



CITY COUNCILMEMBER
RIGEL ROBINSON
 DISTRICT 7

CONSENT CALENDAR
 January 16, 2024

To: Honorable Mayor and Members of the City Council
 From: Councilmember Rigel Robinson (Author), Councilmember Harrison (Co-Author), Councilmember Hahn (Co-Sponsor)
 Subject: Referral: Policies to Accommodate Chess

RECOMMENDATION

Refer to the City Manager to explore legislative and policy alternatives for accommodating chess and games in the public right-of-way. Consideration should be given to ensure that use of tables and chairs does not unduly obstruct public sidewalks or complicate existing enforcement of rules relating to the public right-of-way.

POLICY COMMITTEE RECOMMENDATION

On December 11, 2023, the Health, Life Enrichment, Equity, & Community Committee adopted the following action: M/S/C (Hahn/Bartlett) to send Item 2 and Item 3 on the Committee's agenda to the City Council as revised with a positive recommendation. Proposed revisions include consideration of: financing of improvements; negotiations with property owner(s); rules relating to the public right-of-way; and support of city-wide program(s). Vote: All Ayes.

This proposal was discussed at the December 12th meeting of the Health, Life Enrichment, Equity & Community policy committee. The proposal was advanced with a positive recommendation alongside a separate, complementary item submitted by Councilmember Hahn: M/S/C (Hahn/Bartlett).

Vote: Ayes – Hahn, Bartlett, Humbert; Noes – None; Abstain – None.

BACKGROUND

Community members have gathered to play chess and socialize on the 2400 block of Telegraph Avenue since 2021. The informal "chess club" that has met on the block is a cherished community space that embodies Berkeley values of non-commercial, organic interactions between people of all ages and backgrounds on one of the most historic and storied blocks in the City. The chess club serves as a space for all to interact in a transaction-free, non-commercialized environment that does not exclude those who are unable to pay.

The chess club has recently been situated on private property, which has created conflicts with the property owner. These activities, however, are not permitted in the public right-of-way. There are steps that the property owner could have taken and could

take now to welcome the chess club's activities at their current location if that is desired, including but not limited to building a parklet or seeking to modify the use permit for the property. And there are steps the city can take to expand space for public recreation, including reactivating the Dwight Triangle and pursuing reforms to the municipal code to enable these activities in the public right-of-way. It is in the public interest to explore all options.

The chess club has revealed some fundamental legal limitations that the Berkeley Municipal Code places on these organic activities — namely, on residents setting up tables, chairs, and other objects on sidewalks to utilize public space for purposes of recreation. In an increasingly commercialized and consumerist environment, free and communal activities such as gathering to play chess are a welcome and necessary use of public space. Moreover, they can serve to connect people of all backgrounds by enabling new “third spaces,” or places other than work and school to socialize. It is clear that there is a public interest in encouraging these uses of public space, so long as participants act and operate with respect for their neighbors and surroundings.

There is a notable dearth of public seating available on Telegraph Avenue. Much of the seating in the Telegraph commercial district is behind paywalls, located at businesses and restaurants. There are limited spaces for relaxation and social gathering on Telegraph Avenue. A shortage of publicly available seating creates a particularly hostile environment for the elderly and disabled. The city council has embraced a radical vision for the future of Telegraph Avenue, one of widened sidewalks and beautiful placemaking where the avenue can be transformed into a plaza and embraced as a place for gathering, more so than a thoroughfare. That vision, however, will take time and significant resources. There are strategies, such as allowing chairs and tables provided by community members, that can be welcomed right now to embrace gathering and recreation on Telegraph.

At present, one additional bench has been ordered by city staff to provide for seating at a bus stop on Telegraph Avenue, and the city council has provided direction and referred funding to the budget process to reactivate the Dwight Triangle as an area for recreation and gathering with new seating. All the same, given the severe shortage of publicly available seating and space for resting currently, it is in the public interest to welcome efforts from community members to create additional space for gathering.

Chess club organizers have presented options to our offices proposing Berkeley Municipal Code edits that would loosen limitations on setting up movable tables and chairs on sidewalks. It is our intent, with this legislation, to give staff direction to study and recommend policy options for allowing activities like chess at movable tables and chairs to be set up organically on our sidewalks — so long as an ADA-accessible open sidewalk width is maintained — without applying for a city permit, reducing barriers to creating precisely the organic, transaction-free public spaces we want to see in our city.

Staff are encouraged to review and consider the proposed language submitted by community members in their analysis and preparation of recommendations and legislative alternatives. They are as follows:

Proposal 1:

In Proposal 1, a new section (H) is added to code section 16.18.040 Exemptions from permit requirements.

16.18.040 Exemptions from permit requirements.

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

...

H. Objects such as, but not limited to, tables, chairs, canopies, and umbrellas that enable members of the public to assemble and engage in legal activities for the good of the community, insofar as:

1. All members of the public are allowed to utilize these objects, as long as they are engaged in legal activities such as painting, playing games, protected speech, etc.
2. Members of the public are not charged for use of these objects
3. The placement of these objects may narrow the public right of way to no less than six feet, where possible.

Proposal 2:

In Proposal 2, a new section (H) is added to Title 16, Chapter 18, Section 30 entitled Prohibited Encroachments.

Title 16, Chapter 18, Section 30 entitled Prohibited Encroachments

Notwithstanding the provisions of Section 16.18.020, the following encroachments are specifically prohibited, and no applications shall be accepted nor permits issued therefor:

...

H. Except for tables, canopies, umbrellas, and chairs with acute mobility (e.g. foldable structure and/or able to be disassembled rapidly); assembled for activities that provide a non-profitable public good; devoid of major encroachment as defined by 16.18.010 Section C

FINANCIAL IMPLICATIONS

Staff time.

ENVIRONMENTAL SUSTAINABILITY

Use of the public right-of-way for recreation can create new “third spaces” other than home and work for residents to socialize, especially on commercial corridors where there are other nearby activities and nearby dense housing. Fostering third spaces is critical for the cultivation of walkable neighborhoods, and thereby helpful in reducing vehicular traffic.

CONTACT PERSON

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