

BERKELEY CITY COUNCIL HEALTH, LIFE ENRICHMENT, EQUITY & COMMUNITY COMMITTEE REGULAR MEETING

BERKELEY CITY COUNCIL SPECIAL MEETING

Monday, June 24, 2019 10:00 AM

2180 Milvia Street, 6th Floor - Redwood Room

Committee Members:

Councilmembers Rashi Kesarwani, Ben Bartlett, and Sophie Hahn

AGENDA

Roll Call

Public Comment on Non-Agenda Matters

Minutes for Approval

Draft minutes for the Committee's consideration and approval.

1. Minutes - June 10, 2019

Committee Action Items

The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.

Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.

Committee Action Items

2. Ban Racial, Ethnic, Cultural, and Religious Discrimination on the Basis of

Hairstyle or Headwear (Item contains revised materials)

From: Councilmembers Robinson, Davila, Bartlett, and Hahn

Referred: March 11, 2019 Due: September 15, 2019

Recommendation: Adopt a new Section of the Berkeley Municipal Code: Chapter 13.23 DISCRIMINATION ON THE BASIS OF HAIRSTYLE OR HEADWEAR IN EMPLOYMENT, HOUSING, AND PUBLIC ACCOMMODATIONS, prohibiting grooming or appearance policies which target natural or traditional hair, hairstyles, or headwear.

Financial Implications: See report

Contact: Rigel Robinson, Councilmember, District 7, 981-7170

3. Referral Responses: Managing Recreational Vehicle (RV) Parking (Item contains

supplemental material)
From: City Manager

Referred: March 26, 2019 Due: September 30, 2019

Recommendation: On March 26, 2019, the City Council referred this item to the Health, Life Enrichment, Equity & Community Committee to establish basic criteria for a "permanent" standard two-week permitting process. The standard two-week permit should consider the following:

- A limited number of permits to be issued by the City per month (or other increment).
- Locations to be geographically dispersed among all Council districts.
- A reasonable fee to cover City costs associated with the permit.

Financial Implications: See Report

Contact: Paul Buddenhagen, City Manager's Office, 981-7000

4. Air Quality Monitoring Program

From: Councilmembers Bartlett, Harrison, and Davila

Referred: April 8, 2019 Due: October 28, 2019

Recommendation: Referral to the Public Health Department to establish an advanced air quality monitoring program in Berkeley to provide data about how air quality in the city varies over time and between neighborhoods. To better implement this program, the City should form partnerships with technology companies, environmental research groups, and healthcare providers.

Financial Implications: See report

Contact: Ben Bartlett, Councilmember, District 3, 981-7130

Unscheduled Items

These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.

5a. Recommendations Related to Code Enforcement Actions and Leonard Powell Fact Finding

From: Housing Advisory Commission

Referred: June 11, 2019 Due: November 26, 2019

Recommendation: On June 11, 2019, the City Council referred the two Commission items to the Health, Life Enrichment, Equity & Community Committee to:

- 1. Create a policy that receivership should only be used when the property is a danger to the public, and as a last resort, and only upon approval of the Council.
- 2. Request an analysis of receivers and conservators by the City.
- 3. Send representatives from the City to the fairness hearing for Mr. Powell to raise concerns.

The original recommendation from the Housing Advisory Commission is as follows: Establish policies that will provide housing stability for homeowners and tenants. The City Council should set in place clear, objective, and equitable standards for conducting code enforcement actions and ensure that due process rights of affected homeowners and/or tenants are preserved. Commission a formal fact-finding process to ascertain what occurred in the matter of Mr. Leonard Powell. It should also refer this matter to the City Auditor. The fact finding should, among other things, focus on any actions taken by the Receiver in the case of Mr. Powell and any communications that the City has had with the Receiver. The HAC recognizes that additional steps may be necessary in regard to this matter, and may forward additional recommendations to the City Council at a later date.

Financial Implications: Staff time

Contact: Mike Uberti, Acting Commission Secretary, HHCS (510) 981-5114

5b. Recommendation to Bring Justice to Mr. Leonard Powell and to Change Certain Policies to Ensure Housing Stability for Homeowners and Tenants

From: Peace and Justice Commission

Referred: June 11, 2019 Due: November 26, 2019

Recommendation: On June 11, 2019, the City Council referred the two Commission items to the Health, Life Enrichment, Equity & Community Committee to:

- 1. Create a policy that receivership should only be used when the property is a danger to the public, and as a last resort, and only upon approval of the Council.
- 2. Request an analysis of receivers and conservators by the City.
- 3. Send representatives from the City to the fairness hearing for Mr. Powell to raise concerns.

The original recommendation from the Peace and Justice Commission is as follows: The Peace and Justice (PJC) recommends that the Berkeley City Council take the following actions:

Unscheduled Items

Send a letter to the Superior Court Judge overseeing Mr. Leonard Powell's receivership case thanking him for the fairness and justice of his decision to deny the Bay Area Receivership Group's ongoing requests to sell Mr. Powell's home, and allowing Mr. Powell and his friends and family time to make the necessary financial arrangements.

PJC also recommends to the Berkeley City Council that it set in place the following policies that would provide housing stability for homeowners. In particular, when legal action is being attempted by the City as a result of code enforcement violations, the following practices should be put into place:

- 1. Punitive actions such as eviction, substantial fines, or placing an individual into legal guardianship, or receivership that are likely to result in the permanent displacement of a homeowner or their low-income tenants presently occupying or renting their home is the very last resort that city staff should take. It should only be conducted if all other attempts to resolve the situation have been unsuccessful; and should only be a response to severe code enforcement violations that cause immediate danger to life safety or have been determined by a quasi-judicial body (e.g., Zoning Adjustments Board, City Council) to endanger the health and safety of the immediate neighbors.
- 2. The Mayor, and Councilmember representing the district of the address in question, and Housing Advisory Commission are notified of their constituent's name (if allowed by applicable privacy laws), address, the nature of the alleged code violations, and a report detailing the status of the matter and any past, ongoing, and anticipated future attempts to resolve the matter; and
- 3. The City shall explore the use of anti-displacement funds to assist low-income homeowners and/or tenants residing on the premises with legal matters of forced relocation, expenses, and/or other needs as applicable and appropriate.
- 4. Establish a policy that code enforcement should aim to improve the safety and security of the property for its current residents and their neighbors.
- 5. "Reimburse" Mr. Powell, Friends of Adeline and NAACP by placing an amount not to exceed \$68,000 raised privately to pay for Receivers legal and administrative fees. These parties may collectively determine how to best use these funds.

Financial Implications: See report

Contact: Bre Slimick, Commission Secretary, 981-7000

Items for Future Agendas

- Discussion of items to be added to future agendas
- Discussion of future hearings and open forums

Adjournment

This is a meeting of the Berkeley City Council Health, Life Enrichment, Equity & Community Committee. Since a quorum of the Berkeley City Council may actually be present to discuss matters with the Council Health, Life Enrichment, Equity & Community Committee, this meeting is being noticed as a special meeting of the Berkeley City Council as well as a Council Health, Life Enrichment, Equity & Community Committee meeting.

Written communications addressed to the Health, Life Enrichment, Equity & Community Committee and submitted to the City Clerk Department will be distributed to the Committee prior to the meeting.

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, 981-6900.



COMMUNICATION ACCESS INFORMATION:

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD) at least three

business days before the meeting date. Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.

I hereby certify that the agenda for this special meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on June 20, 2019.

Mart Spring Mark Numainville, City Clerk

Communications

Communications submitted to City Council Policy Committees are on file in the City Clerk Department at 2180 Milvia Street, 1st Floor, Berkeley, CA.

BERKELEY CITY COUNCIL HEALTH, LIFE ENRICHMENT, EQUITY & COMMUNITY COMMITTEE REGULAR MEETING MINUTES

BERKELEY CITY COUNCIL SPECIAL MEETING MINUTES

Monday, June 10, 2019 10:00 AM

2180 Milvia Street, 6th Floor - Redwood Room

Committee Members:

Councilmembers Rashi Kesarwani, Ben Bartlett, and Sophie Hahn

Roll Call: 10:08 a.m. All present.

Public Comment on Non-Agenda Matters – 1 speaker

Minutes for Approval

Draft minutes for the Committee's consideration and approval.

1. Minutes - May 13, 2019

Action: M/S/C (Bartlett/Kesarwani) to approve the minutes of May 13, 2019.

Vote: All Ayes.

Committee Action Items

The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.

Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.

Committee Action Items

2. Referral Responses: Managing Recreational Vehicle (RV) Parking (Item contains supplemental material)

From: City Manager Referred: March 26, 2019 Due: September 30, 2019

Recommendation: On March 26, 2019, the City Council referred this item to the Health, Life Enrichment, Equity & Community Committee to establish basic criteria for a "permanent" standard two-week permitting process. The standard two-week permit should consider the following:

- A limited number of permits to be issued by the City per month (or other increment).
- Locations to be geographically dispersed among all Council districts.
- A reasonable fee to cover City costs associated with the permit.

Financial Implications: See Report

Contact: Paul Buddenhagen, City Manager's Office, 981-7000

Action: 6 speakers. Discussion held. The committee asked staff to review the definition of the house car or camper as found in the Berkeley Municipal Code 12.76.020.

Item continued to June 24, 2019.

Committee Action Items

3. Creation of Vehicle Dwellers Governance Body

From: Councilmember Bartlett

Referred: April 8, 2019 Due: October 28, 2019

Recommendation: Refer to City Manager for policy language to create a Governance Body for permitted vehicle dwellers in Berkeley. This proposal is meant to engender purpose and responsibility among participants. Accordingly, the Governance Body should be self-governing, self-organizing, and self-funding. Governance body will uphold the following conditions: 1. All residents must be registered with Berkeley's Coordinated Entry Program. 2. At all times, vehicles must be registered and fully operable. 3. No illegal substances, weapons, violence, or disruptive behavior will be tolerated either on site or in the immediate neighborhood. 4. Vehicle repairs are not to be performed on-site. 5. No property will be stored outside the vehicle, excluding items exceeding 6 feet in length, and one propane BBQ grill. Personal and immediate areas must remain trash free. 6. A noise curfew will be instituted in agreement with the neighbors. 7. A council including area neighbors and RV dwellers will be established. Participation is mandatory. 8. All residents are expected to pay monthly rent of no more than \$200 per month. The Governance Body will convene weekly at a set time, and act as the final decision making body and conflict resolution forum. All residents, whether in attendance or not, agree to comply with the Body's decisions. Matters related specifically to drugs, weapons, violence, and/or criminal activity will result in immediate termination of residents' tenancy. Such matters may be taken up at the discretion of the Governance Body which may uphold, modify, or set aside

result in immediate termination of residents' tenancy. Such matters may be taken up at the discretion of the Governance Body which may uphold, modify, or set aside termination. In cases of conflict among residents, the following procedures will take place: 1. A complaint is filed by a resident to the Governance Body. The complaint will be hear

complaint is filed by a resident to the Governance Body. The complaint will be heard at the Governance Body meeting. 2. The Governance Body investigates the complaint and makes a determination. If the determination is that the complaint is legitimate, a notice of cease and desist is issued. The recipient of the cease and desist letter will have 72 hours to comply or leave. 3. If the recipient received a cease and desist letter, they may appeal the decision to the Governance Body. The Governance Body will have the ability to meet outside its normal weekly meeting schedule in case of an appeal. 4. If the appeal is upheld, no further action will be taken and the recipient of the cease and desist letter can stay in the community. If the appeal is rejected, the recipient of the cease and desist letter has 24 hours to comply or leave. Governance Body decisions can only be appealed once.

Financial Implications: See report

Contact: Ben Bartlett, Councilmember, District 3, 981-7130

Action: 3 speakers. Discussion held. Item withdrawn by the author, Councilmember Ben Bartlett.

Unscheduled Items

These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.

4. Brown Act Overview

5. Ban Racial, Ethnic, Cultural, and Religious Discrimination on the Basis of Hairstyle or Headwear (Item contains revised materials)

From: Councilmembers Robinson, Davila, Bartlett, and Hahn

Referred: March 11, 2019 Due: September 15, 2019

Recommendation: Adopt a new Section of the Berkeley Municipal Code: Chapter 13.23 DISCRIMINATION ON THE BASIS OF HAIRSTYLE OR HEADWEAR IN EMPLOYMENT, HOUSING, AND PUBLIC ACCOMMODATIONS, prohibiting grooming or appearance policies which target natural or traditional hair, hairstyles, or headwear.

Financial Implications: See report

Contact: Rigel Robinson, Councilmember, District 7, 981-7170

6. Air Quality Monitoring Program

From: Councilmembers Bartlett, Harrison, and Davila

Referred: April 8, 2019 Due: October 28, 2019

Recommendation: Referral to the Public Health Department to establish an advanced air quality monitoring program in Berkeley to provide data about how air quality in the city varies over time and between neighborhoods. To better implement this program, the City should form partnerships with technology companies, environmental research groups, and healthcare providers.

Financial Implications: See report

Contact: Ben Bartlett, Councilmember, District 3, 981-7130

Items for Future Agendas

- Discussion of items to be added to future agendas
- Discussion of future hearings and open forums

Adjournment

Action: M/S/C (Hahn/Bartlett) to adjourn the meeting.

Vote: All Aves.

Adjourned at 12:12 p.m.

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hereby certify that this is a true and correct record of the Health, Life Enrichment, Equity Community Committee meeting held on June 10, 2019.
April Richardson, Assistant City Clerk



RECEIVED AT COUNCIL MEETING OF:

MAY 1 3 2019

OFFICE OF THE CITY CLERK CONSECTIVOSE BERKELEY
March 26, 2019

To:

Honorable Mayor and Members of the City Council

From:

Councilmembers Rigel Robinson, Cheryl Davila, and Ben Bartlett, and

Sophie Hahn

Subject:

Ban Racial, Ethnic, Cultural, and Religious Discrimination on the Basis of

Hairstyle or Headwear

RECOMMENDATION

Ban racial discrimination on the basis of a person's natural hairstyle by either:

Adopt a new Section of the Berkeley Municipal Code: Chapter 13.23 RACIAL DISCRIMINATION ON THE BASIS OF HAIRSTYLE <u>OR HEADWEAR</u> IN EMPLOYMENT, HOUSING, AND PUBLIC ACCOMMODATIONS, prohibiting grooming or appearance policies which target natural <u>or traditional</u> hair, <u>or hairstyles</u>, <u>or headwear</u>.

Or

 Issue local legislative interpretation guidelines regarding both the illegality of disparate impact grooming or appearance policies under the Fair Employment and Housing Act, and the illegality of refusing public services on the basis of mutable characteristics under California Civil Code Section 51.

BACKGROUND

In February 2019, the New York City Commission on Human Rights (NYCCHR) issued new Legal Enforcement Guidance on Race Discrimination on the Basis of Hair, under the New York City Human Rights Law (NYCHRL). The City of Berkeley should follow in New York's footsteps, and take similar action to expressly prohibit racially-discriminatory hair styling and appearance requirements in the areas of employment, housing, school, and other areas of daily living. In doing so, the Council should consider a number of approaches.

In New York, the NYCCHR found the contemporary manifestation of racial bias to include discrimination based on characteristics and cultural practices associated with being African American, including prohibitions on natural hair. In the 2019 Enforcement Guide, NYCCHR states current anti-discrimination law should be interpreted to give people of color "the right to maintain natural hair, treated or untreated hairstyles such as locs, cornrows, twists, braids, Bantu knots, fades, Afros, and/or the right to keep hair in an uncut or untrimmed state."

MAY 1.3 2019

TO EVERY TOMAS

(BMC) identifies as its mission to solve. As stated in BMC Section 1.22.010, "the City of Berkeley shall promote: (1) Higher standards of living, full employment, and conditions of economic and social progress and development; (2) Solutions of local economic, social, health and related problems; and regional cultural and educational cooperation; and (3) Universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion."

In To achieving achieve these goals, the Council has multiple potential legislative routes to consider. Firstly, Berkeley couldshould adopt a new ordinance, BMC Chapter 13.23, a draft of which is attached. Chapter 13.23 would prohibit racial, ethnic, cultural, or religious discrimination on the basis of hair, or hair styling, or headwear, and enumerate the rights of all persons to maintain natural, untreated, and traditional hairstyles and headwear in all sectors of employment, housing, and public accommodations. Chapter 13.23 is modeled after other sections of the code dealing with anti-discrimination law, including Chapters 13.20, 13.28, and 13.30, as well as Chapter 13.101, the Berkeley Family Friendly and Environment Friendly Workplace Ordinance.

Modeling a different approach, the NYCCHR 2019 Enforcement Guide is written as a statutory interpretation document, under the NYCHRL. Similarly, the Council could issue local interpretation guidelines for two comparable California State laws: The 1959 Fair Employment Housing Act (FEHA) to cover discrimination in employment, and the 1959 Unruh Civil Rights Act (Unruh Act) to cover discrimination in places of public accommodation.

One component of FEHA's ban on discriminatory workplace practices covers disparate impact discrimination, which implicates rules that apply to all employees but have a disproportionate impact on members of a protected class. Any hair styling rule that permits members of some groups to wear their hair naturally, but requires others to use more extensive procedures, could be interpreted to be in violation of FEHA.

The Unruh Act, California Civil Code sections 51 through 52, states that a broad range of protected demographic categories "are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever." According to settled legal precedent, the Unruh Act is understood broadly to prohibit public businesses from refusing service based on arbitrary or appearance-based characteristics. Thus, any denial of access to a place of public accommodation based on hairstyle is a clear violation of the Unruh Act.ALTERNATIVE ACTIONS CONSIDERED

An alternative considered was to issue local legislative interpretation guidelines regarding both the illegality of disparate impact grooming or appearance policies under the Fair Employment and Housing Act, and the illegality of refusing public services on the basis of mutable characteristics under California Civil Code Section 51. It was found

that adopting new code language to codify these findings would be more enforceable and legally defensible, as City staff have greater leeway in interpreting local statute than state or federal law.

FINANCIAL IMPLICATIONS

<u>Limited</u>. Enforcement would mostly be done on a complaint basis and by private right of action, limiting staff time required after adoption. None.

ENVIRONMENTAL SUSTAINABILITY

None.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170 Mars Svec-Burdick, Intern to Councilmember Rigel Robinson

Attachments:

- 1: Ordinance
- 2: NYC Commission on Human Rights Legal Enforcement Guidance on Race Discrimination on the Basis of Hair

https://www1.nyc.gov/assets/cchr/downloads/pdf/Hair-Guidance.pdf

- 3: Unruh Civil Rights Act, California Civil Code Section 51
- https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CIV§ionNum=51
- 4: Fair Employment and Housing Act

https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=GOV&division=3.&title=2.&part=2.8.&chapter=&article=

ORDINANCE NO. -N.S.

ADOPT BERKELEY MUNICIPAL CODE CHAPTER 13.23 TO PROHIBIT RACIAL DISCRIMINATION ON THE BASIS OF HAIRSTYLE IN EMPLOYMENT, HOUSING, AND PUBLIC ACCOMMODATIONS

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

<u>Section 1.</u> That Berkeley Municipal Code Chapter 13.23 is added to read as follows:

Chapter 13.23 RACIAL DISCRIMINATION ON THE BASIS OF HAIRSTYLE IN EMPLOYMENT, HOUSING, AND PUBLIC ACCOMMODATIONS

Chapter 13.23.010 Purpose

The purpose of this Chapter is to protect public health, safety and welfare. It does this by seeking to eliminate all forms of racial, ethnic, cultural, and religious discrimination within the City.

Chapter 13.23.020 Findings

The City Council of the City of Berkeley finds and determines as follows:

- A) Discrimination against racial, ethnic, cultural, and religious minorities in employment, housing, and public accommodations exists within the City. The council further finds that the existence of such discrimination poses a substantial threat to the economic and social welfare of a sizeable segment of the community, namely, racial minority groups.
- B) Racial, ethnic, cultural, and religion based by discriminatory grooming or appearance policies exist in places of employment, housing, and public accommodations within the City. These policies exacerbate inequality in the workplace and housing market.
- C) The overall effect of grooming or appearance policies which target the natural or traditional hair styles and headwear of racial, ethnic, cultural, and religious minority groups is to require a disproportionate outlay of monetary and time resources from members of these groups in order to participate in daily living, and to restrict these groups from fully and freely participating in public life.
- D) Discrimination through grooming and appearance policies falls most heavily on low income communities, but cuts across all racial, ethnic, <u>cultural</u>, <u>religious</u>, and economic <u>levelsgroups</u>.

Chapter 13.23.030 Definitions

As used in this chapter, the following words and phrases shall have the meanings ascribed to them in this subsection:

- A) "Department" means the City of Berkeley's Health, Housing, and Community Services Department, or any successor department, or any other Department as designated by the City Manager.
- A)B)__"Grooming or appearance policies" or "appearance policies" means any code of dress, grooming, or appearance, written or unwritten, under which an individual is in any way penalized for noncompliance.
- B)C) "Natural hair" means all natural patterns of hair growth across all racial and ethnic groups, including but not limited to treated or untreated hairstyles such as locs, cornrows, twists, braids, Bantu knots, fades, Afros, and/or the right to keep hair in an uncut or untrimmed state.
- C)D) "Place of public accommodation" or "public accommodations" means providers, whether licensed or unlicensed, of goods, services, facilities, accommodations, advantages or privileges of any kind, and places, whether licensed or unlicensed, where goods, services, facilities, accommodations, advantages or privileges of any kind are extended, offered, sold, or otherwise made available. This unambiguously includes schools, due to the historical proliferation of racially discriminatory grooming and appearance policies in educational settings.
- E) "Traditional hair" means styles of maintaining hair of cultural or religious significance to any racial, ethnic, cultural, or religious group, including keeping hair uncut or completely shaven.
- F) "Traditional headwear" means clothing that is worn on the head that is culturally or religiously significant to any racial, ethnic, cultural, or religious group.

Chapter 13.23.040 Unlawful activities

It is unlawful for any employer, business owner, property owner, provider of public accommodation, or any agent or employee thereof to discriminate in the conditions or enforcement of a grooming or appearance policy. Such prohibited discrimination includes but is not limited to the following:

- A) Publish, verbally state, or otherwise communicate an explicitly or implicitly mandatory appearance policy which includes any condition prohibiting natural or traditional hair or headwear, either textually or in practice;
- B) Require, in order to access employment opportunities, housing accommodations, public accommodations, or the negotiation or carrying out thereof, individual adherence to a grooming or appearance policy which explicitly or implicitly bans any natural or traditional hair style or headwear.

- C) Refuse to enter into negotiations regarding hiring, employment, compensation, lease or rental of property, or otherwise withhold from any person any provision of public accommodations because of their natural <u>or traditional</u> hair style <u>or headwear</u>;
- D) Represent to any person because of their natural <u>or traditional</u> hair style <u>or headwear</u> that employment opportunities, housing accommodations, or public accommodations are not available when such opportunities or accommodations are in fact available;
- E) Include a clause or provision in any legal document or agreement that the employee, tenant, or recipient of public accommodations shall adhere to a grooming or appearance policy which compromises their ability to maintain a natural <u>or traditional</u> hair style <u>or headwear</u>;
- F) Penalize an employee, tenant, or recipient of public accommodations for violating an appearance policy which unlawfully bans natural <u>or traditional</u> hair<u>or headwear</u>, in any manner including financial penalties, termination, withholding of wage increases, or denial of services, housing or access.
- G) Enforce grooming or appearance policies inconsistently between members of different groups, to the effect of enacting unequal and discriminatory grooming standards.

13.23.050 Exemptions – Health and Safety

- A) The Department, in consultation with the Director of Human Resources, may exempt non-City Employees upon request of their non-City Employers, based upon operational requirements related to health and safety according to criteria developed by the Agency and the Director of Human Resources. Such criteria shall advance public safety or public health.
- B) Department Directors may request an exemption from this Chapter from the Director of Human Resources for certain classifications of City employees based upon operational requirements related to health and safety according to criteria developed by the Director of Human Resources. Such criteria shall advance public safety or public health.

Chapter 13.23.0650 Enforcement

- A) Any aggrieved person may enforce the provisions of this chapter by means of a civil action.
- B) Any person who commits, or proposes to commit, an action in violation of this chapter may be enjoined therefrom by any court of competent jurisdiction.

C) Action for injunction under this subsection may be brought by any aggrieved person, by the city attorney, by the district attorney, or by any person or entity which will fairly and adequately represent the interests of the protected class.

Chapter 13.23.0760 Liability for costs and damages

Any person who violates the provisions of this chapter shall be liable to each person injured by such violation for reasonable attorney's fees and costs as determined by the court, plus damages equaling three times the amount of actual damages or a minimum of five hundred dollars.

Chapter 13.23.0870 Criminal penalties

Any person who is found by a court of competent jurisdiction to be guilty of a willful violation of the provisions of this chapter shall be guilty of a misdemeanor as set forth in Chapter 1.20 of this code.

Chapter 13.23.0980 Limitation on action.

Actions under this chapter must be filed within one year of the alleged discriminatory acts.

<u>Section 3.</u> Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 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.

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CONSENT CALENDAR March 26, 2019

To: Honorable Mayor and Members of the City Council

From: Councilmembers Rigel Robinson, Cheryl Davila, and Ben Bartlett

Subject: Ban Racial Discrimination on the Basis of Hairstyle

RECOMMENDATION

Ban racial discrimination on the basis of a person's natural hairstyle by either:

 Adopt a new Section of the Berkeley Municipal Code: Chapter 13.23 RACIAL DISCRIMINATION ON THE BASIS OF HAIRSTYLE IN EMPLOYMENT, HOUSING, AND PUBLIC ACCOMMODATIONS, prohibit grooming or appearance policies which target natural hair or hairstyles.

Or

 Issue local legislative interpretation guidelines regarding both the illegality of disparate impact grooming or appearance policies under the Fair Employment and Housing Act, and the illegality of refusing public services on the basis of mutable characteristics under California Civil Code Section 51.

BACKGROUND

In February 2019, the New York City Commission on Human Rights (NYCCHR) issued new Legal Enforcement Guidance on Race Discrimination on the Basis of Hair, under the New York City Human Rights Law (NYCHRL). The City of Berkeley should follow in New York's footsteps, and take similar action to expressly prohibit racially discriminatory hair styling requirements in the areas of employment, housing, school, and other areas of daily living. In doing so, the Council should consider a number of approaches.

In New York, the NYCCHR found the contemporary manifestation of racial bias to include discrimination based on characteristics and cultural practices associated with being African American, including prohibitions on natural hair. In the 2019 Enforcement Guide, NYCCHR states current anti-discrimination law should be interpreted to give people of color "the right to maintain natural hair, treated or untreated hairstyles such as locs, cornrows, twists, braids, Bantu knots, fades, Afros, and/or the right to keep hair in an uncut or untrimmed state."

This falls under the range of human rights issues which The Berkeley Municipal Code (BMC) identifies as its mission to solve. As stated in BMC Section 1.22.010, "the City of Berkeley shall promote: (1) Higher standards of living, full employment, and conditions of economic and social progress and development; (2) Solutions of local economic,

social, health and related problems; and regional cultural and educational cooperation; and (3) Universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion."

In achieving these goals, the Council has multiple potential legislative routes to consider. Firstly, Berkeley could adopt BMC Chapter 13.23, a draft of which is attached. Chapter 13.23 would prohibit racial discrimination on the basis of hair or hair styling, and enumerate the rights of all persons to maintain natural, untreated hairstyles in all sectors of employment, housing, and public accommodations.

Modeling a different approach, the NYCCHR 2019 Enforcement Guide is written as a statutory interpretation document, under the NYCHRL. Similarly, the Council could issue local interpretation guidelines for two comparable California State laws: The 1959 Fair Employment Housing Act (FEHA) to cover discrimination in employment, and the 1959 Unruh Civil Rights Act (Unruh Act) to cover discrimination in places of public accommodation.

One component of FEHA's ban on discriminatory workplace practices covers disparate impact discrimination, which implicates rules that apply to all employees but have a disproportionate impact on members of a protected class. Any hair styling rule that permits members of some groups to wear their hair naturally, but requires others to use more extensive procedures, could be interpreted to be in violation of FEHA.

The Unruh Act, California Civil Code sections 51 through 52, states that a broad range of protected demographic categories "are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever." According to settled legal precedent, the Unruh Act is understood broadly to prohibit public businesses from refusing service based on arbitrary or appearance-based characteristics. Thus, any denial of access to a place of public accommodation based on hairstyle is a clear violation of the Unruh Act.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

None.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170 Mars Svec-Burdick, Intern to Councilmember Rigel Robinson

Attachments: [Delete if there are NO Attachments]

1: Ordinance

2: NYC Commission on Human Rights Legal Enforcement Guidance on Race Discrimination on the Basis of Hair

https://www1.nyc.gov/assets/cchr/downloads/pdf/Hair-Guidance.pdf

3: Unruh Civil Rights Act, California Civil Code Section 51

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CIV§ionNum=51

4: Fair Employment and Housing Act

https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=GOV&division=3.&title=2.&part=2.8.&chapter=&article=

ORDINANCE NO. -N.S.

ADOPT BERKELEY MUNICIPAL CODE CHAPTER 13.23 TO PROHIBIT RACIAL DISCRIMINATION ON THE BASIS OF HAIRSTYLE IN EMPLOYMENT, HOUSING, AND PUBLIC ACCOMMODATIONS

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

Section 1. That Berkeley Municipal Code Chapter 13.23 is added to read as follows:

Chapter 13.23 RACIAL DISCRIMINATION ON THE BASIS OF HAIRSTYLE IN EMPLOYMENT, HOUSING, AND PUBLIC ACCOMMODATIONS

Chapter 13.23.010 Purpose

The purpose of this Chapter is to protect public health, safety and welfare. It does this by seeking to eliminate all forms of racial discrimination within the City.

Chapter 13.23.020 Findings

The City Council of the City of Berkeley finds and determines as follows:

- A) Discrimination against racial minorities in employment, housing, and public accommodations exists within the City. The council further finds that the existence of such discrimination poses a substantial threat to the economic and social welfare of a sizeable segment of the community, namely, racial minority groups.
- B) Racially discriminatory grooming or appearance policies exist in places of employment, housing, and public accommodations within the City. These policies exacerbate inequality in the workplace and housing market.
- C) The overall effect of grooming or appearance policies which target the natural hair styles of racial minority groups is to require a disproportionate outlay of monetary and time resources from members of these groups in order to participate in daily living.
- D) Discrimination through grooming and appearance policies falls most heavily on low income communities, but cuts across all racial, ethnic and economic levels.

Chapter 13.23.030 Definitions

As used in this chapter, the following words and phrases shall have the meanings ascribed to them in this subsection:

A) "Grooming or appearance policies" or "appearance policies" means any code of dress, grooming, or appearance, written or unwritten, under which an individual is in any way penalized for noncompliance.

- B) "Natural hair" means all natural patterns of hair growth across all racial and ethnic groups, including treated or untreated hairstyles such as locs, cornrows, twists, braids, Bantu knots, fades, Afros, and/or the right to keep hair in an uncut or untrimmed state.
- C) "Place of public accommodation" or "public accommodations" means providers, whether licensed or unlicensed, of goods, services, facilities, accommodations, advantages or privileges of any kind, and places, whether licensed or unlicensed, where goods, services, facilities, accommodations, advantages or privileges of any kind are extended, offered, sold, or otherwise made available. This unambiguously includes schools, due to the historical proliferation of racially discriminatory grooming and appearance policies in educational settings.

Chapter 13.23.040 Unlawful activities

It is unlawful for any employer, business owner, property owner, provider of public accommodation, or any agent or employee thereof to discriminate in the conditions or enforcement of a grooming or appearance policy. Such prohibited discrimination includes but is not limited to the following:

- A) Publish, verbally state, or otherwise communicate an explicitly or implicitly mandatory appearance policy which includes any condition prohibiting natural hair, either textually or in practice;
- B) Require, in order to access employment opportunities, housing accommodations, public accommodations, or the negotiation or carrying out thereof, individual adherence to a grooming or appearance policy which explicitly or implicity bans any natural hair style.
- C) Refuse to enter into negotiations regarding hiring, employment, compensation, lease or rental of property, or otherwise withhold from any person any provision of public accommodations because of their natural hair style:
- D) Represent to any person because of their natural hair style that employment opportunities, housing accommodations, or public accommodations are not available when such opportunities or accommodations are in fact available;
- E) Include a clause or provision in any legal document or agreement that the employee, tenant, or recipient of public accommodations shall adhere to a grooming or appearance policy which compromises their ability to maintain a natural hair style;
- F) Penalize an employee, tenant, or recipient of public accommodations for violating an appearance policy which unlawfully bans natural hair, in any manner including financial penalties, termination, withholding of wage increases, or denial of services, housing or access.

G) Enforce grooming or appearance policies inconsistently between members of different groups, to the effect of enacting unequal and discriminatory grooming standards.

Chapter 13.23.050 Enforcement

- A) Any aggrieved person may enforce the provisions of this chapter by means of a civil action.
- B) Any person who commits, or proposes to commit, an action in violation of this chapter may be enjoined therefrom by any court of competent jurisdiction.
- C) Action for injunction under this subsection may be brought by any aggrieved person, by the city attorney, by the district attorney, or by any person or entity which will fairly and adequately represent the interests of the protected class.

Chapter 13.23.060 Liability for costs and damages

Any person who violates the provisions of this chapter shall be liable to each person injured by such violation for reasonable attorney's fees and costs as determined by the court, plus damages equaling three times the amount of actual damages or a minimum of five hundred dollars.

Chapter 13.23.070 Criminal penalties

Any person who is found by a court of competent jurisdiction to be guilty of a willful violation of the provisions of this chapter shall be guilty of a misdemeanor as set forth in Chapter 1.20 of this code.

Chapter 13.23.080 Limitation on action.

Actions under this chapter must be filed within one year of the alleged discriminatory acts.

<u>Section 3.</u> Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 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.

SOPHIE HAHN

Berkeley City Council, District 5 2180 Milvia Street, 5th Floor Berkeley, CA 94704 (510) 981-7150 shahn@cityofberkeley.info

RECEIVED AT COUNCIL MEETING OF:

JUN 10 2019

OFFICE OF THE CITY CLERK
CITY OF BERKELEY

POSSIBLE PARAMETERS AND DRAFT LANGUAGE FOR 2-WEEK PERMIT SYSTEM

12.76.020 Use for Human Habitation prohibited—Exception.

No person shall use or occupy or permit the use or occupancy of any house car or camper for human habitation within the City except under the following circumstances:

- A. In the rear of any single-family or duplex residential building, provided that not more than one house car or camper may be placed, kept, and or maintained in the rear of any single-family or duplex residential building and used for sleeping purposes only under the following circumstances:
 - 1. From not more than three successive nights in any 90-day period, with no permit.
 - 2. For one period of up to two (2) weeks in every calendar year, subject to a permit issued by the City of Berkeley to the owner of the single-family or duplex property.

Such house car shall not be placed closer than five feet to any property line or closer than ten feet to any building and may be used for sleeping purposes only;, and the sanitary and cooking facilities therein shall not be used.

- B. Subject to a permit to be issued by the City of Berkeley to the vehicle owner for a period of up to two (2) weeks in any calendar year. Such permits shall be issued only for specific areas as designated by the City of Berkeley. In addition, vehicles permitted under this section shall be subject to BMC Section 14.36.050, and the maximum number of permits issued in any month by the City of Berkeley shall be no more than 20.
- C. All house cars or campers used of occupied for human habitation pursuant to Sections A and B shall
 - 1. Meet current habitability codes and otherwise be in working condition [according to X standard].
 - 2. Pump-out only at designated or official pump-out stations.
 - 3. Not use generators or other equipment generating noise over Y level
 - 4. Be X feet or shorter in length and Y feet or narrower in width

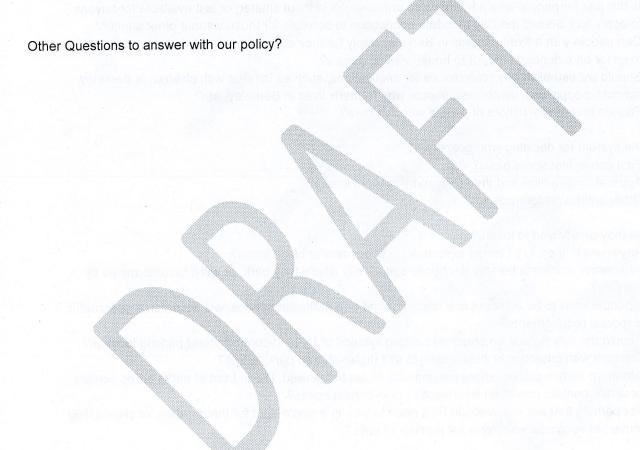
03

OFFICE OF THE CITY CLERK CITY OF BERKELEY

- What is the total number of permits that can be given?
- Who is eligible to apply for and receive a permit?
 - Is there a size requirement vehicles that receive the permit? Can they be cars or vans not made for habitation? Only "real" RVs? Is there a maximum size of vehicle?
 - Must they show that the vehicle is up to various federal and industry standards for safety?
 - https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/fmvss-quickrefquide-hs811439.pdf
 - https://docs.google.com/document/d/11LAcsWdyjXCHZ8WAogp82IKAahUEIRA7d9WER 0UabDE/edit?usp=sharing
 - https://www.rvia.org/standards-regulations/standards-compliance
 - o How often can the same vehicle get a 2-week permit? Once a year? Once every 6 months?
 - o Is this just for people who are otherwise unhoused or without shelter, or is it available for anyone to apply for? Should the City mandate connection to services for those without other shelter?
 - Can people with a fixed address in Berkeley apply for their own vehicle? When they are out of town for an extended time, or to house visiting guests?
 - Should we establish any preferences for applications, such as families with children in Berkeley schools, people with disabilities, people who formerly lived in Berkeley, etc?
 - Friends and family/visitors of people who live here?
- What is the system for deciding who gets them?
 - First come, first serve basis?
 - Application deadline and then chosen by random lottery?
 - Other criteria/preferences?
- Where will they be allowed to locate?
 - o Anywhere in the city? Limited to certain zip codes and/or block faces?
 - Will permit recipients be able to choose specifically where they park, or will it be determined by the City?
 - If people want to be adjacent to a relative/friend or a particular service, will we enforce geographic dispersal requirements?
 - Should the City pursue an on-street parking system, or try to secure off street parking location? Contract with churches or businesses to use under-utilized parking lots?
 - Are there certain places where parking should *not* be allowed, like in front of parks or rec centers or senior centers or certain businesses, or in certain zones?
 - For permits that are received, do RVs need to stay in a single spot for the duration, or should they
 move between spaces after a set number of days?
- Utilities and Sanitary service accessibility and safety terms
 - Waste water, garbage, recycling, etc.
 - How will they access clean water, electricity and any other necessities, beyond those required by health and safety standards?
 - What about RVs that aren't up to the "RV code"? Should they still receive permits? Do they need to show that they are up to the national code?
 - Could it be a problem from a legal perspective for the City to actively/affirmatively permit people to sleep in RVs that are not up to safety codes?



- Limiting the number of people who can live in one RV?
- What other rules might we want to place around them?
 - Letting them know about TNC objects on sidewalks, limiting the spread of items
 - o Noise concerns? Others?
- How do we enforce? If you overstay, what is the penalty?
 - o Can't apply again?
 - o Ticket?
 - o Tow?
 - o Timeframes?



RECEIVED AT What would "Sanctioned Encampments" look lik@OUNCIL MEETING OF: A quick overview of some elements to consider

only, not from top to bottom Chart reads from left to right

LOCATION	100% Resident Discretion	City designated	One/Several locations	OFFICE OF THE CITY CLERK
RESIDENTS Who?	City/Agency Criteria	No Criteria	Resident Criteria	HOUTH OF BERKELEY
RESIDENTS How Many?	No limit per Encampment	City/Agency determined limit	Resident-determined limit (Who/how decided?)	Variable/Stable
RESIDENTS Criteria?	Resident-Determined	City/Agency determined	Hybrid	Protected Class requirements for criteria?
RESIDENTS Duration	Indefinite/Forever	City/Agency specified – limited time	Resident specified – limited time	
Rules /Code of Conduct	Defined by residents	Defined by City/Agency	Hybrid	
Governance	Resident defined: any system desired, self-governing. What system?	City/Agency Defined	Jointly determined/different areas of governance for each?	
Enforcement of Rules	Residents	City/Agency	,	
Removal/exclusi on of Individuals	Decision and Action by Residents	Decision and Action by City/Agency	No removal or exclusion	
Engagement with Services Housing	Not Necessary	Required	Voluntary	Who decides?
Engagement with Services Other (health, jobs, etc.)	Not necessary	Required	Voluntary	Who decides?
Facilities Provision	Provided by community/Not for profits	Provided by City	Hybrid/Mix	
Facilities maintenance	Residents	City/Agency	Not for Profit Org.	Shared responsibilities
First Amendment issues	"Protest" camp – if City affirmatively sanctions/provides space, does this become sanctioning of one type of speech? Code Pink – type concerns?	nctions/provides space, does this	become sanctioning of one type	e of speech?
Self-Governance	What system?	Who picks system? Wh	Who ensures fairness?	Recourse?
City/Agency	Which agency?	Scope of Responsibility? Fur	Funding?	

ORDINANCE NO. 7,643-N.S.

STOPPING, STANDING OR PARKING RESTRICTED OR PROHIBITED ON CERTAIN STREETS; AMENDING BERKELEY MUNICIPAL CODE SECTION 14.40.120

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

<u>Section 1.</u> That Berkeley Municipal Code Section 14.40.120 is amended to read as follows:

14.40.120 No parking between two a.m. and five a.m.

A. It is unlawful for any person to park any oversize or heavy duty commercial vehicle on any street between the hours of two a.m. and five a.m. for a greater length of time than one hour.

B. For the purpose of this section, oversize or heavy duty commercial vehicle shall mean a single vehicle or combination of vehicles having more than two axles, a single vehicle or combination of vehicles 20 feet or more in length, or a single vehicle or combination of vehicles six feet six inches or more in width, and shall include, but shall not be limited to dump trucks, moving vans, tractors, pole or pipe dollies, recreational vehicles (RVs), campers.

<u>Section 2.</u> Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 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.

At a regular meeting of the Council of the City of Berkeley held on February 28, 2019, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Droste, Hahn, Kesarwani, Wengraf, and Arreguin.

Noes: Davila, Harrison and Robinson.

Absent: None.



ACTION CALENDAR February 28, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Paul Buddenhagen, Deputy City Manager

Subject: Referral Responses: Managing Recreational Vehicle (RV) Parking

RECOMMENDATION

Review options provided by City staff in the report and take one of the following actions:

- Refer the recommendations in Option A, amending existing codes to limit RVs parking in the City of Berkeley for extended periods of time and developing an online RV Permitting system, to the City Manager; and/or
- Adopt the recommendations provided in Option B below, prohibiting parking campers and RVs during certain hours and creating additional resources for people living in RVs, and adopt the first reading of two ordinances amending Berkeley Municipal Code (BMC) Chapter 12.76 and BMC Section 14.40.120 and refer any additional costs to the FY20-21 Budget process.

SUMMARY

The City of Berkeley is experiencing an increasing number of RVs parking for long periods of time, impacting public safety, health, and the parking needs for Berkeley residents and businesses. On September 25, 2018, City Council approved a recommendation to "Refer to the City Manager to look into how other cities use permitting to manage RV parking and suggest a permit process that Council can consider to enable RV parking but place some sensible limits." Additionally, on December 11, 2018 the City Council approved a recommendation to "Refer to the City Manager to establish a recreational vehicle waste discharge facility on City property and equitable administrative fee program, including consideration of method of pump out, cost, locations, and capacity, and refer costs associated with the facility to the FY 2020/21 Budget Process."

In order to understand how other neighboring cities are responding to this regional challenge, City staff gathered information on other cities in the Bay Area (Oakland, San Francisco, Fairfield, Richmond, Albany, Emeryville, Alameda and Antioch) and their policies and laws regarding RV parking. The following table presents some findings.

City	Ban Against RV Parking	RV Permitting Process	Special Policies or Services
Oakland	Yes	No	Yes 150 space RV lot coming
San Francisco	Yes	No	Yes
Fairfield	Yes	No	No
Richmond	Yes	No	No
Albany	Yes	Yes/Residents	No
Emeryville	Yes	No	No
Alameda	Yes	No	Yes/Hygiene bus
Antioch	Yes	No	No

Currently, the City has few laws which can effectively address the persistent presence of RVs parking in the City of Berkeley, and no existing sanctioned pathway for RVs to affordably dispose of their effluent waste. In response to these needs, City staff have developed two possible options for Council consideration.

Option A would entail amending existing codes to prohibit RVs parking in the City of Berkeley for extended periods of time and developing an online RV Permitting system that limits the total amount of time any RV or registered owner of an RV parks their vehicle on the City's right-of-way or City-owned off-street parking lots in a calendar year.

Option B would revise existing codes to prohibit parking oversize vehicles, including campers and RVs, in the City of Berkeley from the hours of 2 a.m. to 5 a.m. on any public right-of-way, as well as update existing BMC 12.76 which prohibits sleeping in house cars, and provide alternate resources for those living in RVs.

Adopting either Option A or B would include increased services for RV dwellers to support the transition from living in vehicles to living inside dwellings.

RV dump/pump station In considering the disposal of waste, staff explored installation of a City RV dump/pump station as well as contracting with a mobile pump contractor to

deliver and discharge the effluent waste to an existing nearby RV dump station. The City does have the capacity to absorb the additional waste into the existing sewer collection system. A consideration of the costs associated with each option is below, with the assumption of serving approximately 100 RVs per week. Regardless of the option selected, staff recommends that the implementation costs be recovered through the permitting process.

Option 1: City RV dump/pump station. While staff does not have a set estimate for the total cost of construction of a new RV dump/pump station, this option would require a feasibility study and a planning cost estimate, including long-term maintenance and operational costs, from a professional consultant. Staff also anticipates the need to pursue information from regulatory agencies, which may impact the overall cost of the station's construction and maintenance. No specific location has been identified for this option at this time. Alternatively, staff has learned of a pump station option which could be installed for approximately \$11,000, which would allow individuals to discharge directly into the City's sewer system. While this option would result in minimal staffing costs, other issues to consider include liability, maintenance, and replacement costs.

Option 2: Contract to deliver and discharge waste. Staff are gathering estimates for this type of service. Staff believe, however, this may be the lowest cost option because there is no need for new infrastructure and no additional cost for long term maintenance. Under this option, the mobile effluent waste contractor would visit a designated location and collect the waste from the RVs onsite, then could either dispose of the waste directly into the City's sewer collection system, or could haul the waste to an off-site location for disposal.

FISCAL IMPACTS OF RECOMMENDATION

Adopting Option B would require some additional as yet undetermined staffing costs to enforce the amendments to the BMC. Providing additional outreach and flexible funding for either option would cost up to approximately \$362,000 annually; this would include one outreach person and flexible funds in the amount of \$3,000 each for 100 vehicle dwellers. Council could choose to reallocate existing homeless outreach staff and/or reduce the flexible funds to lower the overall cost.

CURRENT SITUATION AND ITS EFFECTS

This report responds to a referral that originally appeared on the agenda of the September 25, 2018 Council meeting and was sponsored by Councilmembers Maio, Hahn, and Mayor Arreguin. At that meeting, the City Council approved a recommendation to "Refer to the City Manager to look into how other cities use permitting to manage RV parking and suggest a permit process that Council can consider to enable RV parking but place some sensible limits."

Additionally, this report responds to a referral from the December 11, 2018 Council meeting which was sponsored by Councilmembers Harrison and Davila. At that meeting the City Council approved a recommendation to "Refer to the City Manager to establish a recreational vehicle waste discharge facility on City property and equitable administrative fee program, including consideration of method of pump out, cost, locations, and capacity, and refer costs associated with the facility to the FY 2020/21 Budget Process."

Currently, depending on the size, Recreational Vehicles (RVs) can park for three days at a time anywhere there is room and move continuously throughout the City. In practice, RVs often comply with the 72-hour rule by moving a very short distance – sometimes as little as three feet, to the opposite side of the street or around a corner – which results in the vehicles essentially occupying the same general area indefinitely.

The increase in the number of RVs parking in the City of Berkeley, and the subsequent impacts, may be quantified in multiple ways. In December 2018, Berkeley Police staff conducted a thorough citywide count of Recreational Vehicles on the City right-of-way. They counted 193 RVs, campers, converted busses, and vehicles that have been set up and/or designed for human habitation within the City's borders. Of that number, over 100 were located west of San Pablo Avenue. These figures are consistent with a similar assessment which was conducted in November 2018.

Community residents contacted the City more than 1,500 times with requests to address the presence of and/or impacts from extended RV parking in 2018. These requests come via Berkeley Police Dispatch, the City's BPD Direct Parking line, 311 service requests, and through emails directly to staff and council.

The types of issues raised through these calls for service include the loss of residential and customer parking for commercial businesses, and the illegal dumping of trash, debris, and human waste onto City streets, sidewalks, and waterways. The City has 1.5 FTE in Berkeley Police, and 0.85 FTE in Neighborhood Services that respond to these calls for service, as well as other similar service calls that are not RV generated.

One of the issues that is most often raised with regards to extended RV Parking is the alleged discharge of human waste in inappropriate locations. Runoff from the City's storm sewer system is periodically tested as part of regional testing efforts, but not at a scale that would be able to quantify the environmental impacts under discussion. The Regional Water Board, however, has received reports of alleged dumping of human waste, and as a result City staff have been mandated to investigate all complaints. Warnings have been issued, but no citations have been issued to date. Any verified discharge of human waste into the storm sewer system would be considered a violation of the City's Municipal Code (BMC 17.20); if left unaddressed, the City could be at risk of violating its National Pollutant Discharge Elimination System (NPDES) Municipal

Regional Permit, which would lead to enforcement actions by the Regional Water Board.

Currently, the City provides 25 portable toilets and nine hand washing stations at strategic locations throughout the City to help with this issue. There are also extended hours for the City's 181 permanent public restroom facilities.

BACKGROUND

City staff gathered information on neighboring Cities in the Bay Area, in order to explore existing practices and to explore options the City of Berkeley may have in addressing the ongoing RV parking issues in our City.

Staff in the City Manager's Office, City Attorney's Office, and Public Works and Police Departments have collaborated to produce the proposed options. Option A includes amendments to Berkeley Municipal Code sections 12.76 and 14.40.120 (Attachments 1 and 2) that incorporate the principal points and purposes of the September 25, 2018 referral, and an RV permit process. Option B retains the amendments to Berkeley Municipal Code as noted in Attachments 3 and 4. Both options include the potential to provide outreach to people living in RVs to provide them with information and resources to establish a more stable living situation.

Option A

Option A includes amending existing codes to clarify the prohibition against RVs parking in the City of Berkeley for extended periods of time and creating an online RV Permitting system that limits the total amount of time any RV or registered owner of an RV parks their vehicle on the City's right-of-way in a calendar year.

 Existing and Possible Municipal Code Considerations: Currently, the City has multiple Municipal and Vehicular Code sections which support some form of enforcement for RV Parking, or could be amended to do so.

Applicable statutes and laws regulating the parking of RVs on City streets include California Vehicle Code § 22651(k), and BMC 14.36.050, which makes it unlawful to park or leave standing a vehicle on "any public street in the City for seventy-two or more consecutive hours." This section is typically enforced based on complaints, and motorists are provided a warning before a vehicle is cited and/or towed.

BMC 12.76, which prohibits the use of "any house car or camper for human habitation within the City," has not been enforced since June 2014, when the United States Court of Appeals for the Ninth Circuit issued an opinion invalidating an ordinance that prohibited parking a vehicle being used as "living quarters" on Los Angeles streets. The Court held the Los Angeles ordinance was unconstitutionally vague because it failed to provide "fair notice" of what

was being prohibited. Berkeley's "house car" ordinance does not currently define "human habitation" with any specificity, although it could be amended to do so. Attachment 3 includes proposed language which would change the existing ordinance.

BMC 14.40.120 makes it unlawful to park any "heavy duty commercial vehicle on any street between the hours of two a.m. and five a.m." for more than an hour. "Heavy duty commercial vehicle" is defined as a single vehicle or combination of vehicles that (1) has more than two axles, or (2) is 20 feet or longer, or (3) is wider than 6 feet, 6 inches. Examples in the ordinance "include, but shall not be limited to dump trucks, moving vans, tractors, pole or pipe dollies." This section could be amended to clarify that it applies to oversized vehicles used for activities other than commercial purposes, including RVs. Attachment 4 includes proposed language which would make this clarification.

Proposed RV Permit System: In response to the increase in extended RV parking throughout the City, City staff propose implementation of a permit system, modeled after the City's existing RPP visitor pass program, which grants a permit to a licensed vehicle, or a registered owner, a maximum of 14 days per calendar year to park an RV on the City right-of-way, streets, and off-street City-owned parking lots.

The online permit system would be accessible to the general public through Berkeley Public Libraries' free access to computers and the internet, through the City of Berkeley's Customer Service Counter, or through a City webpage.

Individual permits would be issued to a licensed vehicle and/or a registered owner. The permit would also specify an area or street for which the permit would be valid. The permit would also hold the permit holder accountable for the cost of removing any trash and debris left behind, following the conclusion of the permitted time period.

Anticipated costs for the RV permitting system include the cost to acquire and run the online permit platform, administration costs and the impact on existing staff to enforce the policy.

Option A provides all RV owners the ability to legally park on the City's right-of-way for a short time period, and supports residents and businesses who are negatively impacted by vehicular living for long periods of time.

Option B

Option B would revise existing codes and provide outreach to people living in RVs to provide them with information and resources to establish a more stable living situation.

- Amendments to Existing Municipal Code: As outlined in Option A, the City would revise the BMC 14.40.120 (Attachment 1) to clarify that RVs are included in the prohibition of parking for oversized vehicles from 2 5 a.m., as well as update the language to BMC 12.76 as proposed in the revised ordinance (Attachment 2) regarding the use of house cars for human habitation. Without the inclusion of an RV permitting process, this would lead to a ban of RVs parking on Berkeley city streets.
- Provide Alternate Resources and/or Locations outside of Berkeley: City staff has learned of a multi-city collaborative effort, led by the City of Union City and involving the cities of Fremont, Hayward, San Leandro, and Alameda, to leverage use of state Homeless Emergency Assistance Program (HEAP) funding to establish safe parking sites which would be open to other cities. The goal for this effort is to avoid duplicating efforts (e.g. every city start a safe parking program) and to have complimentary programs that hopefully fill gaps (e.g. RV parking) since the issue is a regional one, with individuals often moving between cities in the Bay Area. Partnership in this program would be a substantial financial investment, and would likely require use of some Measure P or HEAP funding, allocated to the City to address the homeless crisis. Additionally, staff could explore partnering with the City of Oakland on RV safe parking.

By prohibiting RVs on the City's streets, Option B would clearly address the ongoing negative issues associated with the continued presence of RVs parking for extended periods of time in the City. Staff shortages and high workloads could compromise a robust enforcement strategy associated with Option B.

Both options

Provide Outreach to people living in RVs: The City could expand outreach efforts to encourage people living in RVs to take advantage of any available shelter resources and, if resources are available, provide flexible funding to help people resolve their homeless situation. This could include housing problem solving and/or housing assistance. This approach would require additional resources for staffing and flexible funds. Providing additional outreach and flexible funding would cost up to approximately \$362,000 annually; this would include one outreach person and flexible funds in the amount of \$3,000 each for 100 vehicle dwellers.

ENVIRONMENTAL SUSTAINABILITY

Environmental sustainability is a core value of the City of Berkeley and informs all City operations. Implementation of a City pump station to collect effluent waste would have the clear benefit of reducing the possibility of human waste entering the storm drain system and consequently the Bay. This is consistent with the goals and requirements set forth in the City's NPDES Municipal Regional Permit. Alternatively, prohibiting the use of public right-of-way for RV parking throughout the City of Berkeley would

accomplish a similar goal, as it reduces the likelihood of human waste entering the storm drain system.

RATIONALE FOR RECOMMENDATION

The approaches proposed by City staff includes the amendment of existing codes to prohibit RVs parking in the City of Berkeley for extended periods of time; and an online RV Permitting system that limits the total amount of time any RV or registered owner of an RV parks their vehicle on the City's right-of-way, streets, and off-street parking lots in a calendar year. These are coupled with increased services in an effort to increase the transition to more stable living for people living in RVs.

ALTERNATIVE ACTIONS CONSIDERED

City Staff considered the option of developing a sanctioned parking location within the City borders. However, there is insufficient space within the City to accommodate such a program. Additionally, there are several liability and logistical concerns which are raised by the City assuming responsibility for such a sanctioned environment.

One additional option would be to continue current City practices regarding RV parking, which includes enforcement of existing vehicle code as well as BMC 14.36, which restricts parking of any vehicle for longer than 72 hours on the public right-of-way.

If this option was preferred, and council desired, staff could come back with pump out costs, locations and timeline. In considering the disposal of waste, staff explored installation of a City RV dump/pump station as well as contracting with a mobile pump contractor to deliver and discharge the effluent waste to an existing nearby RV dump station. The City does have the capacity to absorb the additional waste into the existing sewer collection system. A consideration of the costs associate with each option is below, with the assumption of serving approximately 100 RVs per week. Regardless of the option selected, staff recommends that the implementation costs be recovered through the permitting process.

Option 1: City RV dump/pump station. While staff does not have a set estimate for the total cost of construction of a new RV dump/pump station, this option would require a feasibility study and a planning cost estimate, including long-term maintenance and operational costs, from a professional consultant. Staff also anticipates the need to pursue information from regulatory agencies, which may impact the overall cost of the station's construction and maintenance. No specific location has been identified for this option at this time. Alternatively, staff has learned of a pump station option which could be installed for approximately \$11,000, which would allow individuals to discharge directly into the City's sewer system. While this option would result in minimal staffing costs, other issues to consider include liability, maintenance, and replacement costs.

Option 2: Contract to deliver and discharge waste. Staff are gathering estimates for this type of service. Staff believe, however, this may be the lowest cost option because

there is no need for new infrastructure and no additional cost for long term maintenance. Under this option, the mobile effluent waste contractor would visit a designated location and collect the waste from the RVs onsite, then could either dispose of the waste directly into the City's sewer collection system, or could haul the waste to an off-site location for disposal.

CONTACT PERSON

Kristen Lee, Interim Assistant to the City Manager, 981-7017

Attachments:

- 1. Proposed revisions to BMC 14.40.120
- 2. Proposed revisions to BMC 12.76
- 3. Referral Report from September 25, 2018
- 4. Referral Report from December 11, 2018

ORDINANCE NO. -N.S.

STOPPING, STANDING OR PARKING RESTRICTED OR PROHIBITED ON CERTAIN STREETS; AMENDING BERKELEY MUNICIPAL CODE SECTION 14.40.120

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

<u>Section 1.</u> That Berkeley Municipal Code Section 14.40.120 is amended to read as follows:

14.40.120 No parking between two a.m. and five a.m.

A. It is unlawful for any person to park any <u>oversize or</u> heavy duty commercial vehicle on any street between the hours of two a.m. and five a.m. for a greater length of time than one hour.

B. For the purpose of this section, <u>oversize or</u> heavy duty commercial vehicle shall mean a single vehicle or combination of vehicles having more than two axles, a single vehicle or combination of vehicles 20 feet or more in length, or a single vehicle or combination of vehicles six feet six inches or more in width, and shall include, but shall not be limited to dump trucks, moving vans, tractors, pole or pipe dollies, <u>recreational vehicles (RVs)</u>, <u>campers</u>.

<u>Section 2.</u> Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 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.

ORDINANCE NO. -N.S.

HOUSE CARS; AMENDING BERKELEY MUNICIPAL CODE CHAPTER 12.76

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

<u>Section 1.</u> That Berkeley Municipal Code Section 12.76.010 is amended to read as follows:

12.76.010 Definitions.

A. "Camper" means a structure designed to be mounted upon or attached to a motor vehicle, in order and to provide facilities for human habitation or camping purposes.

B. "House car" means a motor vehicle originally designed or permanently or temporarily altered and equipped for human habitation, or to which a camper has been permanently or temporarily attached. A house car need not contain any plumbing or cooking facilities.

<u>Section 2.</u> That Berkeley Municipal Code Section 12.76.020 is amended to read as follows:

12.76.020 Use for human habitation prohibited - Exception.

A. No person shall use or occupy or permit the use or occupancy of any house car or camper for human habitation within the City, provided that not more than one house car may be placed, kept and maintained in the rear of any single-family or duplex residential building and used for sleeping purposes only for not more than three successive nights in any 90-day period. Such house car shall not be placed closer than five feet to any property line or closer than ten feet to any building, and the sanitary and cooking facilities therein shall not be used.

B. For purposes of this Chapter, "human habitation" means residing in or using any camper or house car for living accommodation, lodging, or sleeping purposes, as exemplified by remaining for prolonged or repeated periods of time not associated with ordinary use for transportation purposes, with one's possessions (including, but not limited to, clothing, sleeping bags, bed rolls, blankets, sheets, or other sleeping implements, luggage, cooking and eating utensils, cookware, food or beverages or toiletries). These activities constitute human habitation when it reasonably appears, in light of all of the circumstances, that a person is using a house car or camper as a living, lodging, or sleeping accommodation regardless of his or her intent, or the nature of any other activities in which he or she might also be engaged.

<u>Section 3.</u> Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 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.



ACTION CALENDAR September 25, 2018

TO: Honorable Mayor and Members of the City Council

FROM: Councilmembers Maio, Hahn, and Mayor Arreguin

SUBJECT: Managing RV Parking Via Permit Process

RECOMMENDATION

Refer to the City Manager to look into how other cities use permitting to manage RV parking and suggest a permit process that Council can consider to enable RV parking but place some sensible limits.

BACKGROUND

The flatlands in Berkeley have become home to an increasing number of RVs parking for very long periods of time. District 1 residents, schools, and business have been reporting increasing numbers and also problems associated with long term parking. These concerns include taking up parking that is needed for residents and businesses. The most problematic of issues is public safety and health. Berkeley has no pump-out facilities and therefore reports of using garbage cans and storm drains for disposing of personal waste have come to our attention.

This Item asks the City Manager to look into what other cities have done to place reasonable limits on RVs. Here is a link to what Antioch as in place: http://www.antiochca.gov/police/rv-permit. This item requests consideration of a 2-week permit.

ENVIRONMENTAL SUSTAINABILITY

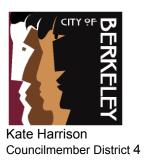
Positive impact on storm drain systems.

FINANCIAL IMPLICATIONS

Staff time for education and enforcement.

CONTACT

Office of Councilmember Linda Maio, District 1
510.981.7110 | Imaio@cityofberkeley.info | cityofberkeley.info/lindamaio
Office of Councilmember Kate Harrison, District 4
510.981.7140 | kharrison@cityofberkeley.info | cityofberkeley.info/councildistrict4
Office of Councilmember Sophie Hahn, District 5
510.981.7150 | shahn@cityofberkeley.info | cityofberkeley.info/district5
Office of Mayor Jesse Arreguin



CONSENT CALENDAR
December 11, 2018

To: Honorable Mayor and Members of the City Council

From: Councilmembers Harrison and Davila

Subject: Referral to City Manager to establish Recreational Vehicle Waste Discharge

Facility on City Property and Referral to FY 2020/21 Budget Process

RECOMMENDATION

1. Refer to the City Manager to establish a recreational vehicle waste discharge facility on City property and equitable administrative fee program, and

Refer costs associated with the facility to the FY 2020/21 Budget Process.

BACKGROUND

A limited number of RV waste discharge facilities exist across the Bay Area; no such public facility is currently available in Berkeley. The nearest public facility appears to be miles away in San Leandro. The ability to discharge human waste into municipal sewers protects public health and meets a basic human need. It is in the interest of the City to prevent the improper discharge of untreated waste into the environment and to provide equitable and convenient access to municipal services.

The City's Parks, Recreation & Waterfront Department reported in June of 2018 that some 200 vehicle dwellers, including visitors, parked overnight in the Berkeley Marina. Vehicle dwellers also park in streets throughout Berkeley. Vehicles provide them with critical respite from the elements but vehicle dwellers lack basic sanitary services.

The Council established an informal Council-staff task force in June of 2018 to explore the feasibility of establishing a sanctioned vehicle dweller park with restrooms and potentially a discharge facility. The task force is making progress, but the long-term nature of the exploration process leaves RV dwellers without critical services. The City can reasonably establish a waste discharge facility on City property in the short term, while pursuing a comprehensive RV park over the long term.

Consultations with officials managing waste discharge facilities at the Central Marin Sanitation Agency and with the Contra Costa County Fairgrounds indicate that the cost of constructing a discharge facility would be relativity inexpensive as fees can be established to cover the cost. Both facilities consist of a sewer drain and RV tank connection equipment, as well as a clean water hose for cleaning. Central Marin reported that their facility cost \$150,000 and was completed ten years ago, which,

CONSENT CALENDAR December 11, 2018

adjusted for inflation, is approximately \$176,000. Both Marin and Contra Costa charge \$10 for each use of the facility, report very low management costs, and serve an average of 10 users per month.

FINANCIAL IMPLICATIONS

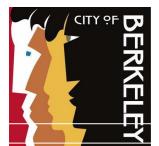
Costs associated with building the facility, approximatively \$150,000 – \$200,000, offset by fees, and staff time to collect fees. On average, an RV occupied by two people needs to discharge waste every week. Thus for every 50 RVs, 2,400 discharges annually could be expected, generating \$36,000 with a \$15 per use fee. Under this scenario, costs would be recouped in approximately 5 years and a small percentage of the fee could go towards subsidizing service for very low-income vehicle dwellers.

ENVIRONMENTAL SUSTAINABILITY

Reduces public health hazards, as well as environmental pollutants entering our waterways due to poor sanitation and/or a lack of sanitation services. Reduces travel time and resulting emissions.

CONTACT PERSON

Councilmember Kate Harrison, Council District 4, (510) 981-7140



Councilmember Ben Bartlett

City of Berkeley, District 3 2180 Milvia Street, 5th Floor Berkeley, CA 94704 PHONE 510-981-7130

EMAIL: bbartlett@cityofberkeley.info

CONSENT CALENDAR

April 23, 2019

To: Honorable Mayor and Members of the City Council

From: Councilmembers Ben Bartlett, Kate Harrison & Cheryl Davila

Subject: Air Quality Monitoring Program

RECOMMENDATION:

Referral to the Public Health Department to establish an advanced air quality monitoring program in Berkeley to provide data about how air quality in the city varies over time and between neighborhoods. To better implement this program, the City should form partnerships with technology companies, environmental research groups, and healthcare providers.

CURRENT SITUATION

Berkeley has had a history of poor air quality, with causes ranging from smoke caused by regional wildfires to air pollution emitted by high amounts of vehicular traffic throughout the Bay Area. While this is harmful to all Berkeley residents in general, it is particularly harmful to those with respiratory issues and without adequate healthcare. By upgrading air quality monitoring in Berkeley, the City can provide more accurate reports to its residents and identify which areas of Berkeley contain the highest levels of air pollutants and address these issues accordingly. The program will also have the benefit of identifying poor air quality areas that coincide with low-income neighborhoods. Since these particular neighborhoods are less likely to have access to affordable and necessary medical services, they will be at much higher risk of health issues caused by air pollutants. Therefore, this program, in conjunction with the Health Innovation Zone, will not only benefit the general population but also serve to provide better, more equitable healthcare to underserved and low-income neighborhoods in Berkeley.

BACKGROUND:

Currently, Berkeley's primary air monitoring station is located in the Berkeley Aquatic Park area. This single station provides daily Air Quality Index (AQI) measurements as well as ozone and fine particulate matter (PM2.5) levels¹. The station can provide only a single aggregate estimate for the entire city of Berkeley once every hour. However, it is unable to provide any measurements for different areas of the city which may experience disparate levels of air pollution due to Berkeley's varied geography and the

¹ http://www.baaqmd.gov/about-air-quality/current-air-quality/air-monitoring-data?DataViewFormat=daily&DataView=aqi&ParameterId=316

2180 Milvia Street, Berkeley, CA 94704 ● Tel: (510) 981- ● TDD: (510) 981-6903 ● Fax: (510) 981-E-Mail: natural formation of inversion layers in the Bay Area.² These factors, along with the layout of the city, tend to place wealthier neighborhoods at higher elevations (such as on tops of hills) and low-income neighborhoods at lower elevations, with air pollutants possibly accumulating at ground level.³ Neighborhoods near high-traffic roadways are also believed to have higher levels of air pollution due to vehicle emissions.⁴ While all people are harmed by the effects of air pollution, those who consistently live in areas with poorer air quality are at a higher risk of developing long-term respiratory and other health-related issues. If these areas also happen to be low-income neighborhoods, then residents here may have more difficulty affording access to the healthcare necessary to treat or prevent the adverse health effects of air pollution.

In order to determine how different the levels of air pollution are between high-elevation and low-elevation neighborhoods as well as high-traffic and low-traffic areas, the City of Berkeley should upgrade its air monitoring network by installing sensors in different neighborhoods throughout the city. These smaller, less expensive sensors will complement the Berkeley Aquatic Park station by enhancing it with highly localized data that may reveal the differences in air quality in separate parts of Berkeley. Should these disparities exist, the City of Berkeley will be better equipped and informed to address these and other health-related issues.

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, AND LAWS

Currently, The Bay Area Air Quality Management District maintains an air quality monitoring network consisting of over 30 stations distributed among the nine Bay Area counties. This network measures concentrations of pollutants for which health-based ambient air quality standards have been set by the U.S. Environmental Protection Agency and the California Air Resources Board. The network also measures concentrations of various pollutants designated as Toxic Air Contaminants by the state of California.⁵ However, only one of these stations is located within Berkeley. Thus, to upgrade the quality of air monitoring within the city, a network of sensors should be installed throughout the city.

ACTIONS/ALTERNATIVES CONSIDERED

This program is modeled after the Breathe London project.

OUTREACH OVERVIEW AND RESULTS

² http://static.lawrencehallofscience.org/scienceview/scienceview.berkeley.edu/html/view/plume.php

³ https://www.berkeleyside.com/2013/01/04/a-map-details-berkeleys-gulf-between-rich-and-poor

⁴ https://cen.acs.org/environment/pollution/London-starts-worlds-largest-air/97/web/2019/02

⁵ http://www.baaqmd.gov/about-air-quality/air-quality-measurement/ambient-air-monitoring-network

This legislation is designed to make it possible for the City of Berkeley to form partnerships with organizations such as technology companies, environmental groups, and healthcare groups to better implement this program. Recommendations were also received from former Councilmember Gordon Wozniak.

RATIONALE FOR RECOMMENDATION

Currently, Berkeley's single air monitoring station is located in the Berkeley Aquatic Park area, which provides daily measurements of air pollutant levels for the entire city once every hour. However, it is unable to provide any measurements for different areas of the city which may experience disparate levels of air pollution due to Berkeley's varied geography and the natural formation of inversion layers in the Bay Area. In order to determine how different the levels of air pollution are between high-elevation and low-elevation neighborhoods as well as high-traffic and low-traffic areas, the City of Berkeley should upgrade its air monitoring network by installing sensors in different neighborhoods throughout the city. By identifying poor air quality areas that coincide with low-income neighborhoods, the City can address health-related issues caused by air pollution more easily.

IMPLEMENTATION, ADMINISTRATION AND ENFORCEMENT

The program will be financed by the City of Berkeley with support from possible partnerships with interested organizations.

FISCAL IMPACTS OF RECOMMENDATION

Staff time and costs associated with purchasing, installing, and maintaining equipment.

ENVIRONMENTAL SUSTAINABILITY

This program will provide better measurements of air quality and help identify and address environmental issues related to air pollution.

OUTCOMES AND EVALUATION

It is expected that the City of Berkeley and Public Health Department will partner with other organizations to create an effective and cost-efficient program to upgrade Berkeley's air quality monitoring system.

CONTACT PERSON

Councilmember Ben Bartlett 510-981-7130

Brian Gan brianjgan@gmail.com



To: Honorable Mayor and Members of the City Council

From: Housing Advisory Commission

Submitted by: Xavier Johnson, Chairperson, Housing Advisory Commission

Subject: Recommendations Related to Code Enforcement Actions and Leonard Powell

Fact Finding

RECOMMENDATION

Establish policies that will provide housing stability for homeowners and tenants. The City Council should set in place clear, objective, and equitable standards for conducting code enforcement actions and ensure that due process rights of affected homeowners and/or tenants are preserved.

Commission a formal fact-finding process to ascertain what occurred in the matter of Mr. Leonard Powell. It should also refer this matter to the City Auditor. The fact finding should, among other things, focus on any actions taken by the Receiver in the case of Mr. Powell and any communications that the City has had with the Receiver. The HAC recognizes that additional steps may be necessary in regard to this matter, and may forward additional recommendations to the City Council at a later date.

FISCAL IMPACTS OF RECOMMENDATION Staff time.

CURRENT SITUATION AND ITS EFFECTS

Several years ago, the City of Berkeley's code enforcement department was alerted to possible code violations at 1911 Harmon St. owned by Leonard Powell. The City requested that Mr. Powell address these violations. Although Mr. Powell arranged for some work to be done (and received a \$100,000 loan from the City's Senior and Disabled Home Rehabilitation Program) to do this work, not all of the violations cited by the City were addressed. Since Mr. Powell did not correct all the violations, the City petitioned the court to appoint a receiver to bring the house into code compliance. However, many more repairs were made, bringing the total costs to over \$600,000.

The house is now certified by the City for occupancy. However, Mr. Powell faces additional costs which exceed the amount that was provided to him through public loans.

BACKGROUND

Mr. Powell, a veteran and retired U.S. Postal worker had purchased the house at 1911 Harmon Street over forty years ago as a home for himself and family. Since purchasing the duplex house, which Mr. Powell converted to a single family home, there had been no major repairs made by him. The conversion from a duplex to a single family home was done without permits and inspections.

Mr. Powell's situation has triggered public concern that he has not been treated fairly, and concerns of inequitable treatment of a Berkeley resident have been raised. The HAC believes that more fact finding will be very beneficial for the Berkeley community for three main reasons. (1) What triggered the code enforcement actions specifically against Mr. Powell, when in fact, there are many single family homes in various neighborhoods throughout the City (including the hills) that lack code compliance? (2) How did costs increase so quickly, so that the costs of repair are almost equivalent to the costs of new construction (excluding land)? (3) How can lower- and moderate-income households be protected from displacement if similar code enforcement actions are taken by the City and if these owners do not have access to financing to address these violations?

The Housing Advisory Action adopted the following motion at its March 7, 2019 meeting:

Action: M/S/C (Tregub/Wolfe) to recommend to City Council that it set in place the policies that would provide housing stability for homeowners and tenants. The City Council should set in place clear, objective, and equitable standards for conducting code enforcement actions and ensure that due process rights of affected homeowners and/or tenants are preserved. In addition, the HAC recommends that the City Council commission a formal fact-finding process to ascertain what occurred in the matter of Mr. Powell. It should also refer this matter to the City Auditor. The fact finding should, among other things, focus on any actions taken by the Receiver in the case of Mr. Powell and any communications that the City has had with the Receiver. The HAC recognizes that additional steps may be necessary in regard to this matter, and may forward additional recommendations to the City Council at a later date.

<u>Vote</u>: Ayes: Abdeshahian, Johnson, Sharenko, Simon-Weisberg, Tregub, Wolfe and Wright. Noes: None. Abstain: Lord. Absent: Owens (excused) and Sargent (excused).

ENVIRONMENTAL SUSTAINABILITY

This recommendation to undertake fact finding into what happened at 1911 Harmon Street does not impact the environment directly. However, if this recommendation ultimately reduces displacement, then this could contribute to reductions in vehicle miles traveled and greenhouse gas emission reductions.

RATIONALE FOR RECOMMENDATION

This recommendation is an important complement to ongoing local, regional, and state efforts to prevent displacement due to code violations that exceed households' abilities to pay. Both renters and homeowners can be negatively impacted by these code violations. Therefore efforts to address them in a constructive and expeditious manner would be consistent with the HAC's and City of Berkeley's other ongoing priorities.

ALTERNATIVE ACTIONS CONSIDERED

The Housing Advisory Commission will be examining ways to assist lower- and moderate-income homeowners in the future whose homes have code violations, but who lack the financing to abate all the violations in a timely manner.

CITY MANAGER

See companion report.

CONTACT PERSON

Mike Uberti, Acting Commission Secretary, HHCS, (510) 981-5114

5b

ACTION CALENDAR June 11, 2019

To: Honorable Mayor and Members of the City Council

From: Peace and Justice Commission

Submitted by: Igor Tregub, Chairperson, Housing Advisory Commission

Subject: Recommendation to Bring Justice to Mr. Leonard Powell and to Change

Certain Policies to Ensure Housing Stability for Homeowners and

Tenants

RECOMMENDATION

The Peace and Justice (PJC) recommends that the Berkeley City Council take the following actions:

The Peace and Justice Commission (PJC) recommends that the City Council send a letter to the Superior Court Judge overseeing Mr. Leonard Powell's receivership case thanking him for the fairness and justice of his decision to deny the Bay Area Receivership Group's ongoing requests to sell Mr. Powell's home, and allowing Mr. Powell and his friends and family time to make the necessary financial arrangements.

PJC also recommends to the Berkeley City Council that it set in place the following policies that would provide housing stability for homeowners. In particular, when legal action is being attempted by the City as a result of code enforcement violations, the following practices should be put into place:

- 1. Punitive actions such as eviction, substantial fines, or placing an individual into legal guardianship, or receivership that are likely to result in the permanent displacement of a homeowner or their low-income tenants presently occupying or renting their home is the very last resort that city staff should take. It should only be conducted if all other attempts to resolve the situation have been unsuccessful; and should only be a response to severe code enforcement violations that cause immediate danger to life safety or have been determined by a quasi-judicial body (e.g., Zoning Adjustments Board, City Council) to endanger the health and safety of the immediate neighbors.
- 2. The Mayor, and Councilmember representing the district of the address in question, and Housing Advisory Commission are notified of their constituent's name (if allowed by applicable privacy laws), address, the nature of the alleged

- code violations, and a report detailing the status of the matter and any past, ongoing, and anticipated future attempts to resolve the matter; and
- 3. The City shall explore the use of anti-displacement funds to assist *low-income* homeowners and/or tenants residing on the premises with legal matters of *forced* relocation, expenses, and/or other needs as applicable and appropriate.
- 4. Establish a policy that code enforcement should aim to improve the safety and security of the property for its current residents and their neighbors.
- "Reimburse" Mr. Powell, Friends of Adeline and NAACP by placing an amount not to exceed \$68,000 raised privately to pay for Receivers legal and administrative fees. These parties may collectively determine how to best use these funds.

FISCAL IMPACTS OF RECOMMENDATION

Staff time and up to \$68,000 if recommendation (5) above is adopted.

CURRENT SITUATION AND ITS EFFECTS

Several years ago, the City of Berkeley's code enforcement department was alerted to possible code violations at 1911 Harmon St. owned by Leonard Powell. The City requested that Mr. Powell address these violations. Although Mr. Powell arranged for some work to be done (and received a \$100,000 loan from the City's Senior and Disabled Home Rehabilitation Program) to do this work, not all of the violations cited by the City were addressed. Since Mr. Powell did not correct all the violations, the City petitioned the court to appoint a receiver to bring the house into code compliance. However, many more repairs were made, bringing the total costs to over \$600,000.

The house is now certified by the City for occupancy. However, Mr. Powell faces additional costs which exceed the amount that was provided to him through public loans.

BACKGROUND

At its regularly scheduled March 4, 2019 meeting, the PJC took the following action:

<u>Action:</u> To authorize the Chair to draft proposed letter from the Council to the judge and adopt recommendations to council as amended

Motion by: Lippman Seconded by: Bohn

Ayes: al-Bazian, Bohn, Chen, Gussmann, Lippman, Maran, Meola, Morizawa, Pierce,

Rodriguez, Tregub

Noes: None
Abstain: None

Absent: Han, Pancoast

Mr. Powell, a veteran and retired U.S. Postal worker had purchased the house at 1911 Harmon Street over forty years ago as a home for himself and family. Since purchasing the duplex house, which Mr. Powell converted to a single family home, there had been no major repairs made by him. The conversion from a duplex to a single family home was done without permits and inspections.

Mr. Powell's situation has triggered public concern that he has not been treated fairly, and concerns of inequitable treatment of a Berkeley resident have been raised. The PJC believes that more fact finding will be very beneficial for the Berkeley community for three main reasons. (1) What triggered the code enforcement actions specifically against Mr. Powell, when in fact, there are many single family homes in various neighborhoods throughout the City (including the hills) that lack code compliance? (2) How did costs increase so quickly, so that the costs of repair are almost equivalent to the costs of new construction (excluding land)? (3) How can lower- and moderate-income households be protected from displacement if similar code enforcement actions are taken by the City and if these owners do not have access to financing to address these violations? Further, the PJC feels that adoption of these recommendations would ensure that the City take steps to make Mr. Powell whole and allow him to recover possession of his property upon the abatement of any remaining code violations.

ENVIRONMENTAL SUSTAINABILITY

These recommendations do not impact the environment directly. However, if the application of these recommendations ultimately reduces displacement, then this could contribute to reductions in vehicle miles traveled and greenhouse gas emission reductions.

RATIONALE FOR RECOMMENDATION

These recommendations are an important complement to ongoing local, regional, and state efforts to prevent displacement due to code violations that exceed households' abilities to pay. They are also consistent with the Peace and Justice Commission's charter and goals.

ALTERNATIVE ACTIONS CONSIDERED

Several additional recommendations were also suggested to the PJC by community members. The PJC elected to focus only on those recommendations that it deemed to be most constructive toward the achievement of the goals enumerated above and resulting in interests that further equity and justice for Berkeley homeowners and tenants.

CITY MANAGER

See companion report.

CONTACT PERSON

Breanne Slimick, Associate Management Analyst, 981-7018

Attachments:

1. Letter to Judge Brand

RESOLUTION

IN SUPPORT OF BRINGING JUSTICE TO MR. LEONARD POWELL AND TO CHANGE CERTAIN POLICIES TO ENSURE HOUSING STABILITY FOR HOMEOWNERS AND TENANTS

Whereas Mr. Powell, a veteran and retired U.S. Postal worker had purchased the house at 1911 Harmon Street over forty years ago as a home for himself and family; and

Whereas since purchasing the duplex house, which Mr. Powell converted to a single family home, there had been no major repairs made by him; and

Whereas the conversion from a duplex to a single family home was done without permits and inspections; and

Whereas several years ago, the City of Berkeley's code enforcement department was alerted to possible code violations at 1911 Harmon St. owned by Leonard Powell; and Whereas although Mr. Powell arranged for some work to be done (and received a \$100,000 loan from the City's Senior and Disabled Home Rehabilitation Program) to do this work, not all of the violations cited by the City were addressed; and

Whereas since Mr. Powell did not correct all the violations, the City petitioned the court to appoint a receiver to bring the house into code compliance; and

Whereas many more repairs were made than were requested, bringing the total costs to over \$600,000; and

Whereas the house is now certified by the City for occupancy; and

Whereas Mr. Powell faces additional costs which exceed the amount that was provided to him through public loans; and

Whereas Mr. Powell's situation has triggered public concern that he has not been treated fairly, and concerns of inequitable treatment of a Berkeley resident have been raised; and

Whereas at its regularly scheduled March 4, 2019 meeting, the Berkeley Peace and Justice Commission (PJC) took the following action:

<u>Action:</u> To authorize the Chair to draft proposed letter from the Council to the judge and adopt recommendations to council as amended

Motion by: Lippman Seconded by: Bohn

Ayes: al-Bazian, Bohn, Chen, Gussmann, Lippman, Maran, Meola, Morizawa, Pierce,

Rodriguez, Tregub

Noes: None Abstain: None

Absent: Han, Pancoast; and

: and

Whereas the Peace and Justice Commission (PJC) recommends that the City Council send a letter to the Superior Court Judge overseeing Mr. Leonard Powell's receivership case thanking him for the fairness and justice of his decision to deny the Bay Area Receivership Group's ongoing requests to sell Mr. Powell's home, and allowing Mr. Powell and his friends and family time to make the necessary financial arrangements; and

Whereas PJC also recommends to the Berkeley City Council that it set in place the following policies that would provide housing stability for homeowners. In particular, when legal action is being attempted by the City as a result of code enforcement violations, the following practices should be put into place:

- 1. Punitive actions such as eviction, substantial fines, or placing an individual into legal guardianship, or receivership that are likely to result in the permanent displacement of a homeowner or their low-income tenants presently occupying or renting their home is the very last resort that city staff should take. It should only be conducted if all other attempts to resolve the situation have been unsuccessful; and should only be a response to severe code enforcement violations that cause immediate danger to life safety or have been determined by a quasi-judicial body (e.g., Zoning Adjustments Board, City Council) to endanger the health and safety of the immediate neighbors.
- The Mayor, and Councilmember representing the district of the address in question, and Housing Advisory Commission are notified of their constituent's name (if allowed by applicable privacy laws), address, the nature of the alleged code violations, and a report detailing the status of the matter and any past, ongoing, and anticipated future attempts to resolve the matter; and
- 3. The City shall explore the use of anti-displacement funds to assist *low-income* homeowners and/or tenants residing on the premises with legal matters of *forced* relocation, expenses, and/or other needs as applicable and appropriate.
- 4. Establish a policy that code enforcement should aim to improve the safety and security of the property for its current residents and their neighbors.
- 5. "Reimburse" Mr. Powell, Friends of Adeline and NAACP by placing an amount not to exceed \$68,000 raised privately to pay for Receivers legal and administrative fees. These parties may collectively determine how to best use these funds; and

Now, Therefore, Be it Resolved that the Berkeley City Council adopt the actions recommended by the PJC.