





Office of the City Manager

ACTION CALENDAR  
September 16, 2008

To:  Honorable Mayor and Members of the City Council  
From:  Phil Kamlarz, City Manager  
Submitted by: Zach Cowan, Acting City Attorney  
Subject: Amendment: Traffic Ordinance, BMC Chapter 14.48

RECOMMENDATION

Adopt the first reading of an Ordinance amending BMC Chapter 14.48 regulating use of sidewalks.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The former Traffic Ordinance (now BMC Chapters 14.04 to 14.66) regulates the use of the City's streets and sidewalks. Chapter 14.48, which regulates the use of sidewalks, dates from 1952. Although a few provisions in Chapter 14.48 have been amended since that time, as a whole it is quite out of date. In particular, certain aspects of Chapter 14.48 are not fully consistent with rules laid down by courts during the past 50+ years with respect to the use of sidewalks for expressive activities, especially Section 14.48.170. Since the late 1990s, the City has been able to address these concerns through the adoption and periodic revision of a Traffic Engineer administrative regulation that interprets and implements Section 14.48.170. More recently, a number of citizens have expressed a desire to have the substance of this administrative regulation formally adopted in Section 14.48.170 itself, where it will be more accessible to the public. Staff concurs, and has taken the opportunity of amending Section 14.48.170 to make various other cleanup amendments to the balance of Chapter 14.48.

Proposed Amendments to Chapter 14.48

BMC Chapter 14.48.020 generally prohibits placing objects on sidewalks, unless specifically authorized by permit. Specific sections of Chapter 14.48 authorize by permit placing certain types of objects on the sidewalk, e.g. tables, chairs and umbrellas associated with eating establishments; newsracks (in certain locations); A-frame signs (in certain locations); vending tables and carts (in certain locations); and other specified types of encroachments.

The primary purpose of the proposed amendments is to codify in Section 14.48.170 the Traffic Engineer administrative regulation that has been in effect since the 1990s. As currently drafted, Section 14.48.170 regulates the temporary placement of objects used for non-commercial, expressive purposes on the sidewalk. It is under this section that persons who wish to place objects on the sidewalk for communicative purposes generally must obtain a permit. Section 14.48.170 as currently drafted allows on the sidewalks:

Such items not otherwise prohibited by law designed for temporary non-commercial use at such locations and such times as may be permitted by the Social Planning Department<sup>[1]</sup> under the following rules and regulations.

(a) Any person desiring such permission shall make application therefor to the Social Planning Department specifying the object or thing to be used, the proposed time and place and the purpose for which it is intended to be used, and such other information as may be required by the Social Planning Department.

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

The purpose of the revisions to Section 14.48.170 (like the Traffic Engineer regulation adopted in the 1990s) is to replace the broad discretion granted by the current provision with specific, ministerial rules for the placement of objects on sidewalks, consistent with the First Amendment and correlative provisions of the California Constitution, as well as case law interpreting those provisions. At the same time, the proposed amended section protects, to the extent permissible, the City's substantial interests in pedestrian safety, access for persons with disabilities, an aesthetically pleasing streetscape, and vital commercial areas, which are critical to the City's economic well-being.

Revised Section 14.48.170 would not apply to leafleting, hawking, peddling and similar activities to the extent those activities do not involve the placement of physical objects on the sidewalk. It would also not apply to objects placed on the sidewalks pursuant to existing street vending ordinances (*i.e.*, BMC Chapter 9.48 and 9.49). Rather, Section 14.48.170 applies only to objects on the sidewalk. In general, revised Section 14.48.170 defines the types of objects that may be placed or displayed on sidewalks, where they may be located, and for how long.

### Objects That May Be Placed On Sidewalks

As a threshold matter, revised Section 14.48.020 clarifies that certain types of objects are exempt from all regulations regarding objects on the sidewalk. These are:

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<sup>1</sup> There has not been a "Social Planning Department" in the City for some years. For several years section 14.48.170 (formerly section 12.1-o of the Traffic Ordinance) has been administered by the Traffic Engineer.

- objects owned or placed on the sidewalk by the City;
- objects permitted under other ordinances (newsracks, encroachments, tables for licensed street vendors, sidewalk café seating, benches and planters, etc.);
- mobility devices used by pedestrians; and
- personal items, such as suitcases, in a person's immediate custody and control that are placed on the sidewalk temporarily while the person is in transit and that can be readily moved by that person or an assisting person.

Other types of objects are generally prohibited, unless one obtains a permit. Thus, objects associated with noncommercial expression are allowed with a permit, subject to size, location, and durational limitations, as described below.

### Permitted Dimensions and Locations For Noncommercial, Expressive Objects

Objects used for noncommercial expression are authorized by permit under Section 14.48.170, but may not have a cumulative footprint larger than 15 square feet, any horizontal dimension greater than 5 feet, or be 7 feet or more in height, and must be stationary and not have any moving parts or flashing lights, except those required for safety as determined by the Traffic Engineer. In order to protect pedestrian and traffic safety and accessibility, the permit requires there be adequate clear space for wheelchairs. Further, the object cannot create unreasonable obstructions to pedestrian flow, impede access to and from buildings, curb ramps, or bus stops, and cannot reduce visibility of pedestrians or drivers in a manner that creates a hazard.

Section 14.48.170 also authorizes the Traffic Engineer to adopt implementation regulations for major commercial corridors where additional protections are required to ensure accessibility and public use of the sidewalk. To date, one such regulation has been drafted. It carries forward the existing specific site designations for noncommercial, expressive objects on Telegraph Avenue and the part of Shattuck Avenue in downtown. Designation of specific locations with a permit within these congested areas for noncommercial, expressive objects to be placed on the sidewalk was necessary due to the other competing demands for sidewalk space. There are four designated locations on Telegraph between Bancroft and Dwight, at the four corners of Telegraph and Channing. Only two of these may be occupied at any given time. There are also four designated locations on Shattuck in downtown between Kittredge and Center Streets. Outside these congested areas, noncommercial, expressive objects may be placed on the sidewalk with a permit at any location, if consistent with safety and access criteria established by the Traffic Engineer.

### Only Temporary Placement is Permitted

Revised Section 14.48.170 also more clearly defines the term "temporary" so as to better accomplish the overall purpose of Chapter 14.48 and the Traffic Ordinance in that any given area of the sidewalk that is occupied for non-commercial, expressive purposes, and thereby withdrawn from public use, may be only temporarily withdrawn.

A permit to place a noncommercial, expressive object on the sidewalk is effective for fourteen (14) consecutive days and then automatically lapses.

A permit may not be extended or renewed for the same location beyond 14 days, and no permit will be issued if it would result in a single location being allocated to the same individual or organization for more than 14 days during any 30-day period.

Finally, the cleanup amendments to Chapter 14.48 eliminate obsolete language and provisions, and content-based distinctions that are not permitted under modern First Amendment decisions. Obsolete provisions such as those relating to gasoline pumps (§ 14.48.080), recruiting signs<sup>2</sup> (§ 14.48.100), taxicab telephones (§ 14.48.110), vending machines (§ 14.48.150) and milk boxes (§ 14.48.150) are repealed. Further, provisions specifically allowing barber poles<sup>3</sup> (§ 14.48.060) and prohibiting vending of racing forms (§ 14.48.230) or soliciting magazine or other product sales (§ 14.48.240) are repealed, since they are content-based.

#### BACKGROUND

See preceding discussion.

#### RATIONALE FOR RECOMMENDATION

See preceding discussion.

#### ALTERNATIVE ACTIONS CONSIDERED

Take no action.

#### CONTACT PERSON

Zach Cowan, Acting City Attorney 981-6950

#### Attachment

1: Ordinance Amending BMC Chapter 14.48

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<sup>2</sup> Signs are regulated by the Sign Ordinance, BMC Title 20.

<sup>3</sup> Barber poles are regulated by the Sign Ordinance, BMC Title 20.

ADDING SECTION 14.12.045 TO THE BERKELEY MUNICIPAL CODE AND AMENDING CHAPTER 14.48 OF THE BERKELEY MUNICIPAL CODE, REGULATING USE OF SIDEWALKS

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

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

**Section 14.12.045 One-way streets.**

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

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

**Chapter 14.48**

**MISCELLANEOUS USE OF STREETS AND SIDEWALKS**

**Sections:**

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

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

~~14.48.240 Soliciting on streets prohibited.~~

~~14.48.250 Trap Doors in sidewalks.~~

~~14.48.260 Interpretation and severability.~~

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

~~—The City Traffic Engineer is authorized and directed to suitably indicate by appropriate signs those streets or portion of streets designated by resolution of the Council as one-way streets. (Ord. 3262-NS § 12, 1952)~~

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

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

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

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

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

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

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

B. This Chapter does not apply to:

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

custody and control, placed on the sidewalk for not more than 1 hour while the person is in transit, and which can be readily moved by that person or an assisting person.  
~~.; provided that this section shall not apply to any object permitted by or pursuant to Sections 14.48.030 through 14.48.200. (Ord. 6471-NS § 3, 1999: Ord. 4709-NS § 1, 1974: Ord. 3262-NS § 12.1, 1952)~~

**Section 14.48.030 Goods in transit.**

Goods, wares, merchandise or containers may be allowed on the outer one-third of the sidewalk for not to exceed one hour while in the actual course of receipt, delivery or removal. (Ord. 3262-NS § 12.1-a, 1952)

**Section 14.48.040 Construction materials and barricades.**

Materials used in the construction or repair of any building or structure, together with the necessary pedestrian walkways, barricades and warning signs, when permission has been obtained from the proper City departments. (Ord. 3262-NS § 12.1-b, 1952)

**Section 14.48.050 Trees and shrubs.**

Trees, shrubs and flowers with the necessary barricades when planted or maintained either by the City or by private parties under rules and regulations of the Public Works ~~ark~~ Department or authority of the Council expressed by resolution or ordinance. (Ord. 3262-NS § 12.1-c, 1952)

**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. (Ord. 4519-NS § 1, 1971: Ord. 3262-NS § 12.1-d, 1952)

**Section 14.48.070 Bicycle racks.**

Bicycle racks of a type and at locations approved by and under such conditions as may be imposed by the Public Works ~~office~~ Department. (Ord. 3262-NS § 12.1-e, 1952)

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

Bus benches and bus shelters at such locations and in accordance with such rules and regulations as may be prescribed by the City Manager and approved by the City Council. (Ord. 4677-NS § 1, 1973: Ord. 3382-NS § 1, 1954: Ord. 3262-NS § 12.1-g, 1952)

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

~~Mail boxes and armed forces recruiting signs~~ that are placed in such locations that they do not interfere with the normal use of the sidewalk by pedestrians. (Ord. 3262-NS § 12.1-h, 1952)

**Section 14.48.110** ~~ReservedTaxicab telephones.~~

~~Taxicab telephones of a type and at locations approved by and under such conditions as may be imposed by the Police Department, and in accordance with the provisions of the Taxicab Ordinance of this City. (Ord. 3262-NS § 12.1-i, 1952)~~

**Section 14.48.120** ~~Newspaper racks and newspapers.~~

~~Newspaper racks that which~~ are installed and maintained in accordance with Chapter 16.40 or Chapter 16.44 of the Berkeley Municipal Code. (Ord. 6471-NS § 4, 1999: Ord. 6326-NS § 3 (part), 1996: Ord. 3262-NS § 12.1-j, 1952)

**Section 14.48.140** ~~ReservedVending machines.~~

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

**Section 14.48.150** ~~ReservedMilk cases and boxes.~~

~~Milk cases and boxes when located on an unimproved portion of the sidewalk area at locations approved by and under such conditions as may be imposed by the Police Department. (Ord. 3262-NS § 12.1-m, 1952)~~

**Section 14.48.170** ~~Temporary objects used for noncommercial expressionnoncommercial uses.~~

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

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

~~B. If there are no prior applications for such time and place and the use of such object or thing at such time and place will not create a traffic hazard, the permit shall be issued. (Ord. 4686-NS § 1, 1974: Ord. 4594-NS § 1, 1972: Ord. 3389-NS § 1, 1954: Ord. 3262-NS § 12.1-o, 1952)~~

A. Background.

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

ordinances permitting street vending in certain areas (these ordinances were enacted in 1973 and 1981) as well as other commercial-related objects (i.e., sidewalk café seating).

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

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

4. This section, as comprehensively revised in 2008, regulates the temporary placement of objects used for expressive purposes on the sidewalk. Its general purpose is to provide specific, ministerial regulations for such objects, consistent with constitutional protections, while at the same time protecting, to the extent permissible, the City's substantial interests in pedestrian safety, access for persons with disabilities, and an aesthetically pleasing streetscape and vital commercial areas, which are critical to the City's economic well-being. In addition, a particular purpose of this section is to define the term "temporary" so as to ensure that any given area of the sidewalk that is occupied for expressive purposes - and thereby withdrawn from public use - be only temporarily so withdrawn.

#### B. Definitions.

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

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

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

unduly interfere with other public uses or the general aesthetic appearance of the sidewalk.

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

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

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

C. Permit process for objects used for noncommercial expression.

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

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

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

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

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

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

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

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

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

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

D. Location requirements.

Objects used for noncommercial expression that are placed on the sidewalk under this section pursuant to a permit must comply with all of the following location criteria, which

are intended to maintain the sidewalks of the City as safe, useful and accessible means of pedestrian travel. No such object may be located or placed:

1. where there is less than 6 feet of clearance on the sidewalk for pedestrians to pass or so as to reduce pedestrian clearance to less than 6 feet;

2. where it would reduce the clear space for the passage of pedestrians passing between the roadway and the sidewalk to less than 8 linear feet along the curb;

3. where it would obstruct, restrict, or prevent the use of any portion of the sidewalk by pedestrians users beyond the authorized area specified in the permit;

4. within any building entrance (defined as the area the same width as a building doorway and extending from a building doorway 10 feet towards the curb, but not including sidewalk areas at the bottom of stairways that are wider than building doorways);

5. within 6 feet directly in front of any display window of any building abutting the sidewalk;

6. in the portion of the sidewalk closest to a building, if it interferes with access to buildings;

7. in front of or within 3 feet of a bus stop bench;

8. within 5 feet of any public or private driveway, fire hydrant, police or fire call box or other emergency facility, traffic signal controllers, mail boxes, utility boxes, or any fixed object legally placed in the City right-of-way;

9. within 2 feet of the edge of any tree well;

10. within 3 feet of any raised planter in the City right-of-way;

11. within 10 feet of any installation of public art installed pursuant to a program or plan approved by the City Council, except as may be permitted in that program or plan;

12. within 10 feet to the front or rear of any bicycle rack, or 3 feet to either side of a bicycle rack;

13. within 18 inches of any curb (this measurement includes space for persons minding the object as well as the object itself);

14. within 10 feet of any crosswalk (marked or unmarked);

15. within 5 feet of any wheelchair ramp;

16. in a location that interferes with access for persons with disabilities to the sidewalk;

17. at the curb when the curb is yellow, red, white, blue; or when it will interfere with access to a bus stop or fire hydrant operations;

18. where it would obstruct, restrict or hinder visibility of traffic control signs; or

19. within 5 feet of any trap door in the sidewalk permitted pursuant to Section 14.48.250, or between such a trap door and the curb.

E. Size limits and attendance requirement.

The following objects are prohibited under this section:

1. objects or collections of objects with a cumulative footprint larger than 15 square feet and any horizontal dimension greater than 5 feet;

2. objects 7 feet or more in height;

3. objects that are not stationary or move in the wind;

4. objects with moving parts or parts that move in the wind, or flashing lights, except those required for safety as determined by the Traffic Engineer;

5. unattended objects.

F. Permit lapse.

A permit issued under this section that is not exercised within 2 working days of its effective date (if different than its issuance date) shall be deemed to have lapsed and shall be null and void and of no effect, and shall not constitute permission to place an object on the sidewalk. Upon a showing of good cause, such as serious illness, unusual weather, personal or public emergency or other similar circumstance, the Traffic Engineer may waive the lapse of such a permit and allow it to be exercised for the remainder of its term, if the location that is the subject of the permit has not already been allocated pursuant to another permit for the same period of time.

G. Permit duration.

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

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

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

H. Permit posting.

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

I. Additional regulations.

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

**Section 14.48.180 Decorative noncommercial installations.**

Decorative noncommercial installations subject to the following regulations and requirements:

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

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

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

C. No decorative noncommercial installation shall be placed or maintained in the sidewalk area without a permit therefor. Application for such permit shall be made to the

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

D. Anyone granted a permit for a decorative noncommercial installation shall agree to indemnify and hold harmless the City, its officers and employees of and from any and all claims, damages or suits that may arise or in any way be occasioned by the granting of the permit or the maintenance of the decorative noncommercial installation permitted thereby. (Ord. 4026-NS § 1, 1964)

**Section 14.48.190 Public telephones.**

Telephones for public use of a type and at locations approved by and under such conditions as may be imposed by the City Manager. (Ord. 4476-NS § 1, 1970)

**Section 14.48.200 Sidewalk cafe seating.**

Sidewalk cafe seating as defined in Section 22.41-2a of the Zoning Ordinance, Ordinance No. 3018-N.S., if the person who constructs, maintains, places or causes to be used sidewalk cafe seating has obtained a use permit for such use under the terms of the Zoning Ordinance. (Ord. 6281-NS § 5, 1995)

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

Anything placed or permitted to remain upon any sidewalk or roadway in violation of Section 14.48.020 of this chapter, is declared to constitute a nuisance and the [City Police Department](#) 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~~. (Ord. 3262-NS § 12.2, 1952)

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

Any properly licensed ~~peddler or~~ vendor may use the public streets of the City in commercial or industrial zones for the sale of goods, wares, merchandise, or food when conducted under the conditions stated in this 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 ~~that which~~ are lawfully parked upon streets ~~which that~~ 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. (Ord. 5483-NS § 1 (part), 1982: Ord. 4587-NS § 1, 1972: Ord. 4569-NS § 1, 1972: Ord. 3262-NS § 12.3, 1952)

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

~~—Any vendor of racing forms who is properly licensed and has the required permit from the Police Department of the City may use the public streets and sidewalks of the City for selling, offering for sale, distributing or giving away racing forms. (Ord. 3262-NS § 12.4, 1952)~~

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

~~—It is unlawful for any person to solicit, on any public street or sidewalk, park or other public place or in any doorway or entrance way immediately abutting thereon, the sale of any subscription to any magazine, periodical or other publication, or the sale of any tangible personal property for delivery at a subsequent time. (Ord. 3262-NS § 12.5, 1952)~~

**Section 14.48.250** ~~Trap~~ Doors in sidewalks.

A. 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 for loading or unloading or transferring of merchandise or material.

B. The requirements of this section shall be in addition to and not in lieu of any other ordinance of the City having to do with doors or other openings in sidewalks. (Ord. 3262-NS § 12.6, 1952)

**Section 14.48.260 Interpretation and severability.**

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

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

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

branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

