018</p> <hr/> <p>City Manager</p>
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