



Office of the City Manager

ACTION CALENDAR
July 30, 2024
(Continued from July 9, 2024)

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Mark Numainville, City Clerk

Subject: Initiative Petition – Initiative Ordinance Requiring the Adoption of Minimum Indoor Air Quality Standards in City-Owned and City-Leased Buildings

RECOMMENDATION

1) Take action on the initiative petition to:

a) Adopt the provisions of the measure without alteration.

-OR-

b) Adopt a Resolution submitting the measure, without alteration, to a vote of the people at the November 5, 2024 General Municipal Election.

2) Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

FISCAL IMPACTS OF RECOMMENDATION

No direct fiscal impacts related to the recommended action.

CURRENT SITUATION AND ITS EFFECTS

An initiative petition titled “Initiative Ordinance Requiring the Adoption of Minimum Indoor Air Quality Standards in City-Owned and City-Leased Buildings” was filed with the City Clerk on May 15, 2024. The proponents of this petition submitted 4,417 prima facie signatures.

Under Berkeley City Charter Article XIII, a successful initiative petition must include valid signatures of at least 5% (2,985) of the votes for all candidates for Mayor in November 2020 (57,885).

The Alameda County Registrar of Voters verified the signatures by reviewing a random sampling of 500 signatures in accordance with State Elections Code §9215. This statistical sampling found 404 valid signatures. When this ratio of valid signatures is applied to the actual number of signatures submitted, it results in a validity rate of 120%, which exceeds the required threshold in the state Elections Code for the petition to be deemed sufficient. Therefore, the petition was certified by the Registrar of Voters as being sufficient on May 28, 2024.

Initiative Petition

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Additionally, with respect to who can author arguments for measures placed on the ballot by petition, Elections Code Section 9282 provides the City Council may authorize the Council as a whole, or members of the Council, to submit an argument against the initiative ordinance.

BACKGROUND

Pursuant to the City Charter, Article XIII §92, once a petition has been found to have a sufficient amount of signatures, the City Council must consider whether to a) Adopt said ordinance without alteration within twenty days after the attachment of the City Clerk's certificate of sufficiency to the accompanying petition (subject to a referendary vote, under the provision of Article XIV of this Charter); or b) Submit the ordinance to the voters of the City of Berkeley at the next general election.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects or climate impacts associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

The proposed action is mandated by state codes and the provisions of the City Charter.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Mark Numainville, City Clerk, 981-6900

Attachments:

1. Resolution
Exhibit A: Full Text of Measure
2. City Clerk's Certificate of Sufficiency

RESOLUTION NO. ##,###-N.S.

SUBMITTING TO THE BERKELEY ELECTORATE AN INITIATIVE ORDINANCE REQUIRING THE ADOPTION OF MINIMUM INDOOR AIR QUALITY STANDARDS IN CITY-OWNED AND CITY-LEASED BUILDINGS FOR THE NOVEMBER 5, 2024 BALLOT

WHEREAS, the Berkeley City Council has elected to submit to the voters at the November 5, 2024 General Municipal Election, an initiative measure Requiring the Adoption of Minimum Indoor Air Quality Standards in City-Owned and City-Leased Buildings; and

WHEREAS, certain actions are required in connection with said election; and

WHEREAS, the Council has requested that the Alameda County Board of Supervisors consolidate the General Municipal Election with the Presidential General Election; and

WHEREAS, the Council desires to submit all measures to be placed upon the ballot at said consolidated election.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Board of Supervisors of Alameda County is hereby requested to include on the ballots and sample ballots the measure enumerated above to be voted on by the voters of the qualified electors of the City of Berkeley.

BE IT FURTHER RESOLVED that full text of the measure and the City Attorney's analysis shall be printed in the Voter Information Pamphlet mailed to all voters in the City of Berkeley.

BE IT FURTHER RESOLVED that the above enumerated measure requires a majority vote threshold for passage.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to cause the posting, publication and printing of notices, pursuant to the requirements of the Charter of the City of Berkeley, the Government Code and the Elections Code of the State of California.

BE IT FURTHER RESOLVED that the Registrar of Voters of Alameda County is requested to perform services in connection with said election at the request of the City Clerk.

BE IT FURTHER RESOLVED that the City of Berkeley agrees to reimburse the County of Alameda in full for the cost of election services performed.

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized to enter into any contracts necessary for election consulting services, temporary employment services, printing services, and any such other supplies and services as may be required by the statutes of the State of California and the Charter of the City of Berkeley for the conduct of the November General Municipal Election.

BE IT FURTHER RESOLVED that Pursuant to Elections Code Section 9285 (b), the City Council hereby adopts the provisions of Elections Code Section 9285 (a) providing for the filing of rebuttal arguments for city ballot measures.

BE IT FURTHER RESOLVED that said proposed initiative measure shall appear and be printed upon the ballots to be used at said election as follows:

CITY OF BERKELEY INITIATIVE ORDINANCE	
Shall the measure setting indoor air quality standards for City-owned and -leased buildings; prohibiting compliance with those standards through the use of air filtration or disinfection technologies emitting ozone, volatile organic compounds, oxidation byproducts, excessive sound, or ultraviolet light; requiring repair, closure, evacuation, and/or provision of alternative services to the public due to building closure when standards are not met; and creating a private right to sue over alleged violations, be adopted?	YES
	NO

BE IT FURTHER RESOLVED that the text of the initiative ordinance be shown as Exhibit A, attached hereto and made a part hereof.

- Exhibits
- A: Text of Ordinance

ORDINANCE NO. #,###-N.S.

ADDING CHAPTER 12.12 TO THE BERKELEY MUNICIPAL CODE TO REQUIRE
CONTROL OF INFECTIOUS AEROSOLS IN CITY BUILDINGS

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

Section 1. That Chapter 12.12 of the Berkeley Municipal Code is added to read as follows:

Chapter 12.12

CONTROL OF INFECTIOUS AEROSOLS IN CITY BUILDINGS

Sections:

12.12.010 Short Title.

12.12.020 Findings and Purpose.

12.12.030 Definitions.

**12.12.040 Adoption of Standards for Control of Infectious Aerosols in City
Buildings and Related Requirements in City Buildings.**

**12.12.050 Duty of City to Maintain and Repair Control of Infectious Aerosols
Systems and to Provide Alternative Services.**

12.12.060 Noticing and Monitoring Requirements.

12.12.070 Interim Measures.

12.12.080 Private Right of Action.

12.12.090 Amendment.

12.12.100 Severability.

RECEIVED

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**CITY OF BERKELEY
CITY CLERK DEPARTMENT**

12.12.010 Short Title.

This Chapter shall be known as the “Healthy City Buildings Ordinance.”

12.12.020 Findings and Purpose.

The people of the City of Berkeley find as follows:

- A. Airborne transmission of communicable diseases occurs when a susceptible person inhales a sufficient number of active pathogens to cause an infection, i.e., an infectious dose. Engineering design and controls—dilution ventilation, filtration, and air disinfection—can reduce the concentration of active pathogens in the air, which tends to reduce risk of infection. Engineering design and controls are only one element of a well-designed risk management plan. They cannot eliminate risk; however, inadequate control of indoor exposures has been demonstrated to contribute to elevated risk.
- B. Explicit requirements for airborne infection risk management have been absent for a century from indoor air quality (IAQ) standards with the exception of those written for health care facilities and laboratories.
- C. The COVID-19 pandemic and other infectious airborne disease have caused and continue to cause enormous personal, societal, and economic damage, much of which resulted from the closure of public buildings due to widespread perception (supported by considerable evidence) that they are high-risk environments for infection transmission.
- D. Recognizing that indoor environments were not well-prepared to mitigate the risk of COVID-19 transmission, the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), a global society aimed at advancing heating, ventilation, and air conditioning (HVAC) technology for the built environment, formed its Epidemic Task Force early in 2020 and developed a large body of guidance regarding ventilation, filtration and air cleaning, air distribution, HVAC system operation, and commissioning for multiple building types that laid the groundwork for the development of ASHRAE Standard 241. The catalyst for the development of Standard 241 was discussion between ASHRAE and the White House COVID-19 Response Team about the need for new and better IAQ standards.
- E. Given the persistent threat and transmission of COVID-19, long-COVID and related sequelae, other infectious diseases, and poor indoor air quality due to pollution and wildfire smoke, it is in the public interest to protect health and safety through requiring the City to achieve, implement and maintain in City-owned or City-leased occupied buildings the applicable Minimum Equivalent Clean Airflow Per Person in the Breathing Zone in Infection Risk Management Mode as specified in Table 5-1 of ASHRAE Standard 241-2023 and all applicable engineering standards therein during operating hours.

12.12.030 Definitions.

“Building Occupants” means City employees, City contractors, patrons, customers, inmates, clients, patients, children, or community members.

“Occupied Building” means any City-owned or City-leased building or subdivision thereof, and any and all rooms therein, regularly occupied by Building Occupants during Operating Hours.

“Operating Hours” means the period of time the building is occupied during normal,

extended, janitorial hours, or security hours, in connection with performing or maintaining municipal services by City employees or contractors.

“Personal Protective Equipment” means well-fitting respirators equal to or greater than N95 and approved by the National Institute for Occupational Safety and Health.

12.12.040 Adoption of Standards for Control of Infectious Aerosols in City Buildings and Related Requirements in City Buildings.

A. By April 1, 2025, the City shall adopt ASHRAE Standard 241-2023 or a standard of equal or superior stringency for control of infectious aerosols in all Occupied Buildings and implement the requirements so adopted.

B. When the Authority Having Jurisdiction as specified in ASHRAE Standard 241-2023 is the City or an agency or agent of the City, in no case shall the Authority Having Jurisdiction implement, interpret or apply any standards, specifications, or requirements of ASHRAE Standard 241-2023 in a manner less stringent than set forth therein.

C. Notwithstanding any exceptions or voluntary provisions embedded in ASHRAE Standard 241-2023 and except as provided by Section 12.12.050(B) and (C), at a minimum, the City shall achieve, implement and maintain in Occupied Buildings the applicable Minimum Equivalent Clean Airflow Per Person in the Breathing Zone in Infection Risk Management Mode as specified in Table 5-1 of ASHRAE Standard 241-2023 and all related and applicable engineering standards therein indefinitely during Operating Hours. In so doing, the City shall not use any air filtration or air disinfection technologies that emit ozone, volatile organic compounds, oxidation byproducts, or excessive decibels, and shall not install any ultraviolet light disinfection technology in such a manner that the light will come into contact with human skin.

D. The City acknowledges that any compromise, disrepair, or malfunction of ventilation, filtration, or air disinfection systems related to meeting the requirements of this section may harm Building Occupants.

12.12.050 Duty of City to Maintain and Repair Control of Infectious Aerosols Systems and to Provide Alternative Services.

The City shall have the following obligations as of April 1, 2025:

A. Duty to conduct regular maintenance: the City shall establish a program of regular maintenance of ventilation, filtration, or air disinfection systems adopted pursuant to Section 12.12.040 to ensure that ventilation, filtration, or air disinfection requirements in its Occupied Buildings during Operating Hours under Section 12.12.040(C) remain safe and operable at all times and that any servicing needed is completed within the shortest practicable time outside of Operating Hours to the extent that such repairs and servicing may reasonably prevent the City from meeting the requirements of Section 12.12.040(C). A licensed engineer shall certify compliance with Section 12.12.040(C) on an annual basis.

B. Duty to repair malfunctions expeditiously and protect public safety: Where a ventilation, filtration, or air disinfection system in an Occupied Building malfunctions, is compromised, or in a state of disrepair, and such malfunction, compromise, or disrepair may reasonably compromise the City’s ability to meet the requirements of Section 12.12.040(C), except for emergency or City maintenance personnel or maintenance subcontractors wearing Personal Protective Equipment, the Occupied Building shall be

immediately closed to all Building Occupants, any Building Occupants therein shall be immediately evacuated, and the malfunctioning system or systems shall be repaired at the earliest practicable time, except as provided by subsection C. Occupied Buildings closed or evacuated under this subsection shall be reoccupied only upon certification and attestation by the City's engineer that all requirements of Section 12.12.040(C) are satisfied.

(1) Duty to provide alternative services pending ventilation, filtration, or air disinfection repair: If the City is unable to complete a repair of ventilation, filtration, or air disinfection within twenty-four hours of notice of its malfunction pursuant to subsection B, the City shall reasonably locate and provide alternative services for any person reasonably seeking City services because of such person's impaired ability to access such City services due to the Occupied Building's closure. The duty to provide alternative services shall not arise if the City is prevented from repairing the ventilation, filtration, or air disinfection system or systems within twenty-four hours or any time thereafter due to a natural disaster or an act of God other than a pandemic, epidemic, or infectious disease outbreak, provided that the building operator shall be relieved of this duty only during the period that the inability to repair is caused by such natural disaster or act of God.

(2) City Employees who work in Occupied Buildings that are closed or evacuated shall be paid at their full rate for any and all scheduled work hours during such time that Occupied Buildings are closed or evacuated.

C. Exception during certain natural disasters and acts of God: Notwithstanding subsection B, Occupied Buildings closed or evacuated in connection with ventilation, filtration, or air disinfection system malfunctions may be reoccupied by Building Occupants in order to reasonably protect the public during a natural disaster or an act of God other than a pandemic, epidemic, or infectious disease outbreak.

12.12.060 Noticing and Monitoring Requirements.

A. As of April 1, 2025, the City shall reasonably display conspicuous and legible signage at the entrance of all Occupied Buildings subject to this Chapter and open to Building Occupants attesting to compliance with Sections 12.12.040(C) and 12.12.050(A).

(1) Signage shall summarize and enumerate the specific methods employed to comply with Section 12.12.040(C). When natural or portable equivalent clean airflow systems are used, signage shall specify as applicable their filtration type, location, and quantity.

(2) Signage shall detail the normal maintenance schedule for applicable methods or equipment.

(3) Signage shall detail procedures for the public to reasonably request additional technical information about the City's systems, equipment, and engineering certifications and design.

B. As of April 1, 2025, the City shall install conspicuous carbon dioxide monitors with non-dispersive infrared or equivalent or superior technology in each regularly occupied room of all Occupied Buildings subject to this Chapter and with signage explaining how to read and interpret results.

12.12.070 Interim Measures.

By January 1, 2025, the City shall take all feasible measures to improve ventilation, filtration, and air disinfection in Occupied Buildings, including at least the following:

- A. Ensure that all windows that can open are open during Operating Hours unless there is inclement weather.
- B. Purchase and install high-efficiency particulate air (HEPA) filters for areas of Occupied Buildings where windows cannot open.

12.12.080 Private Right of Action.

- A. Right to Cure. This Chapter does not provide a private right of action upon any person or entity to seek injunctive relief or civil penalties against the City or any employee unless that person or entity has first provided written notice to the City Manager by serving the City Clerk by e-mail or mail, regarding the specific alleged violations of this Chapter. If the alleged violation is substantiated and subsequently cured, a notice shall be posted in a conspicuous manner on the City's website and any applicable Occupied Buildings that describes, to the extent permissible by law, the corrective measures taken to address the violation.
- B. Cause of Action. Other than with respect to Section 12.12.050(B), if a specific alleged violation is not remedied within five (5) days of the written notice specified in subsection A, a person or entity may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce this Ordinance and may also seek civil penalties. With respect to Section 12.12.050(B), if a specific alleged violation is not remedied with two (2) hours of the written notice specified in subsection A, a person or entity may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce Section 12.12.050(B) and may also seek civil penalties.
- C. Civil Penalties. If the City is found liable in a cause of action brought under subsection B above for a violation that is the result of arbitrary or capricious action by the City or an employee or agent thereof in their official capacity, the City shall be liable for a civil penalty as determined by the court. In determining the amount of civil penalty, the court shall consider prior violations of this ordinance by the City department that committed the violation.
- D. Attorney's Fees and Costs. A court shall award a plaintiff who prevails on a cause of action under subsection B reasonable attorney's fees and costs.
- E. Limitations on Actions. Any person bringing an action for money or damages for a violation of this ordinance must first file a claim with the City pursuant to Government Code 905 or any successor statute within four years of the alleged violation.
- F. Any contracting Person or Entity knowingly or willingly supplying false information in violation of Section 13.105.030C.2 shall be guilty of a misdemeanor and up to a \$1,000 fine.

12.12.090 Amendment.

The Council may, by majority vote of the entire City Council, amend this Chapter in furtherance of its purposes or to:

- (1) correct ambiguities or errors in language, provided that such amendments do not cause the City to achieve, implement, and maintain standards less stringent in City Buildings than those specified in Section 12.12.040, modify the obligations under Sections 12.12.050 and 12.12.070, or modify the noticing and monitoring requirements, procedures, or penalties, as specified under Sections 12.12.060 and 12.12.080;

(2) adopt successor standards in whole or in part to ASHRAE Standard 241-2023 only insofar as and to the extent that new standards are more stringent than ASHRAE Standard 241-2023 and the applicable Minimum Equivalent Clean Airflow Per Person in the Breathing Zone in Infection Risk Management Mode as specified in Table 5-1 of ASHRAE Standard 241-2023.

12.12.100 Severability.

If any word, phrase, sentence, part, section, subsection, or other portion of this ordinance, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The People of the City of Berkeley hereby declare that they would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

BERKELEY CITY CLERK CERTIFICATE OF PETITION

I, Mark Numainville, City Clerk of the City of Berkeley, California, do hereby certify the following:

An Initiative Petition entitled: "Initiative Ordinance Requiring the Adoption of Minimum Indoor Air Quality Standards in City-Owned and City-Leased Buildings" was filed with the Berkeley City Clerk on May 8, 2024 within the statutory time limit and forwarded to the office of the Alameda County Registrar of Voters for verification on May 16, 2024; and

The petition contained **4,417** unverified signatures; and

Pursuant to the Charter of the City of Berkeley, in order to be sufficient, the petition must have been signed by at least **2,985** qualified registered voters of the City of Berkeley, the number being equal to 5% of the total votes cast for all candidates for mayor in the last general municipal election; and

I have examined or caused to be examined, signatures on the petition pursuant to California Elections Code sections 9211 and 9115; and

I have determined that the petition contained a valid signature rate of **120%** based on a random sample of the signatures as performed and certified by the Registrar of Voters in Exhibit A attached herewith; and

This number meets or exceeds the valid signature rate needed to qualify the initiative; therefore

The petition is found to be sufficient to require the City Council of the City of Berkeley to take appropriate action specified under Article XIII of the Berkeley City Charter.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 26th day of June, 2024.



A handwritten signature in blue ink, which appears to read "Mark Numainville". The signature is written in a cursive style and is positioned above a horizontal line.

Mark Numainville
City Clerk
City of Berkeley

REGISTRAR OF VOTERS CERTIFICATE TO PETITION

I, **Tim Dupuis**, Registrar of Voters for the County of Alameda, State of California, hereby certify that: an Initiative Entitled: City of Berkeley Ordinance Requiring the Adoption of Minimum Indoor Air Quality Standards in City-Owned and City-Leased Buildings, was filed with the Berkeley City Clerk within the statutory time limit and forwarded to this office for verification on May 16, 2024; and

The petition contained 4,417 unverified signatures: and

In accordance with Article XIII of the Berkeley City Charter, it was determined that the total number of votes cast for all candidates for Mayor at the November 2020 General Election was 57,885, the requisite number of signatures required to qualify this initiative is 5% of 57,885 or 2,985.

I have examined, or caused to be examined, signatures on the petition pursuant to California Elections Code sections 9211 and 9115; and

Have determined that the petition contained 404 valid signatures of qualified registered voters in the City of Berkeley based on the random sample examination set forth in section 9115 and the formula prescribed by the California Secretary of State: and

That this number represents 120% of the total number of signatures needed to qualify the initiative, therefore.

The petition is found to be sufficient to require the City Council of the City of Berkeley to take the appropriate action specified in the California Elections Code.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 28th day of **May 2024**.



DocuSigned by:

Tim Dupuis

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Tim Dupuis
Registrar of Voters
County of Alameda
State of California