



Community Health
Commission

Community Health Commission
Thursday, March 23rd, 2023, 6:30 – 9:00pm
Meeting Location: South Berkeley Senior Center
2939 Ellis Street, Berkeley, CA 94703
Phone: 510-981-5170

AGENDA

Preliminary Matters

1. Roll Call
2. Announcements & Introductions of any new members
3. Approval of Draft Minutes from 2/23/2023 meeting – **Attachment 1**
4. Confirm note taker
5. Public Comment

The public may comment virtually about any item **not** on the agenda. Public comments are limited to two minutes per speaker. Public comments regarding agenda items will be heard while the Commission is discussing the item.

Subcommittee Reports

1. Basic Needs Subcommittee
2. Chronic Disease Prevention Subcommittee
3. Entheogenic Subcommittee
4. Health Equity Subcommittee
5. Health Facilities Subcommittee
6. Policy Tracking Subcommittee

Discussion and Action Items

Public comments regarding agenda items will be heard while the Commission is discussing the item. Public comments are limited to two minutes per speaker.

1. Updates from Health Officer – Dr. Lisa Hernandez (Katz)
2. Presentations by Public Health Division programs (Katz)
3. City Council Referral on Single-Serving Alcohol Containers (Bechtolsheim) – **Attachment 7**
4. City Council Referral on Long-Term Care Facilities (Katz) – **Attachment 8**
5. Add/Remove Subcommittees/ Members (Katz) – **Attachment 4**

A Vibrant and Healthy Berkeley for All

1947 Center Street, 2nd Floor, Berkeley, CA 94704 Tel: 510.981.5300 TDD: 510.981.6903 Fax: 510.981.5395
E-mail: publichealth@ci.berkeley.ca.us - <http://www.cityofberkeley.info/health/>

Attachments

1. Draft minutes from January 26th, 2023 CHC special meeting
2. Approved minutes from November 29th, 2022 CHC regular meeting
3. CHC Work Plan
4. CHC Subcommittee Roster 2022
5. CHC Meeting Calendar 2023
6. City Council and Community Health Commission Timeline 2022
7. Referral – Regulations on the sale of miniature bottles of alcohol.
8. Referral – Long Term Care Facilities

The next meeting of the Community Health Commission will be held on April 27th, 2023. Dates are subject to change. Please contact the Commission Secretary to confirm.

CONFLICT OF INTEREST INFORMATION: City commissioners, pursuant to Government Code section 1090, are responsible for recusing themselves from all commission discussions and actions in which they may have a conflict of interest. If your affiliation, paid or unpaid, with other agencies has changed since the last meeting of this commission, your ability to participate in commission activities may have changed. Individual guidance is available from the City Attorney's Office (CAO). Commissioners are encouraged to consult with the CAO if they have questions, concerns, or would like clarification about matters related to potential conflicts of interest.

The CAO may be reached at:

Email: attorney@cityofberkeley.info
TEL: (510) 981-6950 TDD: (510) 981-6903, FAX: (510) 981-6960
2180 Milvia Street 4th Floor, Berkeley, CA 94704 - Office Hours: Mon-Fri, 8am-5pm

AMERICAN DISABILITIES ACT DISCLAIMER: 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. Please refrain from wearing scented products to this meeting.

SB 343 DISCLAIMER:

Any writings or documents provided to a majority of the commission regarding any item on this agenda will be made available for public inspection at the Public Health Division located on 1947 Center Street, Berkeley, CA 94704.

COMMUNICATION DISCLAIMER:

Communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the commission secretary for further information.



Community Health Commission

Community Health Commission

DRAFT MINUTES

Regular Meeting, Thursday, February 23rd, 2022

The meeting convened at 6:36p.m. with Commission Chair Katz presiding.

ROLL CALL

Present: Commissioner Webber, Bechtolsheim (8:03), Smart, Spigner, Adams (7:21), Katz.

Absent: Commissioner Rosales.

Excused: Commissioner Nightingale.

Staff present: Roberto Terrones, Lisa Hernandez, Kellie Knox.

Community Members: None.

COMMENTS FROM THE PUBLIC: None.

ACTION ITEM

1. M/S/C (Webber/Spigner): Motion to adopt minutes from the February 23rd, 2023, meeting.

Ayes: Commissioner Webber, Smart, Spigner, Katz.

Noes: None.

Abstain: None.

Absent from vote: Commissioner Rosales, Bechtolsheim.

Excused: Commissioner Nightingale.

Motion Passed.

2. M/S/C (Smart/Adams): Motion to approve the Community Health Commission 2023 Work Plan.

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Ayes: Commissioner Webber, Smart, Spigner, Adams, Katz.

Noes: None.

Abstain: None.

Absent from vote: Commissioner Rosales, Bechtolsheim.

Excused: Nightingale.

Motion Passed.

3. M/S/C (Spigner/Webber): Motion to appoint Commissioner Katz as Chair of the Community Health Commission.

Ayes: Commissioner Webber, Bechtolsheim, Spigner, Adams, Katz.

Noes: None.

Abstain: None.

Absent from vote: Commissioner Rosales, Smart.

Excused: Commissioner Nightingale.

Motion Passed.

4. M/S/C (Webber/Adams): Motion to appoint Commissioner Smart as Vice-Chair of the Community Health Commission.

Ayes: Commissioner Webber, Bechtolsheim, Spigner, Adams, Katz.

Noes: None.

Abstain: None.

Absent from vote: Commissioner Rosales, Smart.

Excused: Commissioner Nightingale.

Motion Passed.

This meeting adjourned at 8:38 p.m.

Respectfully submitted, Roberto Terrones, Commission Secretary.

Minutes will be approved at the March 23rd, 2023, meeting.



Community Health Commission

Community Health Commission

MINUTES

Regular Meeting, Thursday, January 26th, 2022

The meeting convened at 6:40p.m. with Commission Chair Katz presiding.

ROLL CALL

Present: Commissioner Webber, Bechtolsheim (8:07), Nightingale, Smart (6:44), Spigner, Adams, Katz.

Absent: Commissioner Rosales.

Excused: None.

Staff present: Roberto Terrones, Lisa Hernandez.

Community Members: 1.

COMMENTS FROM THE PUBLIC: 1.

ACTION ITEM

1. M/S/C (Adams/Webber): Motion to adopt minutes from the November 29th, 2022, meeting with approved edits.

Ayes: Commissioner Webber, Bechtolsheim, Nightingale, Smart, Spigner, Adams, Katz.

Noes: None.

Abstain: None.

Absent from vote: Commissioner Rosales.

Excused: None.

Motion Passed.

2. M/S/C (Webber/Smart): Motion to extend the meeting by five (5) minutes.

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Ayes: Commissioner Webber, Bechtolsheim, Smart, Spigner, Adams, Katz.

Noes: None.

Abstain: None.

Absent from vote: Commissioner Rosales, Nightingale.

Excused: None.

Motion Passed.

3. M/S/C (Webber/Smart): Motion to appoint Commissioner Adams and Smart as representatives of the Commission for upcoming meetings related to *Responsible Psychedelic Drug Policy Reform in Berkeley*.

Ayes: Commissioner Webber, Bechtolsheim, Smart, Spigner, Adams, Katz.

Noes: None.

Abstain: None.

Absent from vote: Commissioner Rosales, Nightingale.

Excused: None.

Motion Passed.

4. M/S/C (Webber/Smart): Add Commissioner Bechtolsheim to the Chronic Disease Prevention Subcommittee.

Ayes: Commissioner Webber, Bechtolsheim, Smart, Spigner, Adams, Katz.

Noes: None.

Abstain: None.

Absent from vote: Commissioner Rosales, Nightingale.

Excused: None.

Motion Passed.

This meeting adjourned at 9:10 p.m.

Respectfully submitted, Roberto Terrones, Commission Secretary.
Minutes were approved at the February 23rd, 2023, meeting.



Office of the City Manager

Community Health Commission 2021 Work Plan

Guiding Philosophy: To look at health through the lens of equity, and to address, ameliorate, and abolish health inequities in Berkeley through our work while advancing other public health efforts.

Mission/Purpose:

1. Collaborate with the community and the Berkeley Public Health Division, and City of Berkeley to eliminate health inequity by:
 - a. Advocating for good policy to council that has the potential to improve the health of Berkeley residents that can be implemented, monitored, and evaluated.
 - b. Representing the community through the diversity of this commission
 - c. Increasing the public education/social marketing efforts, understanding, and awareness of issues
 - d. Advocating together with the residents of Berkeley most affected by institutional, social, organizational inequities/disparities
 - e. Providing a public forum for all community members to share concerns, ideas
2. Achieve general public health progress by being responsive to community needs and facilitating general health and safety.

Overall goals, issues & priorities: All issues can be addressed through a health equity lens.

- Include a focus on the impact of covid-19 and the city's response to it
- Increase healthy food security
- Advocate for the expansion of affordable housing
- Continue to urge that Alta Bates Berkeley Medical Campus remain open while also helping to suggest actions to address consequences of planned closure
- Be responsive in potential recommendations to help Berkeley residents, and care providers and clinics cope with potential federal disruption in healthcare policy and federal spending cuts
- Further address more social determinants of health
- Continue to be a community advocate to City Council to address structural, institutional, and health inequities impacting all underserved populations

- Work to have community health data measures documented in a timely manner and to promptly evaluate and act on novel data such as the Health Status Report
- Work to support policies and initiatives that advance UHC such as Medicare for all
- Advise the City Council as the Public Health Department develop their strategic plan

General steps and actions needed to meet priorities:

1. Better follow up with council implementations
2. Conduct outreach to encourage the Berkeley community to engage with the CHC
3. Collaborate with other commissions to share resources and support recommendations
4. Focused/specialized ad-hoc subcommittees
5. Keep track of local, state, and federal policy and data flow

Specific steps and actions needed to meet priorities: Subcommittees

- **Strategic Planning subcommittee**
 - Serve as point of contact with Public Health Division for city's strategic plan and facilitate deliberation between full commission and division.
 - Recommend structure of portion of agenda to educate commission on strategic plan development
- **Acute Services for Berkeley**
 - Continue to recommend actions to keep Alta Bates open
 - Consider ways to increase emergency care access in Berkeley
- **Basic Needs Security**

Focus on healthy food security and affordable/accessible housing

 - In terms of healthy food security:
 - Identify food recovery donation systems
 - Connect communities with healthy food resources (awareness)
 - Advocate for policies to mitigate unhealthy food consumption
 - Advocate for affordability and accessibility of healthy foods
 - in supporting programs like the Berkeley Food Institute, etc.,
 - In terms of accessible/affordable housing:
 - Identify areas of stark homelessness
 - Connect homeless communities with resources (awareness)
 - Advocate for affordable housing
 - Advocate for increased rent control

- Investigate how Covid-19 has exposed and increased the impact of inequities on basic needs of Berkeley residents
- Connect with the community based organizations and appropriate city of Berkeley departments to acquire information about available resources for Berkeley residents.
- Work with community based organizations to disseminate resources to Berkeley residents around basic needs, including housing, food, healthcare, and public health care
- **Policy tracking**
 - Track City Council minutes, state, and national legislative actions
 - Priority areas:
 - Affordable housing throughout the city of Berkeley
 - Homeless encampments: ensure they are receiving necessary care and resources
 - Covid-19 related policies
 - Access to education due to remote learning
- **Health Equity Subcommittee**
 - Engage Stakeholders on LGBT health equity issues to help complement findings of the Health Status Report
 - Follow up on status of the African American Holistic Resource Center
 - Work on cultural competency for health care providers
 - Review the Health Status Report- dialogues with staff and community to investigate the data and inequities, and recommend program interventions for the City Public Health Division
 - Implement efforts to improve immigrant access to health care
 - Investigate community access to telehealth and other technologies to improve healthcare equity
 - Meet with the public health officer to be informed and updated regarding the city's response to Covid-19, including the vaccination program, and ensure the consideration of health equity to include at risk populations based on emerging literature
- **Chronic Disease Prevention**
 - Recommend presenters that can educate the commission on innovative approaches to chronic disease prevention
 - Consider the use of high profile figures in media campaigns to educate the community about chronic disease prevention.
 - Recommend interventions to address diabetes, obesity, heart diseases, and other chronic conditions highlighted by the Berkeley health status report.

- Recommend interventions to respond to deferred preventative care due to covid-19

➤ **Cannabis**

- Advocating for holistic education of cannabis use throughout the community
- Assessing holistically the risks and benefits of cannabis use in terms of community health
- Assessing holistically how cannabis should be integrated within the local economy while maintaining the health of the community .i.e. nurseries, dispensaries, etc.
- Prioritizing community health following the legalization of cannabis with emphasis on holistically understanding the risk and benefits of cannabis

District	Last	First	Community Health Commission Subcommittees 2022				
			Health Facilities	Health Equity	Basic Needs Security	Chronic Disease Prevention	Entheoge nic
1	Webber	Sara			X		
2	Bechtolsheim	Benjamin				X	
3	Nightingale	Jamila				X	
4	Smart	Karma		X	X		X
5	Spigner	Tora		X			
6	Adams	Joseph					X
7	Vacant	Vacant					
8	Rosales	Ces	X	X			
M	Katz	Andy	X				
			2	3	2	2	2

2023 Commission Meeting Dates

Name of Commission: Community Health Commission

Commission Secretary: Roberto Terrones

Please Note the Commission Meeting Dates for 2023 Below

Please fill in meeting date below. If no meeting for the month is scheduled please note as "No Meeting."

Example

Month	Meeting Day and Date	Time
February 2022	Wednesday 2/10/2022	7:00 pm

Month	Meeting Day and Date	Time
July 2022	No Meeting	

2023 Meeting Dates

Month	Meeting Day and Date	Time
January 2023	Thursday 1/26/2023	6:30 pm
February 2023	Thursday 2/23/2023	6:30 pm
March 2023	Thursday 3/23/2023	6:30 pm
April 2023	Thursday 4/27/2023	6:30 pm
May 2023	Thursday 5/25/2023	6:30 pm
June 2023	Thursday 6/22/2023	6:30 pm

Month	Meeting Day and Date	Time
July 2023	Thursday 7/27/2023	6:30 pm
August 2023	CHC Does not meet in August 2023	
September 2023	Thursday 9/28/2023	6:30 pm
October 2023	Thursday 10/26/2023	6:30 pm
November 2023	Thursday 11/23/2023	6:30 pm
December 2023	CHC does not meet in December 2023	

commission@cityofberkeley.info

City Clerk Department

Please contact our office at (510) 981-6908 with any questions.

2023			Thursday 12:00 PM	Thursday 12:00 PM	Monday 2:30 PM	Wednesday 11:00 AM	Thursday 5:00 PM
COUNCIL MEETING DATE	Reports Due to Dept. Director	Reports Due to CAO	Dept. Reports Due to Clerk Day 33	Agenda Committee Packet to Print Day 19	Agenda Committee Meeting Day 15	Final Agenda Meeting - (Print Agenda on wed.) Day 13	Council Agenda Delivery Day 12
Winter Recess [December 14, 2022 through January 16, 2023]							
Jan 17	12/1	12/1	12/15	12/29	1/4	1/4	1/5
Jan 31	12/9	12/9	12/29	1/12	1/16	1/18	1/19
Feb 14	12/29	12/29	1/12	1/26	1/30	2/1	2/2
Feb 28	1/12	1/12	1/26	2/9	2/8 (Tues)	2/15	2/10
Mar 14	1/26	1/26	2/9	2/23	2/22 (Tues)	3/1	3/2
Mar 21	2/2	2/2	2/16	3/2	3/6	3/8	3/9
Spring Recess [March 22 through April 10, 2023]							
Apr 11	2/23	2/23	3/9	3/23	3/27	3/29	3/30
Apr 25	3/9	3/9	3/23	4/6	4/10	4/12	4/13
May 9	3/23	3/23	4/6	4/20	4/24	4/26	4/27
May 23	4/6	4/6	4/20	5/4	5/8	5/10	5/11
May 30	4/13	4/13	4/27	5/11	5/15	5/17	5/18
Jun 6	4/20	4/20	5/4	5/18	5/31 (Tues)	5/24	5/25
Jun 13	4/27	4/27	5/11	5/25	5/29	5/31	6/1
Jun 27	5/11	5/11	5/25	6/8	6/12	6/14	6/15
Jul 11	5/25	5/25	6/8	6/22	6/26	6/28	6/29
Jul 25	6/8	6/8	6/22	7/6	7/10	7/12	7/13
Summer Recess [July 26 through September 11, 2023]							
Sep 12	7/27	7/27	8/10	8/24	8/28	8/30	8/31
Sep 19	8/3	8/3	8/17	8/31	9/6 (Tues)	9/6	9/7
Oct 3	8/11	8/11	8/25	9/8	9/12	9/14	9/15
Oct 10	8/25	8/25	9/8	9/22	9/28 (Wed)	9/28	9/29
Nov 7	9/15	9/15	9/29	10/13	10/19 (Wed)	10/19	10/20
Nov 14	9/28	9/28	10/12	10/26	10/30	11/1	11/2
Nov 28	10/12	10/12	10/26	11/10	11/13	11/15	11/16
Dec 5	10/19	10/19	11/2	11/17	11/20	11/22	11/23 (Wed)
Dec 12	10/27	10/27	11/9	11/23 (Wed)	11/27	11/29	11/30
Winter Recess [December 13, 2023 through January 15, 2024]							

Revised 09/29/2022

VTO Affected Dates

Holiday Affected Dates

Religious Holiday Affected Date



CONSENT CALENDAR
December 13, 2022

To: Honorable Mayor and Members of the City Council
From: Councilmember Ben Bartlett
Subject: Referral to the Health Commission to Regulate the Sale of Miniature Bottles of Alcohol "Airplane Bottles"

RECOMMENDATION

Direct the Health Commission and the Environmental Commission to propose regulations on the sale of miniature bottles of alcohol ("Airplane Bottles") in the City of Berkeley.

BACKGROUND/CURRENT SITUATION

As a community, the City of Berkeley ("Berkeley" or the "City") has continuously made efforts to improve the well-being of community members and the environment. As reported by the California Health Care Foundation, the alcohol epidemic is on the rise and is particularly acute among many members of the unhoused community.¹ The small size and low unit price of Airplane Bottles, combined with the problematic placement of liquor stores, conspire to make hard liquor overly accessible to people in crisis. Additionally, Airplane Bottles contribute to the City's litter problem, concentrating debris in neighborhoods adjacent to liquor stores. To address impacts on health, safety, and environmental harm, the City must address the consumption and sale of miniature bottles of alcohol.

Impact on Homeless and Rehabilitation Centers: According to a 2019 survey from the Substance Abuse and Mental Health Services Administration of the US Department of Health and Human Services, 38% of homeless individuals are alcohol dependent, demonstrating the pervasiveness of alcohol in homeless communities, and highlights the difficulty of achieving sobriety.² Homeless individuals who abuse alcohol are reported to remain homeless for longer amounts of time as compared to sober homeless individuals.³

The City of Berkeley has experienced an increase in alcohol consumption in its unhoused population. According to the 2017 Berkeley Homeless Census and Survey, 24 percent of the 972 unhoused individuals suffer from drug or alcohol abuse, emphasizing the prevalence of these substances among the homeless population.⁴ The September 2016 report by the Bureau of Alcohol and Beverage Control and the Berkeley Police Department has found that there have been 551 alcohol-related incidents, which is a 30% increase from 2015.⁵

¹ "2022 Edition - Substance Use in California." California Health Care Foundation, 3 Feb. 2022, <https://www.chcf.org/publication/2022-edition-substance-use-california/#related-links-and-downloads>.

² "Homelessness and Addiction - Addiction Center." Addiction Center, <https://www.addictioncenter.com/addiction/homelessness/>.

³ "Homeless Alcoholism." *Alcohol Rehab Guide*, 24 Feb. 2022, <https://www.alcoholrehabguide.org/resources/homeless-alcoholism/>.

⁴ Hernandez, Lisa B, et al. City of Berkeley Health Status Report 2018. City of Berkeley, City of Berkeley Health Status Report 2018, https://www.cityofberkeley.info/uploadedFiles/Health_Human_Services/Level_3_-_Public_Health/2018-health-status-report-berkeley.pdf.

⁵ Cherney, Max. "First Responders, Students Question Stats Showing Rise in Alcohol Abuse at UC Berkeley." *Berkeleyside*, Berkeleyside, 29 Sept. 2016, <https://www.berkeleyside.com/2016/09/29/first-responders-students-question-stats-showing-rise-in-alcohol-abuse-at-uc-berkeley>.

The low cost of Airplane Bottles presents an inordinately accessible source of alcohol, worsening the public health crisis. Consistent alcohol abuse increases the rate of cardiovascular disease, immune suppression, and mental health disorders.⁶ An additional concern is the inexplicable proximity of liquor stores to rehabilitation centers. In Berkeley, the easy accessibility to “Airplane Bottles” is especially pronounced near abuse recovery centers.⁷ City maps clearly show addiction treatment centers cited disturbingly close to liquor stores, often less than a block away. Berkeley’s most vulnerable populations have been set up to fail. This predatory “trap” amounts to an institutional barrier to wellness.

Impact on the Environment: Airplane Bottles use single-use beverage packaging, which is a major source of litter in our streets, plastic in landfills, pollution in waterways and oceans, greenhouse gas emissions, and harm to wildlife. In many cities, including Berkeley, it is common to find Airplane Bottles around the streets because these miniature items are forgettable small bottles that can slip out of one’s pocket or be “thrown out of a window.”⁸ An example of a similarly harmful product being eliminated through regulation is plastic bags. The regulation of plastic bags has reduced the pollution seen around cities, and some grocery stores have completely eliminated them⁹. The ban on plastic bags, combined with the cost to consumers of purchasing them, incentivizes individuals to use reusable bags instead. The reduced waste has even created less pollution in various public spaces such as parks, rivers, and city streets. Banning plastic straws has made a similar impact. Limiting the use of single-use plastic items has been effective in reducing their abundance in wastelands. Similarly, banning Airplane Bottles might further reduce this type of waste in Berkeley.

Other Jurisdictions Provide Precedent: In order to address the social and environmental impacts associated with Airplane Bottles, numerous jurisdictions have banned alcoholic beverages in containers 100 milliliters or less.¹⁰

In Massachusetts, the cities of Chelsea, Mashpee, Falmouth, Wareham, and Newton have all enacted ordinances regulating the sale of Airplane Bottles.

The City of San Bernardino approved an ordinance banning the sale of beer and malt liquor in containers that are less than 40 ounces.¹¹ It also includes hard liquor sold in small bottles. San Bernardino’s stated intent was to address public health by not facilitating substance abuse among people in crisis on the streets.

⁶ “Behind the Numbers: Alcohol is Killing More People Than the Opioid Epidemic. Why Aren’t We Talking About It?” <https://www.caron.org/blog/alcohol-is-killing-more-people-than-the-opioid-epidemic>

⁷ “Images of Liquor Stores and Rehabilitation Centers in the City of Berkeley.” Google Docs, Google, https://docs.google.com/document/d/1LftM41TmMSRNa4-Ujz-Ofo2vogz9dxzdWLBu_tSUY9M/edit?usp=sharing.

⁸ Barnes, Jennette. “A Nip of Trouble: Are Tiny Liquor Bottles on Cape Roadsides More than Just Litter?” CAI, CAI, 13 Mar. 2020, <https://www.capeandislands.org/news/2020-03-12/a-nip-of-trouble-are-tiny-liquor-bottles-on-cape-roadsides-more-than-just-litter>.

⁹ “Why Bag Laws Work: A Summary of Plastic Bag Law Effectiveness.” Surfrider Foundation, <https://www.surfrider.org/coastal-blog/entry/why-bag-bans-work-a-summary-of-plastic-bag-law-effectiveness>.

¹⁰ “More Towns Banning Nips & Miniatures in Liquor Stores.” *Liquor Store Broker & Liquor License Advisor*, 4 May 2022, <https://liquorlicenseadvisor.com/2022/05/04/more-towns-banning-nips-miniatures-in-liquor-stores/>.

¹¹ Brayton, Julie. “Single-Bottle Booze Banned in San Bernardino.” *NBC Los Angeles*, NBC Southern California, 5 May 2010, <https://www.nbclosangeles.com/news/local/single-bottle-booze-banned-in-san-bernardino/1918405/>.

New Mexico also implemented a liquor law in July 2022 that bans the sale of these miniature liquor bottles.¹² These bans were both in an effort to address the growing number of these bottles piling up on curbs, in public spaces, and for the prevention of waterway pollution, which ultimately creates a hazard for community members.

Likewise, the regulation of Airplane Bottles can be expected to enhance public health outcomes, and reduce litter in Berkeley.

ENVIRONMENTAL SUSTAINABILITY

The regulation of Airplane Bottles is expected to reduce litter in Berkeley. Reducing such litter cleans up waterways, allows miniature urban environments to thrive, and improves the City's aesthetic.

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, AND LAWS

Currently, California and the City of Berkeley have no policies prohibiting the sale of any alcoholic beverages more than 300 feet from schools, churches, hospitals, etc.¹³

FISCAL IMPACTS OF RECOMMENDATION

Potential factors being fiscally implicated are: businesses regarding alcohol sales, individuals' health with medicine and doctors, the city's enforcement of the code, and the city's costs related to crime reduction are to be determined in a further study. This recommendation is being referred to the Health Commission for further research into the fiscal impacts of this proposal.

RATIONALE FOR RECOMMENDATION

This proposal would combat the harm that small liquor bottles inflict on public health and the environment. Due to their compact size, these bottles are easier to transport and conceal. Additionally, students and unhoused individuals may be more attracted to purchase and carry more bottles under the illusion from the small size that there is less alcohol yet the percentage of alcohol contained within is what causes the harm. This ban on Airplane Bottles would signify less access to concealable alcohol for the overall population, especially the homeless.

OUTCOMES AND EVALUATION

It is expected that the City Council will refer this ban on Airplane Bottles to the Health Commission, which will then enact a cost-effective and efficient way of removing existing bottles and preventing the sale of future ones.

CONTACT PERSON

Councilmember Ben Bartlett	bbartlett@cityofberkeley.info
Kimberly Woo	510-981-7131
Reequanza McBride	510-981-7135
Wenxin (Nina) Li	510-981-7130
Dafne Cruz Rodriguez	510-981-7130

¹² Chacón@sfnewmexican.com, Daniel J., and Luis Sánchez Saturno/The New Mexican. "New Liquor Law to Ban Most Mini Sales in New Mexico." *Santa Fe New Mexican*, 28 Apr. 2022, https://www.santafenewmexican.com/news/local_news/new-liquor-law-to-ban-most-mini-sales-in-new-mexico/article_454d11d8-8bec-11eb-91e7-3797d461bcff.html.

¹³ "§ 111.03 Sale of Alcoholic Beverages Prohibited near Public Schools, Private Schools, Churches and Public Hospitals." American Legal Publishing Corporation, https://codelibrary.amlegal.com/codes/mtpleasanttx/latest/mtpleasant_tx/0-0-0-123.

**BEN BARTLETT**

CITY COUNCILMEMBER, DISTRICT 3

CONSENT CALENDAR

December 14, 2021

To: Honorable Mayor and Members of the City Council
From: Councilmember Ben Bartlett
Subject: Health Care Facility Oversight

RECOMMENDATION

Refer to the City Manager and the Community Health Commission an assessment of the breadth of regulatory control the City of Berkeley can exert on skilled nursing facilities, and create a process of accountability if complaints are found to be substantiated that threaten, or could potentially escalate to the point of threatening, the wellbeing of patients and/or violate federal, state, or local law; the business license of the offending facility will be suspended until the skilled nursing facility submits a report demonstrating rectification of the situation.

BACKGROUND

The California Department of Public Health (CDPH) mandates that skilled nursing facilities provide 3.5 hours of patient care to each patient per day.¹ For instance, some care facilities in Berkeley are reported to have as few as 6 staffers serving 66 patients, meaning that even if the staff worked around the clock, at most they would be able to offer 2.1 staff hours per patient per day. In 2021 alone, the facility has received 12 complaints, but not a single one has been followed up by an enforcement action². This is just a single example in an egregious pattern of lack of care met with lack of enforcement. In 2019, for example, skilled nursing facilities were found to violate an average of 23 federal and state laws per facility. Yet, in the 77 skilled nursing facilities across California, not a single regulation was enforced. As a result, there has been a history of negligence, mistreatment, and patient abuse within Californian care facilities.³

CURRENT SITUATION

The City has received numerous grievances from concerned community members over the quality of care in certain skilled nursing facilities in Berkeley. Community members complain of neglect, indifference, and harmful, negligent behavior with sometimes tragic consequences.

The City must address these hazards by creating internal procedures and policies designed to prevent further harmful acts. Precedence for license revocation policies can be found in other municipalities. For example, Chapter 6 Section 1.80 of Superior, Colorado Municipal Code states that business licenses can be suspended “when any activity conducted by the licensee, his or her employee or agent violates any federal, state or local rule, regulation or law.”⁴ The City

¹<https://canhrnews.com/guidelines-for-3-5-direct-care-service-hours-per-patient-day-dhppd-staffing-audits/>

² <https://www.cdph.ca.gov/Programs/CHCQ/LCP/CalHealthFind/Pages/SearchResult.aspx>

³ <https://calmatters.org/health/2021/10/nursing-homes-oversight-california-hearing/>

⁴ https://library.municode.com/co/superior/codes/municipal_code?nodeId=CH6BULIRE

of Berkeley could adopt such an ordinance to shutter inept care facilities and deter improper conduct and mismanagement.

Furthermore, to ensure enforcement, the City could mandate that all complaints be forwarded to the Environmental Health Division to be reviewed in a timely manner. This would prevent a backlog of complaints and strengthen City follow-through.

The City of Berkeley needs to enforce strict regulations over the performance and conditions of skilled nursing care facilities to ensure that patients are not stripped of their right to quality care. As stated above, a particularly skilled nursing care facility received 12 complaints in 2021, but there was zero enforcement action taken against them. With this recommendation, there will be a strict standard that skilled nursing care facilities must meet to guarantee that issues are adequately addressed by the City of Berkeley. Furthermore, it provides safeguards to ensure that patients are not neglected by those assigned to look after them.

FINANCIAL IMPLICATIONS

Determine as part of City Manager and Commission response.

Suppose the City can regulate skilled nursing facilities (generally not a City role). In that case, there could be significant financial implications because there is currently no staff assigned to this work in the City.

COMMUNITY CONSULTATIONS

This item was informed by consultations with and complaints raised by community members.

CONTACT PERSONS

Councilmember Ben Bartlett
James Chang
Hillary Phan
Jerry Wong

bbartlett@cityofberkeley.info
jchang@cityofberkeley.info
510-981-7130
510-981-7135

Model Ordinance for Local Long Term Care Facility Licensure

California law states that no person or entity shall operate a health facility without first obtaining a license (Health and Safety Code Section 1253). Unfortunately, the California Department of Public Health's (CDPH) licensing process has become dysfunctional to the point of irrelevance. CDPH takes no action when nursing home operations are transferred to unlicensed and unvetted operators. As a result, operators no longer need a license to own or run nursing homes in California. Virtually anyone or any company can acquire nursing homes in California, no matter how incompetent, financially unqualified, or terrible their track record they may be. As a result, California nursing homes are dominated by for-profit chains that, at best, are known for putting profits over care and, at worst, for routinely exposing residents to neglect and abuse that is causing residents to suffer severe harm, misery and torturous deaths. As the State continues to fumble with its role of nursing home oversight, cities and counties are encouraged to become proactive in vetting what people or entities are operating nursing homes in their communities.

The following model local ordinance is meant to ensure that no new entity can operate a nursing home without prior approval from the local community by creating consequences severe enough to discourage even the most unscrupulous operators. The model ordinance is also designed to ensure the local community has the information it needs to make good licensing decisions.

The ordinance

No person or entity shall own or operate a skilled nursing facility without first obtaining a local license. A skilled nursing facility is defined in Health and Safety Code Section 1250(c).

“Operate” means to exercise operational control, including but not limited to, managing, budget setting, and contracting with residents for admission.

Operation

1. Application

Any person(s) or entity(ies) seeking to own or operate a skilled nursing facility shall submit an application, signed under penalty of perjury that includes the following:

- A description of the services to be offered in the facility.
- The name of the proposed owner(s) / operator(s), type of facility to be owned or operated, address of facility to be owned or operated, name of the facility, and the name of the current owner and operator,
- Whether the owner or operator is for-profit or non-profit provider.
- If the proposed owner or operator is an entity, the application must include the name, address, and affiliation with any other long term care facilities of all directors, board

members, managers, and persons with an ownership interest of five percent or more. The application must also include the name, address, and affiliation with any other long term care facilities of any and all parent organizations of any entity. Every entity named must include the names, addresses, and affiliation with any other long term care facilities of all directors, board members, and managers of any and all parent organizations in a list format. All entities must be connected to individual people. A *“long term care facility”* is a skilled nursing facility under Health and Safety Code Section 1250(c) or Residential Care Facility for the Elderly under Health and Safety Code Section 1569.2.

- If the facility would be part of a chain after the proposed change in ownership or operation, a diagram indicating the relationship between the applicant and the persons or entities that are part of the chain, including those that are owned or controlled by the same parties, and in a separate list, the name, address, and license number, if applicable, for each person or entity in the diagram. A “chain” means a group of two or more long term care facilities that are owned or operated by the same persons or entities.
- A detailed projected budget for the first twelve months of operation, prepared in accordance with generally accepted accounting principles and certified by the principal officer of the prospective operator, accompanied by evidence of access to a sufficient amount of working capital required to operate the long term care facility in accordance with the budget, in the form of cash on deposit, a line of credit, applicant's equity, or any combination thereof.
- Proof of sufficient insurance
- Affirmative evidence that the prospective owner(s) or operator(s) has the character, ability, education, experience, performance history, financial resources, and other necessary qualifications to ensure that the facility will be operated in full compliance with all applicable statutes and regulations governing the operation of skilled nursing facilities. If the proposed owner/operator is an entity, like evidence shall be submitted as to the members or shareholders thereof.
- Any revocation, suspension, probation, exclusion order, or other similar administrative disciplinary action that was filed and sustained in California or any other state, or in the process of being adjudicated, against a facility associated with a person or entity identified in the application or by any authority responsible for the licensing of health, residential, or community care facilities within the past ten years.
- Copies of final findings, orders, or both, issued by any health, residential, or community care licensing agency or any court relevant to the actions described above.
- Any petition for bankruptcy relief filed within five years of the date of application involving operation or closure of any related health, residential, or community care facility licensed

in California or any other state, the court, date, and case number of the filing, and whether a discharge was granted. If a discharge was not granted, the applicant shall provide copies of any court findings supporting denial of discharge.

- Proof of the right to possess the facility at the time the application will be granted and the name and address of any persons or entities that own the real property on which the facility seeking licensure is located.
- Fire clearance
- Any other information as may be required by the City/County.
- The information required pursuant to this section, other than individuals' social security numbers, shall be made available to the public upon request, and shall be included in the department's public file regarding the facility.
- An application fee that covers the cost of reviewing the application.

The City/County may require the prospective owner or operator to furnish other information or documents at its discretion. Failure of the applicant to provide any needed information may result in the denial of the application. Failure of the proposed owner or operator to disclose affiliations with other facilities will result in the denial of the application or revocation of license.

2. Considering the Application

The application will be submitted and reviewed by the City/County. The City/County will hold a public hearing before approving or denying the application.

The application may be approved if the City/County believes the facility will be operated in full compliance with all applicable statutes and regulations governing the operation of skilled nursing facilities while under the ownership or operational control of the applicant.

The City/County retains sole discretion over approval or denial of an application for a license but the following will result in automatic denial or revocation of a license:

The prospective owner or operator or any affiliate of the prospective owner or operator:

- Has owned, operated or managed any facility that has received more than one class "AA" citation from the Department of Public Health within any 24-month period.
- Has owned, operated or managed any facility that has received three or more of any combination of a class "AA" citation, a class "A" citation, or a deficiency constituting an immediate jeopardy violation in the preceding five years.

- Is on the List of Excluded Individuals/Entities of the United States Department of Health and Human Services Office of Inspector General.
- Has owned, operated, or managed a facility that was terminated from the federal Medicare Program or the Medi-Cal program due to noncompliance, had its license suspended or revoked, or was subjected to receivership.
- Has been convicted of a crime as defined in Health and Safety Code Section 1265.2.

Knowingly making a false statement or withholding material information on the application. The City may assess a civil penalty of ten thousand dollars (\$10,000) for making a false statement or withholding material information on an application for licensure or renewal.

The City/County shall consider the performance of associated facilities such as the number of regulatory complaints and civil lawsuits filed against them and publicly available data regarding facility staffing and other performance measures. The City/County shall consult with the local long term care Ombudsman program regarding the performance of associated facilities.

3. Approval or Denial of the Application

Approved owners and operators will be granted a license and may assume ownership or operational control of the facility. Denied operators or operators awaiting approval may not assume operational control.

The approval or denial shall be communicated in writing. If the license is denied, the written denial shall state the reason for the denial

Applicants who are denied licensure may seek an appeal. The applicant may not own or operate the facility at issue while the appeal is pending.

4. Enforcement

Any violation of this section is a misdemeanor. If a facility is being operated, in whole or in part, by an unlicensed person or entity, the licensed owner, licensed operator, unlicensed owner, and unlicensed operator are all subject to the following measures:

- A ban on admitting new residents to the facility;
- A daily fine of up to \$10,000 / day. The fines may be assessed on the individual operators in their personal capacity, in addition to the entities;;
- Up to one year in jail;criminal liability,
- A civil suit for injunctive relief.

Internal

The penalties available in this section are cumulative to any other penalty or punishment available under any other law.



Healthy Checkout

SMALL STORE RESEARCH RESULTS

Across 15 stores in Berkeley

The City of Berkeley can expand its Healthy Checkout Ordinance to include small stores and further support the health of its residents!

BACKGROUND

Berkeley is often cited as one of the healthiest cities in the country, yet significant health disparities persist within families and residents, especially in communities of color. African American residents are more likely to deal with inequalities in the lived environment which heavily influence diet and health, including disproportionate marketing of sugary beverages to the youth and a lack of availability of healthy food. As issues like hypertension, heart disease and tooth decay continue to hurt families, families are forced to make hard decisions about what is more important: price or quality.

While the passing of the Healthy Checkout Ordinance addresses these issues in stores over 2500 sq ft, smaller, corner and convenience stores are currently exempt. This is a health equity issue for low-income families, who purchase twice as many of their calories from convenience stores than their non-SNAP eligible counterparts.

Currently at checkout in small stores...

83%

of drinks
are
unhealthy

52%

of snacks
are
unhealthy

48%

of snack
options are
candy or
gum

**ONLY
9%**

of all
products
are healthy

1st Goal

Affordable healthier snacks
(especially for youth!)

2nd Goal

Access to familiar items

3rd Goal

Fresh, high quality choices

“Healthy checkout could offer health benefits and possibly transform lives by enhancing what people interact with on a normal basis.”

– Patron at Mi Tierra

**100% support
from
Interviewees**

“Kids can get difficult when they get candy and their parents just let them so they can go. It might be nice if there’s a good selection.”

– Interviewee at Black and White Store



Healthy Checkout



Most shoppers think that local food stores are a valuable resource in the community, and see merchants as agents who can take action to positively influence public health.

WHAT WAS SAID BEFORE HEALTHY CHECKOUT

Community members expressed concern over BHS youth stocking up on unhealthy snacks during their lunch break.

"It's hard to want that [healthy food] if you never ate like that and don't know if it's worth it to spend your money."
-Small store shopper

"The soda always catches my eye. But I always resist because I know it's a temptation, so I opt for healthier orange or apple juices from other markets instead, and I'm trying to get my kids to do the same too!" -Berkeley farmers market vendor

WHAT IS BEING SAID AFTER HEALTHY CHECKOUT

"I can get a healthier snack for my kid on the go if they change it..." -Berkeley resident

"Policy plays an important role in challenging someone's habits and standards - Berkeley has been able to take risks." - interviewee at Mi Tierra

"I appreciate it because having the choice to be exposed to things is really important, and it feels like we have less opportunity to stop being exposed to advertisements or products we are trying to avoid."
-Berkeley resident



To: Berkeley City Council

Re: Healthy Checkout – Minimum Nutrition Standards at Checkout in Small Stores

To the Berkeley City Council Members:

I am part of [organization name]. Our mission is to [org mission or goals].

As citizens of Berkeley we think....

As citizens of Berkeley we are proud of being the first city to pass an ordinance banning unhealthy food from checkout areas while shopping at larger retailers.

Why this matters...

Having healthy options at small stores, corner stores, gas stations matters because it is where the majority of lower income families shop on a daily basis. According to the American Diabetes Association, a comparison with high income, the relative percentage difference in prevalence of diabetes for those that are classified as middle income, near poor and poor, was 40.0%, 74.1% and 100% respectively.

For these reasons, we want to encourage the City Council to ensure that **small stores also** have minimum nutritional standards at checkout.

Sincerely,

[PRINTED NAME]