



Office of the City Manager

ACTION CALENDAR

May 8, 2007

To: Honorable Mayor and
Members of the City Council

From: *PK* Phil Kamlarz, City Manager

Submitted by: Jim Hynes, Assistant to the City Manager

Subject: Public Commons for Everyone Initiative

RECOMMENDATION

That Council discusses and provides direction on options to:

1. Restrict smoking in public areas in commercial zones;
2. Install better directional signage to public restrooms;
3. Develop prohibitions and increased fines for public urination and defecation;
4. Provide for strict enforcement of all existing laws affecting the quality of life in public spaces and parks; and
5. Reduce warning provisions associated with regulation prohibiting lying on the sidewalk

SUMMARY

This report contains policy and services options for Council consideration for improving the quality of life of public commons in the City. It discusses smoking restrictions, improved signage, and modification and strict enforcement of existing laws. Short term costs are identified as approximately \$5000; potential additional costs 6-12 months from now could total \$50,000 and longer term costs through FY 07-08 could total \$400,000 to \$500,000 depending on future Council direction.

BACKGROUND

This is a follow-up report to Mayor Tom Bates' March 13, 2007 request to the City Manager to develop options for improving the physical, social and economic conditions of public areas in the city of Berkeley. The Mayor's report entitled "Public Commons for Everyone Initiative (PCEI)" identified eight different areas for the City Manager to undertake as a new workplan project for the City. This report will address five of the eight different areas, as referenced in the recommendation above, and provide options for the Council to consider for implementation relatively quickly.

The remaining three areas (new rules for objects on the sidewalk, sitting on the sidewalk and the development of a new diversion program) will require further staff analysis and as such will need to be included for funding consideration in the FY 2007-08 budget. Implementation of these items is contingent on additional staff funding. Should additional funding be authorized, approximately six months of staff work will be required in order to present Council with a set of reasonable recommendations.

FISCAL IMPLICATIONS

Depending on Council action on policy and service options outlined in this report, short-term costs are estimated at approximately \$5000 mainly for the cost of fabrication and installation of signage associated with those options. Should any changes in existing laws be made, or direction provided as to the intensity of enforcement, there might be some modest additional police costs for enforcement training.

CURRENT SITUATION AND ITS EFFECTS

The impetus for the Mayor's Public Commons for Everyone Initiative came from previous discussions with Council on the effectiveness of a special \$220,000 budget augmentation for additional police, mental health and public works services implemented in July 2006. While these services were focused initially on Telegraph Avenue, recent actions by Council authorized an additional \$200,000 and extended these services into the Downtown since some of the street level problems associated with Telegraph Ave migrated toward the Downtown area.

The recent staff evaluation report on the effectiveness of these expenditures concluded that while there are significant improvements in the conditions and appearances of Telegraph Avenue and the Downtown, there are still problems associated with individuals engaged in criminal, anti-social and aggressive behaviors. This includes aggressive panhandling, public urination/defecation and a blatant disregard for existing laws and regulations intended to promote a higher quality of life. While the streets and sidewalks are cleaner, there is less open drug dealing and social workers are much more actively involved with outreach efforts to needy individuals, there is still a critical mass of individuals involved with problematic street behavior that keeps customers away and has an overall negative impact on the economic vitality of the both Telegraph Avenue and the Downtown area.

In accordance with the current situation, the Mayor's Public Commons for everyone Initiative requested the City Manager to examine the following:

1. Smoking laws

Currently the City prohibits smoking within 20 feet of a *doorway*, vent or bus stop. A sign indicating 'No Smoking Within 20 feet' must be posted in order for police to enforce. The Mayor's Public Commons for Everyone Initiative requested the City Manager consider changes in the law to prohibit smoking 25 feet from any *building face* in a commercial zone. While this change will definitely increase the areas where smoking is prohibited, it will not eliminate some

of the practical problems that have plagued enforcement personnel in the past with the existing law. First, it is often difficult for officers to know with certainty the exact distances from doorways or buildings smokers would need to be in order to be legal. Second, smoking laws have not historically been considered high priority relative to other enforcement priorities. Third, citations are easily contestable since it requires the perpetrator to actually look at a door or building to see a No Smoking sign. Fourth, not all business operators post No Smoking signs, which make it impossible for officers to enforce. Finally, there are high pedestrian public areas of the Downtown (BART Plaza, Library Plaza, etc) that extend far beyond 20 or 25 feet from a doorway or building face, and thus are not subject to the current law and would not be subject to the Mayor's proposed change in smoking laws.

Council may wish to consider the following options:

Option 1: Impose a no smoking ban in all public areas of all commercial zones in the City, defined as areas of the public-right-of-way, sidewalks, streets, bus stops and public plazas, as well as parks. It does not include areas in commercial zones in which the public does not typically frequent, such as areas behind businesses at service entrances. Business operators will no longer be required to post No Smoking signs. The warning provision via a vis signage will be handled similarly to warning provisions for riding bicycles on sidewalks, through signage on poles and/or through signage on the sidewalk itself.

Option 2: Impose a no smoking ban in all public areas of the City, defined above, regardless of zone. The warning requirement will be handled similarly to Option 1 above.

2. Install directional signage to public restrooms

There are four main public restrooms in the Downtown and Telegraph Ave. areas. They are located at:

1. People's Park
2. Sather Gate Garage
3. Center Street Garage, and
4. Civic Center Building

While some of these locations are already signed (sign installed on building), there have been complaints that visitors often cannot find a public restroom easily and that directional signage is lacking.

Council may wish to consider additional signage in high pedestrian areas, and in areas where people are first arriving via bus, private automobile, bicycle or BART, subject to analysis by the Public Works Department. Additional signage for the Downtown should be subject to review and input by the City's Downtown Area Planning and Advisory Committee (DAPAC).

Currently, People's Park closes at 10 pm and all other public restrooms close at the same time that normal business operations cease. Council may wish to consider changing hours of operations of public restrooms, in particular the public bathroom at the Civic Center bathroom which could feasibly remain open 24 hours a day 7 days a week, which will require increased costs and therefore should be referred to the budget process.

3. Public Urination/Defecation

Currently, the City of Berkeley does not have a prohibition on public urination or defecation. If and when it is subject to enforcement by a police officer, it is considered littering under BMC section 12.40.080. It is unknown at this time how often police officers encounter situations in which this type of littering violation requires enforcement action, but littering in general is considered a low priority crime and is easily appealed through a hearing. Mental Health staff has many times been asked by business owners and merchant leaders to provide assistance and intervention with chronic and malicious offenders. The intent is to prevent future occurrences by providing direct mental health outreach and services referrals to individuals involved in these behaviors.

Council may wish to consider a revision to the BMC adding public urination and defecation as a specific citable offense. Other Bay Area jurisdictions including San Francisco have enacted similar regulations, which seem to have made a detrimental effect on chronic and repeat offenders as a more serious crime with higher fines and requirements for community service.

Enactment of a new law on public urination and defecation should be coupled with installation of new directional signage to public restrooms.

4. Strict Enforcement of All Existing Laws

There are many more laws on the books than the City has resources to enforce. Also, at times in the past Council has requested the City Manager to direct staff to place low priority on enforcement of existing laws. This has created a "stop-start" mentality within enforcement staff that creates confusion over which laws should be taken seriously and which ones should be ignored. Council direction and clarity over strict enforcement of existing laws will greatly alleviate this confusion and send a clear message to police that quality of life matters in the public spaces is a high priority concern of the City.

Since it will be impossible to enforce all laws strictly and equally, Council direction is needed at this time as to which laws and ordinances warrant strict enforcement. As a starting point for discussion, Council may wish to consider the following Berkeley Municipal Codes and state law:

Berkeley Municipal Code

BMC- 10.04.091-Removal of Dog Feces Required

BMC 10.12.110- Hitching Animals to Fixed Objects Prohibited

BMC 12.40.080- Littering
BMC 13.36.015- Lying on the sidewalk
BMC 13.36.070- Public Consumption of Alcohol
BMC 13.40.070- Noise disturbances yelling and shouting
BMC 14.48.020- Obstructing or restricting use of the sidewalk
BMC 14.68.130- Bicycle License and Registration required
BMC 14.68.130- Riding a bicycle on Sidewalk Prohibited
BMC 14.68.180- Parking a bicycle against a window or on a parking meter

State law

Unauthorized possession of a shopping cart
Unauthorized possession of a recycling container
Unauthorized possession of a milk crate
647J-Rescind resolution 61,042 -N.S. language on complaint driven and two warnings.

As a guideline, Council should take note of the experiences of other municipalities that have attempted to address overall quality of life issues in public common areas through strict enforcement approaches. The Times Square area in midtown Manhattan particularly is noteworthy. Leaders in New York discovered that strict enforcement of laws previously considered low priority had a proxy effect on more serious crimes.

5. Reduce Warning Provisions for Lying on the Sidewalk

BMC Section 13.36.015 (Lying on the sidewalk) and PC 647j (Lodging in Public) both require that warnings be issued before citations are issued. This has proven cumbersome and impractical as officers usually do not have time to monitor situations so closely given a steady rate of calls for service that require them to respond to other places.

Council direction to reduce and/or eliminate warnings provisions will ease enforcement of both of these laws.

6. Other

- Include assessment of seating in public areas in FY07-08 Public Works workplan
- Continue support of Office of Economic Development for marketing, business attraction and retention, consistent with recent council authorization of \$500,000.
- Continue outreach work with business leaders to divert street- level donations to appropriate non-profit service providers.

POSSIBLE FUTURE ACTION

Council should consider the possibility of including a 6-month FTE in FY 07-08 budget to allow for a comprehensive assessment of the feasibility and effectiveness of creating new rules for objects on the sidewalk, sitting on the sidewalk and the development of a new diversion

program. This position could also assist with facilitating the significant amount of public discussion and stakeholder consensus required to develop an appropriate outcomes-driven diversion model.

Expansion of public works sidewalk cleaning and street cleaning in key commercial districts of the city, as previously discussed and referred to FY07-08 budget.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

\$50,000 to cover a 6-month temporary position as described immediately above

The Council's latest round of funding authorization will keep additional Police and Mental Health services intact only through July 2007 unless Council authorizes more special funding or adopts a FY 2007-08 budget with special Police and Mental Health services as part of the recurring budget.

Additional Public Works sidewalk and street cleaning funding of \$380,000 for all commercial districts is included in the City Manager's proposed budget recommendations, and this will include continuation of Public Works sidewalk and streetcleaning services on Telegraph and the Downtown beyond July 2007.

Council should anticipate either for FY 08 mid-budget process or FY08-09 budget approximately \$400,000-\$500,000 in additional expenditures for a new diversion model for addressing problematic street behavior issues that are otherwise not alleviated by current or near term policy directives and budget authorizations by Council. There is currently no funding available for these programs and will require a new revenue source. Council should consider raising the parking meter rates and/or install meters in new areas to generate additional funds.

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