



Office of the City Manager

ACTION CALENDAR
June 11, 2013

To: Honorable Mayor and Members of the City Council
From:  Christine Daniel, City Manager
Submitted by: William Rogers, Deputy City Manager
Gregory Daniel, Supervisor Code Enforcement
Subject: Amending Berkeley Municipal Code Chapters 9.48, Chapter 14.48 and Chapter 16.18 to Establish a Two Year Pilot Program Authorizing Sidewalk Displays by Fixed Location Merchants on Telegraph Avenue

RECOMMENDATION

Adopt first reading of three Ordinances:

1. Amending BMC Chapter 9.48 regarding regulation of sidewalk vending on Telegraph Avenue;
2. Amending BMC Chapter 14.48 regarding regulation of miscellaneous use of sidewalk; and
3. Amending BMC Chapter 16.18 regarding regulation of right of way encroachments.

FISCAL IMPACT OF RECOMMENDATION

The proposed sidewalk vending permit fee will add revenue to the General Fund (010.3202.341.5201), however, the amount of revenue is dependent upon the number of fixed location merchants (Hereinafter “Merchants”) on Telegraph Avenue that apply for the sidewalk vending permits.

CURRENT SITUATION AND ITS EFFECTS

On March 6, 2012, the City Council referred to the City Manager an item regarding a program to allow merchants on Telegraph Avenue to display their retail items on the sidewalk. This item recommends a number of amendments to the Berkeley Municipal Code (BMC) in response to the Council referral.

Since 1975 BMC Chapter 9.48 Sidewalk Vending has regulated vending on City’s sidewalks, particularly Telegraph Avenue and Shattuck Avenue. Such vending is limited to “arts and crafts” products. Currently arts and craft vendors renew their permits annually through the Finance Department. Each year new sidewalk vendors are screened based on the provisions of Chapter 9.48. Consequently, Chapter 9.48 already provides a mechanism to administer and approve sidewalk display and sales for fixed location merchants on Telegraph Avenue.

In addition, the Zoning Ordinance requires a discretionary permit for activities outside of a building. This tends to limit the ability of fixed-location businesses to display and sell their goods on or adjacent to the sidewalk.

As a result, fixed-location businesses in Berkeley do not have practical access to many sidewalk areas where they would like to display and sell goods. According to the Telegraph Business Improvement District, four Telegraph Avenue Merchants have confirmed an interest in sidewalk display and sales.

BACKGROUND

In March 2012, the City Council directed staff to develop a pilot program that would allow fixed location merchants on Telegraph Avenue to use the sidewalk for display and sale of retail items. In response, staff is recommending a number of amendments to the Berkeley Municipal Code. The proposed amendments would allow an as-of-right permitting process for all merchants to use the sidewalk for display and sales during the pilot period.

The available sidewalk space on Telegraph is generally sixteen feet. When sidewalk vendors were permitted, vendors were required to be ten feet, six inches from the front of any building. However, in order to accommodate Merchants, the sidewalk clear path space will be six feet [which comports with accessibility standards]. The use of the sixteen feet of sidewalk space would be established as follows:

| <u>Description</u> | <u>Distance (ft)</u> |
|----------------------|----------------------|
| Curb Clearance | 1.5 |
| Vendors Space | 5.5 |
| Merchant Space | 3.0 |
| <u>Clear Path</u> | <u>6.0</u> |
| Total Sidewalk Space | 16.0 |

The proposed changes to the BMC are intended to provide an efficient and equitable mechanism for approving sidewalk vending for Merchants on Telegraph Avenue.

Proposed Changes to the Berkeley Municipal Code

In response to the City Council's referral staff is proposing amendments to the City's existing regulations regarding the use of the sidewalk on Telegraph Avenue. Those amendments are described in further detail below.

In general, the proposed amendments to Chapter 9.48 would give fixed-location merchants the opportunity to apply for permits to display and sell their items on the sidewalk, without requiring those items qualify as arts and crafts.

Section 9.48.045, Vending associated with fixed location businesses on Telegraph Avenue

Originally BMC Chapter 9.48 was adopted to regulate arts and crafts vending in the public right of way on Telegraph and downtown Berkeley. The proposed amendment

would establish a two year pilot program that would expire on July 31, 2015. The amendment would also require that any merchant wanting to display and sell items on the sidewalk would have to apply for a sidewalk vending permit. As with sidewalk vendors, the application process for merchants will have relevant restrictions. A merchant sidewalk display must be immediately adjacent to the building and may extend no more than 36" from the building. Additionally, the following items are prohibited: 1) food products of any sort, 2) alcoholic beverages, 3) drug paraphernalia, 4) tobacco products, and 5) firearms or ammunition. Merchant displays would be restricted to Telegraph Avenue between Dwight Way and Bancroft Way, consistent with established sidewalk vendor locations.

Section 14.48.160 Authorized Retail Display

BMC Chapter 14.48 regulates the use of streets and sidewalks for commercial, non-commercial and institutional uses. The proposed amendment would authorize merchant vending on Telegraph provided the merchant complies with the permit requirements of BMC Chapter 9.48.

Section 16.18.040.G Exemption from permit requirements

BMC Chapter 16.18 regulates right of way encroachments and encroachment permits. The objective of BMC Chapter 16.18 is to protect public safety and public property. Generally businesses in Berkeley are not allowed to use the public right of way for profit making. Additionally, a minor encroachment such as sidewalk vending equipment would require a separate permit approved by the Director of Public Works. Provided the merchant met the requirements of Chapter 9.48, this proposed amendment would allow merchants on Telegraph to place display and sales equipment on the sidewalk without the need for an additional permit.

Cleanup Amendments to BMC Chapter 16.18

Given that establishing sidewalk displays requires an amendment to BMC Chapter 16.18, staff believes this is an appropriate opportunity to incorporate other cleanup amendments to BMC Chapter 16.18 as follows:

Section 16.18.010 Definition

The proposed changes are to correct language, spelling and punctuation errors.

Section 16.18.160 Existing encroachments not having a permit

Currently, BMC Section 16.18.030.B prohibits underground vaults and elevators not owned by public utilities or public agencies. The proposed amendment authorizes the use of non-publically owned vaults and elevators, subject to approval and conditions imposed by the City Engineer.

RATIONALE FOR RECOMMENDATION

See preceding discussion.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

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Attachments:

1. Ordinance Amending BMC Chapter 9.48
2. Ordinance Amending BMC Chapter 14.48
3. Ordinance Amending BMC Chapter 16.18

ORDINANCE - N.S.

ADDING BERKELEY MUNICIPAL CODE SECTION 9.48.045 CONCERNING
SIDEWALK VENDING ON TELEGRAPH AVENUE

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

Section 1. That Section 9.48.045 is added to the Berkeley Municipal Code to read as follows:

9.48.045 Vending associated with fixed location businesses on Telegraph Avenue.

A. The following provisions shall apply on Telegraph Avenue between Bancroft Way and Dwight Way.

B. A fixed-location business may vend goods from a location on the sidewalk in front of its fixed location provided that it complies with the requirements of Sections 9.48.080 through 9.48.110, except as follows.

1. Vending equipment shall not extend more than 36' towards the street from the front of the building.

2. Vending equipment shall have a maximum height of four feet, six inches and a maximum length of nine feet. In no case may the vending equipment extend beyond the established store front.

3. In no case may vending equipment permitted pursuant to this section reduce the width of the sidewalk available for pedestrian use to less than 6 feet, after taking into account any other vending equipment permitted pursuant to this Chapter.

C. Application for and issuance of vending permits under this Section shall be subject to Sections 9.48.050 and 9.48.060.

D. In no case may an existing vendor permitted pursuant to this Chapter be displaced in order to provide an opportunity for vending pursuant to this Section.

E. For purposes of this Section, the following types of goods may not be displayed or sold at a sidewalk location:

1. food products of any sort;
2. alcoholic beverages;
3. drug paraphernalia;
4. tobacco products; and
5. firearms or ammunition.

F. The provisions of Section 9.48.045 shall expire and shall be repealed in its entirety on July 31, 2015, unless such date of repeal is further extended by resolution of the City Council.

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 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 - N.S.

ADDING BERKELEY MUNICIPAL CODE SECTION 14.48.160 CONCERNING RETAIL
DISPLAYS ON THE PUBLIC RIGHT OF WAY

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

Section 1. That Section 14.48.160 is added to the Berkeley Municipal Code to read as follows:

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 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 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 - N.S.

AMENDING SUBDIVISION (D) OF SECTION 16.18.010 AND SECTIONS 16.18.040 AND 16.18.160 OF THE BERKELEY MUNICIPAL CODE CONCERNING ENCROACHMENTS ON THE PUBLIC RIGHT OF WAY

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

Section 1. That subdivision (D) of Section 16.18.010 of the Berkeley Municipal Code is amended to read as follows:

D. "Minor encroachment" means encroachment into the public right-of-way resting on or projecting into the sidewalk area such as: subsurface tiebacks, and soil nails, concrete stairs, disabled Access Ramps where more than six feet of sidewalk area is preserved, subsurface foundations extending less than 2 feet from the property line, level landings for garages, landscape features less than two feet in height, conduit for privately owned phone and data and lines connecting buildings owned by the permittee, ~~as~~ flower pots, permanent planter boxes, clocks, bus shelters, phone booths, bike racks, fences less than six feet above grade, earth retaining structures less than three feet above grade, benches, and curbs around planter areas. Any encroachment which is not a minor encroachment is a major encroachment.

Section 2. That Section 16.18.040 of the Berkeley Municipal Code is amended to read as follows:

16.18.040 Exemptions from permit requirements.

The following encroachments may be placed or maintained without a permit:

A. Mailboxes, however, must be placed in accordance with the rules and regulations at the United States Post Office Department and no box shall be placed so as to endanger the life or safety of the traveling public.

B. Newspaper racks which are installed and maintained in accordance with Chapter 16.40 or 16.44.

C. Lawns of any grass and type not prohibited by other laws.

1. The lawn shall not extend into the traveled way of the public street, not into the drainage ditches, gutters, and other drainage facilities, and not into that portion of the sidewalk area required for pedestrian usage.

2. The general public may not be denied the use of the planted area for pedestrian or other lawful travel. The City may use the planted area for any purpose soever, and may issue a permit to any applicant to go thereon to perform work. If the lawn is damaged or disturbed in the course of such work, it will be removed and replaced by the permittee doing the work unless the permit specifically states otherwise.

D. Decorative Noncommercial Installations authorized and lawfully maintained under Section 14.48.180.

E. Sidewalk Cafe Seating and Benches and Planters authorized and lawfully maintained under Section 14.48.200, Chapter 23E.24, and former Chapter 23E.26.

F. Signs authorized and lawfully maintained under Title 20.

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

Section 3. That Section 16.18.160 of the Berkeley Municipal Code is amended to read as follows:

16.18.160 Existing encroachments not having a permit.

A. Existing encroachments that were constructed without a permit are illegal, may be cited as infractions or misdemeanors, and must be either removed or a permit applied for under the provisions of this chapter. If there is no response by the owner or owners within thirty days of notification, the City will have the right to remove the illegal encroachment at the owner's expense.

B. Notwithstanding the preceding subdivision, underground vaults and associated elevators or lifts may be maintained and used subject to approval of the City Engineer, if the City Engineer determines that the permitted use of the property with which the vault and lift are associated is impracticable absent their maintenance and use. The City Engineer may impose conditions on such continued maintenance and use, including but not limited to conditions relating to drainage, disabled access and safety on sidewalks and other areas of the public right of way that are affected by the vault. The City Engineer may also impose conditions limiting the duration for which a vault and associated elevator or lift may be maintained or used, the land uses in conjunction with which they may be maintained and operated, or the users who may maintain and operate them. Any approval by the City Engineer under his subdivision shall be dependent on compliance with any conditions that may be imposed on continued maintenance and operation, and shall be revocable upon noncompliance.

Section 4. 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 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.