

# CITY OF BERKELEY

## ADMINISTRATIVE REGULATION

**Subject: Regulating Temporary Non-Commercial Objects on Sidewalks and in Parklets, Pursuant to BMC § 14.48.120**

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### PURPOSE

This Regulation is intended to protect the City's substantial interests in access and safety on Sidewalks and Parklets for pedestrians and for persons with disabilities, aesthetically pleasing streetscapes, and vital commercial areas, all of which are critical to the City's economic and social well-being, in a manner consistent with the United States and California Constitutions, including the First, Fourth, Eighth, and Fourteenth Amendments.

This Regulation provides policy and procedures regarding placing Temporary Noncommercial (TNC) Objects on Sidewalks and Parklets, pursuant to Berkeley Municipal Code (BMC) § 14.48.120.

### DEFINITIONS

"BART Access Corridor" is a Sidewalk, including a wide plaza area, on the same side of the street as a BART Station entrance, within 25 feet of such entrance. In the downtown area, the BART Access Corridor includes all sidewalk and plaza areas on the west side of Shattuck Avenue from Addison Street to Allston Way.

"Parklet" is defined as provided in BMC § 14.48.190.

"Path of Travel" is defined as:

- For Sidewalks which measure less than fourteen (14) feet in width, the Path of Travel is six (6) feet wide; this 6-foot wide strip is parallel to the curb and the sides of this strip are equidistant from the curb edge of the sidewalk and the edge of private property abutting such sidewalk.
- For Sidewalks which measure 14 feet or greater in width, the Path of Travel is ten (10) feet wide; This 10-foot strip is parallel to the curb and the sides of this strip are equidistant from the curb edge of the sidewalk and the edge of private property abutting such sidewalk.

"Sidewalk" is defined as provided in BMC § 1.04.010(18) as that portion of a street between the curblines and the adjacent property line intended for the use of pedestrians.

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The dirt planting strip that sometimes exists within the sidewalk along the edge of the curb is part of the sidewalk because it is intended to be used by pedestrians walking to and from a roadway, e.g. to a parked car.

“Street” is defined as provided in BMC § 1.04.010(20) as all streets, highways, avenues, lanes, alleys, courts, places, squares, curbs, or other public ways in this City which have been or may hereafter be dedicated and open to public use, or such other public property so designated in any law of this state. For the purposes of this Administrative Regulation, “street” encompasses any median therein.

“TNC Objects” are defined as provided in BMC § 14.48.120 as personal belongings:

1. In the immediate custody and control of a person or persons at substantially all times;
2. Not offered for sale or exchange or involved in the solicitation of money for immediate payment;
3. Not otherwise prohibited and of a size, weight and quantity that can be easily moved by the owner.
4. Not furniture. Furniture is only allowed pursuant to BMC Chapter 9.48 or pursuant to BMC § 14.48.030 for Objects in Transit or BMC § 14.48.150 for Sidewalk Café permits and City-installed furniture.

“TNC Prohibited Area” is a public location where notices have been posted in reasonably visible locations delineating a geographic area where TNC Objects are prohibited.

## **POLICY**

### **A. Objects Subject to this Regulation**

This Regulation applies to all Temporary Noncommercial (TNC) Objects. It does 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, or to TNC or other objects expressly permitted by the Berkeley Municipal Code.

TNCs that create major health and safety impacts for encampment residents or the general public are not allowed on City streets, sidewalk, or other public rights-of-way under any circumstances and are subject to removal pursuant to Administrative Regulation 10.1.

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**B. TNC Objects Exempt from this Regulation**

1. Mobility devices used by pedestrians or individuals are exempt from this regulation.
2. The following TNC Objects are exempt from this Regulation, except in TNC Prohibited Areas: Blankets, cushions, mats, or other material providing cushioning (“Cushioning Material”) while an individual is seated on such an item, which does not expand beyond 2’ x 2’ in size and is outside of the Path of Travel.

**C. Time and Location Requirements for TNC Objects**

1. TNC Objects - Residential Districts

TNC Objects are prohibited on Sidewalks in Residential Districts, except Objects in Transit pursuant to BMC § 14.48.030 or as otherwise specifically authorized by the BMC.

2. TNC Objects - Commercial and Manufacturing Districts

- a. TNC Objects shall not be left unattended for more than 2 hours.
- b. TNC Objects may not be placed in Parklets or on any portion of a street that is not a Sidewalk.
- c. TNC Objects must not interfere with access to and use of driveways, crosswalks, bus benches, bus stops, transit stops, bicycle racks, fire hydrants, faucet bibs, utility boxes, public art installations, mailboxes, ATM machines, embedded trap doors, parking meters, parking payment machines, refuse or recycling cans, or pursuant to a City permit, construction materials, newspaper racks, or sidewalk café seating.
- d. TNC Objects may not be placed in a location that interferes with access for individuals with disabilities such as curb and wheelchair ramps, or other features for disability access.
- e. TNC Objects may not be placed in a location where they would obstruct, restrict, or hinder visibility of traffic devices or signs.

- f. TNC Objects may not be placed at or adjacent to any blue or white curb.
- g. TNC Objects may not be placed on a Sidewalk directly in front of or within three feet of either side of a building entrance, from the building face to the curb edge of the Sidewalk.
- h. TNC Objects may not be placed within a BART Access Corridor, except objects in transit per 14.48.030 and other objects expressly allowed by the BMC.
- i. TNC objects must occupy a space of no more than 9 square feet and may not exceed 5 feet in height.
- j. TNC Objects may not be placed in TNC Prohibited Areas.

#### **D. ENFORCEMENT PROCEDURES**

To the extent possible, given resources, the initial outreach may be made by homeless outreach staff; management and/or enforcement of TNC Objects may be initiated by Neighborhood Services Homeless Response Team, Code Enforcement, Berkeley Police Department, and/or Public Works staff.

To further implement BMC §§ 14.48.120(C) and (D), the City hereby adopts the following procedures:

1. If TNC Objects or Cushioning Material are located within the Path of Travel or in a BART Access Corridor, they must be immediately moved out of the Path of Travel or BART Access Corridor by their owner upon request of the enforcement officer. Should TNC objects not be immediately moved, such objects shall be subject to removal and storage by the City pursuant to BMC § 14.48.160 and consistent with Administrative Regulation 10.1, and/or a citation may be issued.
2. For TNC Objects or accumulations of TNC Objects, enforcement of this Regulation shall be a low priority, except when:
  - TNC Objects have been in the same approximate location for 24 hours or more,
  - TNC Objects are located in a TNC Prohibited Area,
  - More than two accumulations of TNC Objects occupy a single blockface, or
  - TNC Objects pose a significant impact to health, safety, or city operations.

Enforcement officers may:

- Request that TNC Objects be reduced to a 9-square-foot footprint (measured as 3' x 3', 4' x 2.25', 9' x 1', etc.) and/or less than 5 feet in height,
- Request that TNC Objects be moved to another location,
- Subject to the notice requirements below, remove TNC Objects pursuant to BMC § 14.48.160 and Administrative Regulation 10.1, or
- Issue an administrative citation or infraction.

3. Except in the case of a significant health or safety risk or in TNC Prohibited Areas:

Prior to removal of TNC Objects, 48 hour written notice of intent to remove TNC Objects shall be provided, either by attaching such notice to, or directly adjacent to, such TNC Objects, or by providing notice to the owner.

**INTERPRETATION**

This Regulation 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.

<p><b>RESPONSIBLE DEPARTMENT:</b> City Manager</p> <p><b>TO BE REVISED:</b> As needed</p>	<p>Approved by:</p> <p><i>Paul Buddenhagen</i></p> <hr/> <p>City Manager</p>
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# AR 10.2 - Regulating Temporary Non-Commercial Objects on Sidewalks and in Parklets

Final Audit Report

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