



Cheryl Davila  
Councilmember  
District 2

## **TIME CRITICAL AGENDA MATERIAL**

**Meeting Date:** April 14, 2020

**Subject:** Establish a Moratorium on Enforcements of the BMC Chapter 14.48 Sidewalk Ordinance, 3x3 regulation, Encampment Evictions, Sweeps, RV Parking and the towing/ticketing/impounding of vehicles used for shelter during the COVID 19 Pandemic.

**Submitted by:** Councilmember Cheryl Davila

**Rationale:** Find that pursuant to California Government Code Section 54954.2(b) that immediate action is required and that the matter came to the attention of the City Council after the agenda was published.



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ACTION CALENDAR  
April 21, 2020  
(Continued from April 14, 2020)

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila

Subject: Establish a Moratorium on Enforcements of the BMC Chapter 14.48 Sidewalk Ordinance, 3x3 regulation, Encampment Evictions, Sweeps, RV Parking and the towing/ticketing/impounding of vehicles used for shelter during the COVID 19 Pandemic.

RECOMMENDATION

1. Adopt a resolution establishing a moratorium on enforcements of the BMC Chapter 14.48 Sidewalk Ordinance, 3x3 regulation, Encampment Evictions, Sweeps, RV Parking and the towing/ticketing/impounding of vehicles used for shelter during the COVID 19 Pandemic.
2. Direct the City Manager and/or designee to implement the moratorium.

BACKGROUND

In light of the [news of community spread in Berkeley](#), which disproportionately places individuals in encampments and shelters at risk, more than ever, it is the utmost urgency to enact a written moratorium of enforcements of the BMC Chapter 14.48 Sidewalk Ordinance, 3x3 regulation, Encampment Evictions, Sweeps, RV Parking and the towing/ticketing/impounding of vehicles used for shelter during the COVID 19 Pandemic.

The City of Berkeley has not enacted a formal, written, moratorium. Fear of displacement causes barriers to individuals adequately sheltering in place to protect themselves and others in the community by causing a constant state of insecurity, as well as unneeded mental and psychological duress. Having the moratorium confirmed in writing would alleviate such stress and enable residents to practice the public health recommendations by experts and major authorities.

With [one COVID-19 related death in Berkeley](#) and the recent news of [70 homeless individuals in an SF shelter testing positive for COVID-19](#), there is an urgent need to fully consider the wellbeing of the unhoused community.

The emergence of COVID-19 (Coronavirus) has resulted in thousands of deaths nationwide and worldwide. The Coronavirus death toll is highest for seniors aged sixty or older, and others with compromised immune systems, have had a heart attack or other health complexities. As of April 13, 2020, there are 38 lab-confirmed cases and one death attributed to COVID-19 in Berkeley.

According to the [Center of Disease Control](#), as of April 14, 2020 there were 579,005 cases of COVID 19 throughout the United States including 22,252 fatalities. These numbers increase hourly. In light of new CDC guidelines and the risk of spreading COVID19 in Berkeley, it disproportionately places individuals in encampments and shelters at risk.

On March 4, 2020, [Governor Gavin Newsome's Executive Order](#) proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

The [City of Berkeley Health Officer ordered](#) all residents to shelter at home, leaving only to receive or provide essential services, effective 12:01 AM, Tuesday, March 17, 2020 due to the Coronavirus (COVID 19 Pandemic).

On March 17, 2020, the Berkeley City Council approved several measures in response to the COVID-19 pandemic, such as adopting the recommendations prompted by the Demands from Grassroots Organizers Concerning COVID-19 to inform the City of Berkeley's emergency response to the Coronavirus.

On the week of March 17, 2020, several Bay Area counties (Alameda, Contra Costa, Marin, San Francisco, San Mateo, and Santa Clara) issued "Shelter In Place" orders, directing nearly seven million residents to stay home through April 7, 2020. This order was the strongest and most serious effort at that point in the U.S. to contain the spread of the coronavirus and forestall health systems from becoming overwhelmed with new cases. County health officials convened prior to issuing the orders and concluded the stay-at-home orders were necessary to slow the spread of the pandemic.

On March 19, 2020, Governor Newsom announced a statewide stay-at-home order to reduce the spread of COVID-19.

Currently, our current city statistics only reflect lab-confirmed cases, and not the total number of people in Berkeley infected with COVID-19, which we know is much larger. Data shows a substantial community spread in our area. Many people with COVID-19 experience mild or no symptoms, but they can still spread the disease to others. Additionally, many people with symptoms are not included in this count due to limitations on testing.

In February 2019, the Berkeley City Council approved a measure: "Referral Responses: Managing Recreational Vehicle (RV) Parking," which prohibits overnight RV parking. The measure negatively impacts unhoused residents, creating new problems and the fear of being towed or red tagged, due to the enforcement of this measure.

In October 2018, Berkeley City Council approved an ordinance: “Adoption of Administrative Regulations Regarding Temporary Non-Commercial Objects on Sidewalks and Parklets and amended the [BMC Chapter 14.48](#)”, which negatively affects unhoused residents especially those living with tents, reducing their personal belongings to a 3 by 3 feet square. The ordinance has displaced many unsheltered residents.

On any given night, more than 1,000 Berkeley residents do not have shelter (i.e. living outdoors in tents, on sidewalks or in vehicles) according to the [Alameda County 2019 Point-In-Time Count](#). A growing number of residents are housing insecure and at risk of becoming homeless. A majority of unhoused Berkeley residents are people of color, seniors and disabled. Any type of policy, measure or action that criminalizes and/or displaces our unhoused residents during the COVID 19 pandemic is cruel and unusual punishment.

As the public health emergency intensifies and the number of people infected by the COVID-19 virus increases, the City of Berkeley needs to protect our unhoused communities that are particularly vulnerable and high risk. Every resident has been instructed to prioritize public health through safe measures, and we must also take steps to ensure the safety of our most vulnerable populations. Any type of enforcement by the City (i.e. sidewalk ordinance, encampments evictions, sweeps, RV Parking and the towing/ticketing/impounding of vehicles used for shelter) will not only disrupt and displace unhoused residents during this COVID 19 pandemic crisis, but will exacerbate the risk and danger of the public health and safety of all residents in the City.

This measure will also make people feel more secure, and will enable them to practice CDC and HUD guidelines for appropriate physical distancing in encampments and sidewalks.

As the “stay at home” order from California Governor Newsom has been in effect since late March, the City of Berkeley has a duty to assist all residents to safely “shelter in place.” The risk of spreading COVID19 disproportionately places individuals in encampments, living in tents and shelters at a greater risk. The City of Berkeley should limit the exposure of community spread of our citizenry and beyond by implementing a moratorium on enforcement of encampments, the sidewalk ordinance and towing or citations for RV’s and other vehicles as homes, parking on our streets.

#### FINANCIAL IMPLICATIONS

The cost of enforcement will be diverted, including the cost of the staff time dedicated to the sidewalk ordinance, encampment evictions/ closures and RV towing which can be redirected to address the COVID 19 pandemic or other expenses.

#### ENVIRONMENTAL SUSTAINABILITY

Protecting the most vulnerable is itself an act of environmental sustainability.

#### CONTACT PERSON

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ATTACHMENTS:

1. Resolution

REFERENCES:

1. [Berkeleyside: News of community spread in Berkeley](#)
2. [Berkeleyside: one COVID-19 related death in Berkeley](#)
3. [ABC News: 70 homeless individuals in an SF shelter testing positive for COVID-19](#)
4. [Alameda County 2019 Point-In-Time Count](#)
5. [Governor Gavin Newsome's Executive Order](#)
6. [City of Berkeley Health Officer order](#)
7. [Center of Disease Control](#)
8. [BMC Chapter 14.48](#)
9. [HUD guidelines for encampments](#)
10. [HUD](#) and [CDC](#) guidelines for physical distancing
11. [State of California guidelines](#)

RESOLUTION NO. XXXX

A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF BERKELEY TO ESTABLISH A MORATORIUM ON ENFORCEMENTS OF THE SIDEWALK ORDINANCE, 3x3 REGULATIONS, ENCAMPMENTS EVICTIONS, SWEEPS, RV PARKING AND THE TOWING/TICKETING/IMPOUNDING OF VEHICLES USED FOR SHELTER DURING THE COVID 19 PANDEMIC CRISIS

WHEREAS, In light of the [news of community spread in Berkeley](#), which disproportionately places individuals in encampments and shelters at risk, more than ever, it is the utmost urgency to enacting a written moratorium of enforcements of the BMC Chapter 14.48 Sidewalk Ordinance, 3x3 regulation, Encampment Evictions, Sweeps, RV Parking and the towing/ticketing/impounding of vehicles used for shelter during the COVID 19 Pandemic; and

WHEREAS, Although the mayor has asked for a moratorium on public record, the City of Berkeley has not enacted a formal, written, moratorium. Fear of displacement causes barriers to these individuals adequately sheltering in place to protect themselves and others in the community by causing a constant state of insecurity, as well as unneeded mental and psychological duress. Having the moratorium confirmed in writing would alleviate such stress and enable residents to practice public health recommendations by experts and major authorities; and

WHEREAS, With [one COVID-19 related death in Berkeley](#) and the recent news of [70 homeless individuals in an SF shelter testing positive for COVID-19](#), there is an urgent need to fully consider the wellbeing of the unhoused community; and

WHEREAS, The emergence of COVID-19 (Coronavirus) has resulted in thousands of deaths nationwide and worldwide. The Coronavirus death toll is highest for seniors aged sixty or older, and others with compromised immune systems, have had a heart attack or other health complexities. As of April 13, 2020, there are 38 lab-confirmed cases and one death, attributed to COVID-19 in Berkeley; and

WHEREAS, the emergence of COVID-19 (Coronavirus) has resulted in thousands of deaths nationwide and worldwide, especially with several confirmed cases within the City of Berkeley. The Coronavirus death toll is highest for seniors aged 60 or older, but persons who are immunocompromised also run great risks; and

WHEREAS, according to the [Center of Disease Control](#), as of March 28, 2020 there were 103,321 cases of COVID 19 throughout the United States including 1668 fatalities. In light of new CDC guidelines and the risk of spreading COVID19 in Berkeley, it disproportionately places individuals in encampments and shelters at a greater risk; and

WHEREAS, on March 4, 2020, [Governor Gavin Newsome's Executive Order](#) proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

WHEREAS, the [City of Berkeley Health Officer ordered](#) all residents to shelter at home, leaving only to receive or provide essential services, effective 12:01 AM, Tuesday, March 17, 2020 due to the Coronavirus (COVID 19 Pandemic); and

WHEREAS, on March 17, 2020, the Berkeley City Council majority approved several measures in response to the COVID-19 pandemic, such as adopting the recommendations prompted by the Demands from Grassroots Organizers Concerning COVID-19 to inform the City of Berkeley's emergency response to the Coronavirus; and

WHEREAS, on the week of March 17, 2020, The City of Berkeley and several Bay Area counties (Alameda, Contra Costa, Marin, San Francisco, San Mateo, and Santa Clara) issued "Shelter In Place" orders, directing nearly seven million residents to stay home through April 7, 2020. This order was the strongest and most serious effort up to that point in the U.S. to contain the spread of the coronavirus and forestall health systems becoming overwhelmed with new cases. County health officials convened prior to issuing the orders and concluded the orders were necessary to slow the spread of the pandemic; and

WHEREAS, on March 19, 2020, Governor Newsom announced a statewide stay-at-home order to reduce the spread of COVID-19; and

WHEREAS, in February 2019, the Berkeley City Council majority approved a measure: "Referral Responses: Managing Recreational Vehicle (RV) Parking", which prohibits overnight RV parking. The measure negatively impacts unhoused residents, creating new problems and the fear of being towed or red tagged, due to the enforcement of this measure; and

WHEREAS, in October 2018, Berkeley City Council approved an ordinance: "Adoption of Administrative Regulations Regarding Temporary Non-Commercial Objects on Sidewalks and Parklets and amended the [BMC Chapter 14.48](#)", which negatively affects unhoused residents especially those with tents, reducing their personal belongings to a 3 by 3 feet square. The ordinance, and has displaced many unsheltered residents; and

WHEREAS, on any given night, more than 1,000 Berkeley residents do not have shelter (i.e. living outdoors in tents, on sidewalks or in vehicles) according to the [Alameda County 2019 Point-In-Time Count](#), a growing number of residents are housing insecure (at risk of becoming homeless). A majority of unhoused Berkeley residents are people of color, seniors and disabled. Any type of policy, measure or action that criminalizes and/or displaces our unhoused residents during the COVID 19 pandemic is cruel and unusual punishment; and

WHEREAS, As the public health emergency intensifies and the number of people infected by the COVID-19 virus increases, the city of Berkeley needs to protect our unhoused communities that are particularly vulnerable and high risk. Everyone has been instructed to prioritize public health through safe measures, and we must take steps to ensure the safety of our most vulnerable populations. Any type of enforcement by the City (i.e. sidewalk ordinance, encampments evictions, sweeps, RV Parking and the towing/ticketing/impounding of vehicles used for shelter) will not only disrupt and displace unhoused residents during this COVID 19 pandemic crisis, but will exacerbate the risk and danger of the public health and safety of all residents in the City of Berkeley; and

WHEREAS, With the "stay at home" order from California Governor Newsom, the City of Berkeley has a duty to assist all residents to safely "shelter in place." The risk of spreading COVID19 disproportionately places individuals in encampments, living in tents, on sidewalks, and shelters at risk. The City of Berkeley should limit the exposure of community spread of our citizenry and beyond by implementing a moratorium on enforcement of encampments, the sidewalk ordinance and towing or citations for a RV's parking on our streets; and

NOW, THEREFORE, BE IT RESOLVED by the City Council for the City of Berkeley, hereby adopts this resolution moratorium on enforcements of the BMC Chapter 14.48 Sidewalk Ordinance, 3x3 regulation, Encampment Evictions, Sweeps, RV Parking and the towing/ticketing/impounding of vehicles used for shelter during the COVID 19 Pandemic, and directs the City Manager and/or designee to implement this measure; and

BE, IT FURTHER RESOLVED, that the 2018, Berkeley City Council majority adopted measure: "Adoption of Administrative Regulations Regarding Temporary Non- Commercial Objects on Sidewalks and Parklets, and Amending BMC Chapter 14.48", be suspended during this crisis; and

BE, IT FURTHER RESOLVED, that the 2019, Berkeley City Council majority adopted measure: "Referral Responses: Managing Recreational Vehicle (RV) Parking," which prohibits overnight RV parking, be suspended during this COVID 19/ Coronavirus pandemic crisis.