

# BerkeleyLaw

UNIVERSITY OF CALIFORNIA

Policy Advocacy Clinic



# Does Sit-Lie Work: WILL BERKELEY'S "MEASURE S" INCREASE ECONOMIC ACTIVITY AND IMPROVE SERVICES TO HOMELESS PEOPLE?

## About the Authors

This report was researched and written by Joseph Cooter, Ericka Meanor and Emily Soli, Policy Advocacy Clinic students under the supervision of Clinical Professor Jeffrey Selbin.

The authors are grateful to the community, municipal, business and law enforcement personnel who responded to our national survey, the local stakeholders who offered background and input, and School of Law faculty members who provided consultation and technical assistance.

## EXECUTIVE SUMMARY

When Berkeley voters go to the polls on November 6, 2012, they will decide whether to enact Measure S, an ordinance that would ban sitting on public sidewalks during business hours in the City's commercial districts.<sup>1</sup>

Proponents of the "Civil Sidewalks Ordinance" – called "Sit-Lie" in the municipalities which have enacted such laws in recent years – argue that it will:

- (1) increase local economic activity ("saves jobs"), and
- (2) improve services to homeless people ("helps people").<sup>2</sup>

A coalition of community groups and individuals opposed to Measure S asked the Policy Advocacy Clinic to research and analyze the economic and social service impacts of Sit-Lie laws in other jurisdictions and the potential for such an ordinance to deliver on its promises in Berkeley.<sup>3</sup>

To prepare this report, we reviewed data on economic activity and homeless services in other Sit-Lie jurisdictions nationally, statewide and locally.

We surveyed community organizations, municipal human services and economic development agencies, business groups and police departments in more than a dozen Sit-Lie jurisdictions, including seven in California.

Finally, we consulted local stakeholders about implementation challenges and opportunities.

Although there are limits to the data gathered – and more research needs to be done to answer these questions with more precision – we find no meaningful evidence to support the arguments that Sit-Lie laws increase economic activity or improve services to homeless people.

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**Introduction**

If approved, Measure S will amend the Berkeley Municipal Code to prohibit people from sitting on city sidewalks in commercial zones from 7am to 10pm. The ordinance provides certain exceptions – for example, in the case of medical emergency or for people in wheelchairs – and requires police officers to warn illegal sitters before citing them. Failure to comply with an officer’s warning constitutes a crime punishable by a fine (\$75) or community service, and subsequent violations can be charged as misdemeanors. Although Measure S is silent on this issue, proponents say that citations will be erased for homeless people who enter and participate in social services.

Measure S is one of a variety of “Sit-Lie” laws that have been enacted in the last two decades, typically in response to economic downturns (Berkeley law already prohibits lying on sidewalks; Measure S would extend the ban to sitting). Measure S proponents advance two basic arguments in favor of its passage: First, they say, enactment of the ordinance will increase economic activity for struggling businesses in commercial zones. Second, they argue, the ordinance will improve services to homeless people and “transform their lives.” Supporters point to similar “successful laws implemented in over 60 cities” as evidence that Measure S will work in Berkeley.

In order to test these two central arguments, we undertook the following research:

- Researched and analyzed existing Sit-Lie laws, including their history, legal challenges, and implementation;
- Conducted a national Sit-Lie literature review with a special focus on identifying evidence of the

economic and service impact of Sit-Lie ordinances;

- Surveyed key stakeholders (chambers of commerce, city economic development agencies, police departments, city human services agencies and homeless service providers) in 19 Sit-Lie jurisdictions, including 7 in California;
- Analyzed the Measure S ballot initiative, including the findings, proposed ordinance and formal statements for and against the ordinance (and rebuttals);
- Gathered and analyzed publicly-available economic data on the impact of Sit-Lie laws in California cities and in Berkeley’s commercial zones; and
- Gathered and analyzed City of Berkeley reports and other documents relevant to Measure S, and interviewed local stakeholders, including service providers and city officials.

It is important to note here the limits of our methods, the scarcity of data, and the difficulty of answering these questions in light of other factors unrelated to Sit-Lie. In spite of our efforts, we found relatively limited data from other Sit-Lie jurisdictions. The only jurisdiction with a published report about the effects of Sit-Lie is San Francisco, where the ordinance is less than two years old. In addition, survey response rates from stakeholders in Sit-Lie jurisdictions were under 20%, making it difficult to draw meaningful conclusions, especially because the sample size was already small. Finally, with respect to both economic activity and social services, there are many other variables which make it hard to isolate the specific impact of Sit-Lie laws.

On the other hand, Sit-Lie ordinances purport to represent an effective and important policy intervention, and we would expect the impacts to be significant and demonstrable. Interestingly, however, we could not find any non-anecdotal evidence of positive impacts with respect to economic activity or homeless services. Our literature review did not reveal any evidence of Sit-Lie’s efficacy in other jurisdictions, and of the fifteen survey responses we received, none directed us to any evidence in support of their views about the positive or negative impacts of Sit-Lie. Even as we report our findings below, therefore, we recommend that more research be conducted to inform local officials and voters when considering such ordinances.

Section I of this report provides a brief history of Sit-Lie laws and Measure S. While the origins of

Measure S in Berkeley can be traced to 1994, Sit-Lie laws are the most recent example of centuries-long efforts to address vagrancy during periods of economic hardship and uncertainty. Local authorities have used various means to “warn out” homeless people and others since the American colonies.

Section II provides an economic analysis of Sit-Lie laws in the United States. Though increased economic activity is a central argument in favor of Sit-Lie laws, there is a dearth of evidence regarding the economic benefits or costs of such laws. We present the limited available data, including from Berkeley, and find that while economic costs may be substantial, economic benefits are uncertain and perhaps illusory.

Section III analyzes the service benefits of Sit-Lie laws to homeless people. While not an argument for Sit-Lie laws everywhere, Measure S proponents in Berkeley have stressed that the ordinance will drive homeless people to much-needed services. Based on data from other jurisdictions, the text of the ordinance and Berkeley’s existing capacity, we find no evidence that Measure S will improve services to homeless people.

Section IV considers proven alternatives to Sit-Lie ordinances like Measure S. In light of evidence-based practices elsewhere – and plans developed by the City of Berkeley’s Office of Economic Development – we conclude that the City likely has better options for revitalizing commercial areas and helping those in need.

## I. The History of Sit-Lie Laws and Berkeley’s Measure S

Ordinances controlling homeless people date at least to 14<sup>th</sup> century England in the form of vagrancy laws.<sup>4</sup> Rather than criminalizing an act, such laws criminalized the status of being a vagrant.<sup>5</sup> These laws were imported to the American colonies in the 17<sup>th</sup> century, and their enactment and enforcement fluctuated with war, economic crises and demographic changes.<sup>6</sup> By the middle of the 20<sup>th</sup> century, vagrancy laws and other laws regulating homeless people were in place in every state.<sup>7</sup> By the 1960s, however, state and federal courts across the country began striking down these laws for various constitutional reasons.<sup>8</sup> In 1972, a unanimous Supreme Court rejected vagrancy laws as “archaic classifications” that are unconstitutionally vague.<sup>9</sup>

After the deinstitutionalization of people with mentally illness in the 1970s and large social service cuts during the 1980s, local officials began looking for new methods to address the sharp rise in

homelessness.<sup>10</sup> Among those methods were Sit-Lie ordinances, which cities began enacting in the early 1990s.<sup>11</sup> In 1993, Seattle passed one of the first ordinances banning people from sitting or lying on commercial sidewalks during certain hours.<sup>12</sup> Other west coast cities followed Seattle’s lead, and in November, 1994, Berkeley voters passed Measure O banning sitting and lying in commercial zones.<sup>13</sup>

The Seattle law was challenged on the grounds that it violated the First and Fourteenth Amendments to the U.S. Constitution.<sup>14</sup> The American Civil Liberties Union (ACLU) and others sued the City of Berkeley on similar grounds halting enforcement of Measure O one month before it was to go into effect.<sup>15</sup> In 1996, however, the U.S. Court of Appeals for the Ninth Circuit upheld Seattle’s ban as constitutional on its face.<sup>16</sup> The Ninth Circuit also held that Sit-Lie ordinances could be successfully challenged when enforced – so-called “as applied” challenges – and in 1997, the Berkeley City Council repealed Sit-Lie (Measure O) and settled the lawsuit with the ACLU.<sup>17</sup>

In the two decades since it was enacted, a number of cities across the country have adopted Sit-Lie bans based on the Seattle model, including Santa Cruz, Santa Barbara, Modesto, Santa Monica, San Bruno and Palo Alto.<sup>18</sup> In 2010, the San Francisco Board of Supervisors placed a Sit-Lie ban, Proposition L, on the ballot and in November of that year it passed with 54.3% of the vote.<sup>19</sup> The following year, the Berkeley City Council began discussing a full Sit-Lie ban modeled after Proposition L.<sup>20</sup> In June 2012, the City Council voted 6-3 to place Measure S on this November’s ballot.<sup>21</sup>

## II. An Economic Analysis of Sit-Lie Laws

Since the early 1990s, a dozen or more U.S. cities have enacted Sit-Lie ordinances.<sup>22</sup> Proponents of Sit-Lie ordinances argue that they will improve the business climate in commercial areas where homeless people congregate. This section presents our findings on the economic benefits and costs of Sit-Lie laws generally, including what we can glean about the possible economic impact of Measure S in Berkeley.

As described more fully below, we find no empirical evidence that Sit-Lie ordinances revitalize business districts or otherwise increase economic activity. Although rarely discussed in Sit-Lie debates, implementation of such ordinances imposes fiscal costs on jurisdictions in the form of law enforcement and punishment. Such costs are difficult to measure – and we could find no jurisdictions which attempted to do so

– but they are likely to be non-trivial if the ordinances are enforced as written. In addition, Sit-Lie ordinances can be expensive to defend against lawsuits, since they are vulnerable to “as applied” challenges.

**A. Economic Benefits of Sit-Lie Laws**

Measure S proponents say it will “save jobs,” presumably by stabilizing or increasing economic activity. In addition to employment, there are several possible economic indicators of the impact of Sit-Lie laws, including retail sales tax receipts and commercial vacancy rates. We therefore conducted a national search for such data related to the enactment of Sit-Lie ordinances. In addition to conducting an extensive literature review, we requested information from municipal economic development agencies and private chambers of commerce in Sit-Lie jurisdictions across the country.

Unfortunately, we were not able to identify any jurisdictions that captured before and after data on these or other economic metrics for the purposes of analyzing the effectiveness of their Sit-Lie ordinances. However, we were able to analyze California and Berkeley-specific data as follows:

First, we analyzed data from the California Board of Equalization regarding sales tax receipts in five Sit-Lie jurisdictions before and after enactment. Second, with data the City published in 2010, we analyzed the economic impact of the presence of homeless people in Downtown Berkeley and Telegraph Avenue.

As reported below, we find: (1) no evidence supporting a link between the enactment of Sit-Lie ordinances and economic activity in California cities, and (2) and no evidence that homeless people negatively impact economic activity in selected commercial zones in Berkeley.

***Finding #1: There is no evidence of increased economic activity in California Sit-Lie jurisdictions***

To our knowledge, not a single study has investigated the local economic impacts of a Sit-Lie ordinance. To begin addressing this knowledge gap, we examined the taxable sales of California municipalities with Sit-Lie ordinances. The California Board of Equalization publishes information on retail taxable sales at the city and county level.<sup>23</sup> Since 1997, the date

from which such data are available, five California cities have enacted Sit-Lie ordinances.<sup>24</sup> For each of these cities, we compared the retail sales from before the ordinance to the retail sales one year after the ordinance entered into effect. To control for other economic factors, we compared each city to the county in which it is situated.

We restricted taxable sales to retail sales because we assume that the imposition of a Sit-Lie ban has little impact on other forms of business, such as industrial or agricultural sales, especially in the short term. For each city-county pairing, we looked at the retail taxable sales in the last full quarter prior to the passage of the ordinance, and compared those ratios to the fiscal quarter one year after passage of the ordinance. We included a time lag because we do not expect behavioral changes in response to new laws to be instantaneous.

For the county data, we subtracted each comparison city’s retail sales from the overall retail sales of the entire county.<sup>25</sup> We recognize the inherent limitations of comparing a city to its county, including the problem that many cities rely on different economic bases than the rest of the county. Nevertheless, these were the best publicly-available economic data on the impact of Sit-Lie.

As set forth in Table 1, we found that among these five California cities, only Santa Monica outperformed its county one year after the enactment of Sit-Lie. That is, four of the five California Sit-Lie cities economically underperformed their county one year after enactment.

**Table 1. City vs. County Retail Sales Growth Rates after Implementation of Sit-Lie**

City	City Growth Rate	County Growth Rate
Santa Barbara	3.33%	5.27%
Modesto	4.36%	5.68%
Santa Monica	5.25%	3.67%
San Bruno	(-) 4.96%	0.00%
Palo Alto	(-) 4.32%	(-) 1.99%

It is important to note that this sample size is too small and controls for too few variables to reach

definitive statistical conclusions. Nevertheless, if there were a strong causal relationship between Sit-Lie laws and improved economic performance, we would expect to see at least some evidence in these data. No such evidence exists; in fact, the data suggest that Sit-Lie ordinances do not yield substantial economic benefits.

***Finding #2: There is no evidence that Berkeley retail sales have suffered due to homeless people***

The text of Measure S states “the purpose of the Ordinance is solely to address the deleterious impacts of encampments on public sidewalks.”<sup>26</sup> However, we found no publicly-available empirical data to support the argument that the presence of homeless people negatively impacts economic activity in particular commercial zones.<sup>27</sup>

Measure S proponents argue that an increase in homeless people since the economic downturn in 2008 has harmed economic activity in the Downtown Berkeley and Telegraph Avenue business districts.<sup>28</sup> We would expect, therefore, to find that such districts have fared worse than other commercial zones during this time. According to the most recent available data, all commercial zones have seen declining sales since 2008. In relative terms, however, Downtown Berkeley and Telegraph Avenue have out-performed all other business districts during that time.<sup>29</sup>

Table 2 provides data on the percentage change in retail sales in Berkeley’s nine business districts from the first quarter of 2008 through the first quarter of 2010.<sup>30</sup>

**Table 2. Change in Retail Sales by District, Year Ending 03/08 to Year Ending 3/10**

Neighborhood	Change in Retail Sales
Downtown	(-) 4.6%
Telegraph	(-) 6.9%
South San Pablo	(-) 7.1%
Elmwood	(-) 7.7%
North San Pablo	(-) 13.5%

South Berkeley	(-) 13.5%
Solano	(-) 15.4%
North Shattuck	(-) 18.5%
Fourth Street	(-) 21.5%

Thus, while every commercial neighborhood in Berkeley declined during this period, the areas with the greatest concentration of homeless people outperformed all other commercial districts. Of course, it is possible that the Downtown and Telegraph Avenue areas would have performed even better in the absence of homeless people, but our research has found no evidence in support of this theory.

**B. Economic Costs of Sit-Lie Laws**

If Measure S passes, the City will likely incur implementation, enforcement and litigation costs. Projecting these costs prior to enactment is speculative, especially because the ordinance itself does not provide funding for these expenses. Costs will depend on city expenditures before the law goes into effect, the extent to which the police department prioritizes enforcement, and litigation costs if Measure S is challenged in the courts.

***Finding #3: Implementing and enforcing Measure S will impose costs on the City***

Additional city police costs that result from Measure S are unlikely to be significant. On one hand, some opponents argue that the ordinance will spread Berkeley’s police force more thinly. Officers will devote time to giving warnings, issuing citations and defending them in court, rather than addressing other crimes and policing responsibilities.<sup>31</sup> On the other hand, proponents argue that a Sit-Lie law gives beat cops another tool to address public disturbances.<sup>32</sup> The San Francisco City Hall Fellows report attempted to address this question by studying “quality of life citations,” but found that San Francisco’s tracking system does not provide requisite data for an adequate comparative analysis.<sup>33</sup> Without empirical data, we do not know whether the additional benefit will outweigh the opportunity cost, although we speculate that neither effect will be especially large.

Implementation of the law will require education of the police force and the public. Educating the police force entails the creation, dissemination, and absorption of guidelines for implementing the new law.<sup>34</sup> Educating the public is likely to be a more intensive process. Measure S will not go into effect until July 1, 2013, so that “comprehensive outreach and public education can be conducted.”<sup>35</sup> The outreach and education will involve homeless and youth service providers, merchants, community agencies, city staff and the police.<sup>36</sup> Furthermore, the Measure states that other methods, including signage will be used.<sup>37</sup> Although Measure S does not make provision for these expenditures, it is clear that the City must incur some implementation costs.

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***Finding #4: Defending Measure S against legal challenges is likely to be costly***

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Proponents characterize Measure S as constitutionally sound, but this is only partly accurate. There is enough uncertainty about the constitutionality of Sit-Lie laws that the passage of Measure S would likely result in a lawsuit against the City. As described above, a similar ordinance in Seattle was upheld *on its face* by the U.S. Court of Appeals for the Ninth Circuit – which is controlling precedent in California – but the court made clear that such ordinances could run afoul of the Constitution *as applied (enforced)* in any particular jurisdiction.<sup>38</sup> In a letter to the Berkeley City Council opposing Measure S, the ACLU notes that Measure S is unconstitutional if it unnecessarily limits free speech activities, such as panhandling and playing music.<sup>39</sup>

Berkeley’s history of litigation regarding similar ordinances suggests that Measure S will be contested in the courts should it pass.<sup>40</sup> Such a lawsuit could cost the City of Berkeley hundreds of thousands of dollars or more. As noted above, in the wake of the passage of Measure O in 1995, the ACLU filed a lawsuit challenging the Sit-Lie restrictions.<sup>41</sup> The case was eventually settled when the City agreed to repeal the law, but only after paying the ACLU \$110,000 in attorneys’ fees and presumably incurring substantial legal costs of its own.<sup>42</sup>

In sum, although we find no evidence of economic benefit, there will be costs related to the implementation, enforcement and legal defense of Measure S.

### III. A Service Analysis of Sit-Lie Laws

Proponents argue that helping homeless people access social services is one of the key goals of Measure S.<sup>43</sup> In fact, proponents claim that Measure S improves upon the Sit-Lie ordinances of other cities in ways that “ensure we are helping people find services.”<sup>44</sup> In this section, we explore whether Measure S is likely to achieve this goal.

First, we sought evidence from other cities regarding Sit-Lie’s impact on services to homeless people. We surveyed homeless service providers, city human services agencies and police departments in the Sit-Lie jurisdictions nationally. Second, we analyzed Measure S to assess how it will improve upon ordinances elsewhere with respect to homeless services. We reviewed the entire ballot measure and the portion which will become law if it passes.

Finally, we investigated the City of Berkeley’s capacity to assist additional homeless people if they are directed to services by the enforcement of Sit-Lie. As a part of this investigation, we analyzed the City of Berkeley’s homelessness reports and interviewed the director of the City’s Department of Housing, Health and Community Services.

As we detail next, there is little evidence to suggest that Measure S will – or even can – improve services to homeless people in Berkeley absent a commitment of additional resources not provided for by the ordinance. Without such an investment, Measure S is likely to harm at least some homeless people, rather than help them.

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***Finding #5: Sit-Lie ordinances have not connected homeless people to services in other cities***

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The National Law Center on Homelessness and Poverty defines the criminalization of homelessness as the “[e]nactment and enforcement of laws that make it illegal to sleep, sit, or store personal belongings in the public spaces of cities without sufficient shelter or affordable housing.”<sup>45</sup> In its 2010 Federal Strategic Plan, the U.S. Interagency Council on Homelessness (USICH) strongly advised local governments to refrain from enacting laws that criminalize homelessness.<sup>46</sup> The USICH plan asserts that such criminalization fails to increase access to services and tends to create additional barriers between homeless people and access to housing, income, and employment.<sup>47</sup>

The only published study about the impact that Sit-Lie has on homeless people comes from San Francisco, which also includes a service component in its ordinance. According to a 2010 report issued by the City Hall Fellows, an independent organization hired by the City of San Francisco, Sit-Lie enforcement has been uneven with respect to getting people into services.<sup>48</sup> First, police inconsistently administer service referrals across stations.<sup>49</sup> Second, the distribution of citations falls disproportionately on a very small number of vulnerable individuals.<sup>50</sup> Whether citations have actually been accompanied by service referrals is difficult to determine, as “there was [sic] no data collected in 2011 to determine the number of service referrals made by SFPD officers enforcing Sit/Lie or a methodology for tracking the individual outcomes of such referrals.”<sup>51</sup>

Given the recommendations from federal agencies, as well as the apparent failure of San Francisco’s Sit-Lie law to push offenders off the streets and into services, we find no evidence that Sit-Lie ordinances in other cities have succeeded in connecting homeless people to services.

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***Finding #6: Measure S will not connect homeless people to services in Berkeley***

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Measure S proponents describe several ways in which the ordinance will help homeless people access social services. First, the Measure S ballot statement – but not the proposed ordinance – says that before the law goes into effect, “comprehensive outreach and education can be conducted, involving homeless and youth service providers, merchants, community agencies, and city staff including police.”<sup>52</sup>

Second, Measure S proponents argue that “Ambassadors will encourage people into services.”<sup>53</sup> The Ambassador program was created by the Downtown Berkeley Property and Business Improvement District. Duties of Ambassadors include cleaning the streets, reporting graffiti to authorities, providing information to tourists, and referring homeless people to services.<sup>54</sup> Proponents say that Berkeley’s version of Sit-Lie is better than ordinances in other cities because it includes outreach from Ambassadors.<sup>55</sup>

Third, Measure S proponents state that Sit-Lie criminal charges will be dropped if violators agree to

participate in services.<sup>56</sup> According to proponents, the waiver citation provision also distinguishes Measure S from other Sit-Lie ordinances.<sup>57</sup>

In spite of these arguments, Measure S does not contain any provisions to connect homeless people with services; in fact, the ordinance itself makes no mention of services at all.<sup>58</sup> Further, the City recently determined that “[d]espite the positive process measures associated with the Ambassadors program, there has only been a marginal change, if any, in the overall quality of life in the Telegraph and Downtown areas.” As a result, the City cut the program’s budget in half for fiscal year 2012.<sup>59</sup> Finally, the Measure is silent on the waiver of citations in exchange for participating in services, and makes no other provision to incentivize service-seeking for cited individuals.

Since there is no requirement that service referrals must be made prior to issuing citations, no evidence that the Ambassador program is effective in changing the quality of life in targeted areas, and no provision for charges to be dropped (or any other incentives) if violators enter into services, it is very unlikely that the ordinance will connect homeless people to social services.

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***Finding #7: Berkeley does not have the capacity to assist more homeless people***

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Proponents of Measure S argue that Berkeley offers comprehensive social services that “are successful in finding treatment and homes for people who participate.”<sup>60</sup> Further, they say that homeless people’s failure to participate in those services is a result of their preference to remain on the streets.<sup>61</sup> Based on our findings, however, Berkeley is currently unable to house and serve all homeless people.

The City’s affordable housing units are currently at full capacity.<sup>62</sup> Additionally, the City has fewer shelter beds than homeless people. According to a 2009 survey, 680 homeless people reside in Berkeley.<sup>63</sup> However, there are only 138 year-round shelter beds in the City.<sup>64</sup> Even with the City’s 184 seasonal shelter beds, which are only available at certain times of the year, and 172 transitional housing beds, which are only available to specific persons, the number of homeless people in Berkeley exceeds the number of available beds.<sup>65</sup> Because Measure S does not include additional funding for homeless services in the City – so capacity cannot

expand in response to need – there is no evidence that homeless people will receive more or better services if the ordinance is enacted.

In fact, some evidence suggests that Measure S will make life harder for homeless people by diminishing their ability to escape the streets.<sup>66</sup> Under the ordinance, repeat Sit-Lie violators can be charged with a misdemeanor.<sup>67</sup> If a Measure S violator fails to attend a scheduled court hearing for any reason, including mental illness, physical disability,<sup>68</sup> or inability to pay transportation costs, then an arrest warrant may be issued, and repeat offenders may be taken into custody.<sup>69</sup> An arrest record creates a myriad of problems for homeless people: their public benefits may be cut,<sup>70</sup> their application for low-income housing units may be denied,<sup>71</sup> and they will face increased barriers to employment.<sup>72</sup> Though much will depend on police enforcement and local court practices, Measure S is likely to increase the problems facing at least some homeless people in Berkeley.

#### IV. Proven Alternatives to Sit-Lie Laws

National findings, reports from other cities, and local evidence suggest that there are proven means to achieve the economic and service goals of Measure S. The City of Berkeley's own assessment of the causes of and solutions to declining economic activity are unrelated to the presence of homeless people in commercial zones. In addition, federal agencies and national service organizations recommend a supportive housing model as the most effective way both to help chronically homeless people escape life on the streets and to decrease community costs related to homelessness.

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#### ***Finding #8: Berkeley has identified better approaches to increasing economic activity***

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Proponents of Measure S suggest that homeless people are responsible for flagging economic activity in Berkeley's commercial districts.<sup>73</sup> But in the most comprehensive report of its kind, the City of Berkeley's Economic Development Manager recently identified three root causes for the decline in retail sales since 2000: (1) the general economic downturn since 2008, (2) the rise of e-commerce, and (3) "the shift of retail spending to new retail centers in Emeryville and elsewhere."<sup>74</sup> Although the report points out that many

people want to "support Berkeley's neighborhood shopping areas, populated as they are with many unique, independently-owned stores,"<sup>75</sup> it is clear that Berkeley's economic problems are due to larger economic forces, including some of the same forces that have increased the number of homeless people.

The Economic Development Manager recommends five actions in response to these trends, none of which involves the regulation of homeless people.<sup>76</sup> These include: (1) "Buy Local," which would educate shoppers about the benefits of patronizing Berkeley stores; (2) later business hours on Telegraph Avenue and in the Downtown area, which would encourage the large youth population to seek entertainment in Berkeley rather than San Francisco or Oakland; (3) marketing assistance to reduce commercial vacancies, which would help retailers locate in Berkeley; (4) streamlining the permitting process for new retail stores; and (5) support for business district-sponsored festivals and events, to attract additional customers and create a "brand" identity for commercial districts in Berkeley.<sup>77</sup>

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#### ***Finding #9: Supportive housing is the best way to accomplish the goals of Measure S***

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According to experts, supportive housing is the most cost-effective means to solve chronic homelessness.<sup>78</sup> The 2011 report of a 29-city survey conducted by the U.S. Conference of Mayors stated that "providing more mainstream assisted housing led the list of actions needed to reduce homelessness in the survey cities."<sup>79</sup> Similarly, the Searching Out Solutions Summit – convened by the U.S. Department of Justice's Access to Justice Initiative, the U.S. Interagency Council on Homelessness, and the U.S. Department of Housing and Urban Development – reported that the development of permanent supportive housing "has been proven to provide a long-term solution for those experiencing chronic homelessness."<sup>80</sup>

Several cities, including New York, Denver, and Los Angeles, have implemented "Housing First" models, which are "premised on the theory that housing provides an initial foundation and source of basic stability without which efforts at recovery and rehabilitation cannot be enduringly successful."<sup>81</sup> New York's Street to Home Project, which has been in operation since 2004, reports to have reduced street homelessness by 87% in the 20-block radius around



Times Square.<sup>82</sup> Predictions based on initial participants in Denver's Housing First program show an average cost savings to the city of \$31,545 per person.<sup>83</sup> The Housing First program in Los Angeles was equally successful, yielding a 108% return on the city's investment and providing many participants with their first real access to comprehensive services.<sup>84</sup> According to participants, the stability created by housing greatly increased their ability to succeed in service programs.<sup>85</sup> Participants further reported that possessing a key to a home allowed them to feel like true members of society, and thus incentivized their success in services.<sup>86</sup>

Berkeley has implemented a supportive housing program, called Square One, which has succeeded in keeping some of Berkeley's chronically homeless people permanently off the streets.<sup>87</sup> In addition to helping Berkeley's homeless residents, Square One has saved the community significant costs. For example, because Square One refers clients to SSI advocates, clients with disabilities are able to transition from county-funded support (General Assistance) to federally-funded SSI benefits.<sup>88</sup> Additionally, Square One's medical care and mental health referrals reduce emergency care costs that hospitals would otherwise bear.<sup>89</sup> Square One has also led to an eight-fold reduction in arrest rates in participants, which reduces law enforcement costs.<sup>90</sup>

## Conclusion

In 2010, the Searching Out Solutions Summit convened national stakeholders to discuss solutions to homelessness, including law enforcement, court personnel, city government officials, social service advocates, business improvement district leaders, and health care providers.<sup>91</sup> The resulting report made several key recommendations to governments seeking to solve problems related to homelessness, including "implementing only proven or promising practices."<sup>92</sup>

Proponents of Measure S make empirical claims about the economic and service benefits of the ordinance. In this study, we tested these claims to see if they represent proven or promising practices. Although more data are needed about Sit-Lie ordinances nationally, our findings suggest that the benefits of such laws are neither proven nor promising.

Berkeley voters may support or oppose Measure S for other reasons, but there is no evidence that it will increase economic activity or improve services to homeless people if enacted.

## Appendix: Ballot Measure S

### Ballot Question

Shall an ordinance prohibiting sitting on sidewalks in commercial districts from 7:00 am to 10:00 pm, with exceptions for: (a) medical emergencies; (b) wheelchairs and similar mobility devices; (c) bus benches; (d) street events; (e) other furniture placed on the sidewalk pursuant to a permit; requiring the City to ensure that it is applied in a constitutional manner and requiring a warning prior to citation, be approved?

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### Text of Measure S

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

**AN ORDINANCE OF THE CITY OF BERKELEY ADOPTING NEW SECTION 13.36.025 OF THE BERKELEY MUNICIPAL CODE TO PROHIBIT SITTING ON SIDEWALKS IN COMMERCIAL DISTRICTS**

**THE PEOPLE OF THE CITY OF BERKELEY ORDAIN AS FOLLOWS:**

#### Section 1. Findings

The People of the City of Berkeley find as follows:

A. In FY 2012 the City of Berkeley devoted more than \$2.8 million to services for the homeless, mentally ill, and other disadvantaged residents, including meals, shelters, transitional and permanent housing with supportive services, daytime drop-in centers, health services, employment programs, alcohol and other drug treatment and rehabilitation, case management, and legal services. Residents, taxpayers, and business owners of Berkeley share the consensus that the City should continue to provide this funding subject to resource constraints and taking into account other needs such as public safety and our City's infrastructure.

B. Public spaces in commercial districts have become increasingly inhospitable due to groups of individuals, often with dogs, having created encampments on sidewalk areas on our commercial streets. These encampments obstruct pedestrian access, and result in litter, debris, and waste left on our sidewalks.

C. City parks are open and available during the day for everyone's use.

D. As a result of the sidewalk encampments, residents and visitors tend to avoid some of our commercial areas, which threatens the viability of Berkeley's businesses that are already struggling. This in turn threatens the City's overall economic health. Reduced economic activity results in fewer resources available for homeless services.

E. Although state and local laws address various specific problematic behaviors and actions associated with encampments of people and dogs on the sidewalks, enforcement of such laws to an extent sufficient to reverse the trend described above is infeasible, as it would require a level of police resources that are simply not available, and would divert public safety resources from more serious crimes.

F. The only practical solution is to limit sitting on sidewalks only in commercial districts at certain hours of the day, and to require a warning before citation.

G. The purpose of this ordinance is solely to address the deleterious impacts of encampments on public sidewalks. Accordingly, it is the intent of the voters that the ordinance be interpreted and applied in a manner that does not discriminate against homeless, mentally ill or other residents of the City based on their status.

H. Because the intent of the voters is not to criminalize persons for sitting on the sidewalk given that other options are available (permanently-affixed public benches, bus stop benches, low walls, etc.), this ordinance shall not take effect until July 1, 2013, so that comprehensive outreach and education can be conducted, involving homeless and youth service providers, merchants, community agencies and City staff including police.

Other methods, such as signage, will also be employed.

#### Section 2. Adoption of Ordinance.

That a new Section 13.36.025 is hereby added to the Berkeley Municipal Code to read as follows:

**Section 13.36.025 - Prohibiting Sitting on Commercial Sidewalks at Certain Times – Exceptions.**

A. Prohibiting Sitting on Commercial Sidewalks at Certain Times. No person shall sit on a Commercial Sidewalk or on any object brought or affixed to said sidewalk, from 7:00 a.m. until 10:00 p.m., except as provided in this Section.

B. Exceptions. This Section shall not apply to any

person sitting on a commercial sidewalk:

1. Due to a medical emergency;
2. On a wheelchair or other device that is needed for mobility;
3. On a public bench or bus stop bench that is permanently affixed to the sidewalk; or
4. As authorized by a City-issued permit, such as a permit for a Street Event, a permit under Sections 14.48.170 or 14.48.200, or other City permit.

This Section shall not be construed to prohibit persons from obtaining such City permits.

These exceptions shall not be construed to allow conduct that is prohibited by other laws.

C. This Section shall not be applied or enforced in a manner that violates the United States or California constitutions. Prior to enforcement of this Section, the City shall develop and adopt rules, regulations and procedures to ensure that it is not applied or enforced in a manner that violates the United States or California constitutions.

D. Necessity of Warning Prior to Citation. No person may be cited for a violation of this Section until a peace officer first warns said person that his or her conduct is unlawful and said person is given a chance to stop said conduct. One warning by a peace officer to a person who is violating this Section is sufficient for a 30-day period as to any subsequent violations of this Section by said person during said period.

E. Commercial Sidewalk - Definition. As used in this Section, "Commercial Sidewalk" means all sidewalks in front of or adjoining property designated on the City's Official Zoning Map with a "C" prefix.

F. Violation - Infraction or Misdemeanor. A first violation of this Section shall be charged only as an infraction subject to either a \$75 fine or community service.

Subsequent violations may be charged as either an infraction or a misdemeanor.

### Section 3. Amendment of Ordinance.

Section 13.36.025 of the Berkeley Municipal Code as adopted by this Ordinance may be repealed or amended by the City Council without a vote of the people.

### Section 4. Severability.

If any section, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining sections, sentences, clauses, phrases, or portions of this ordinance shall nonetheless remain in full force and effect. The people of the City of Berkeley hereby declare that they would have adopted each section, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, sentences, clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable and, to that end, the provisions of this Ordinance are severable.

### Section 5. Majority Approval; Effective Date; Execution.

This Ordinance shall be effective only if approved by a majority of the voters voting thereon and shall go into effect on July 1, 2013. The Mayor and City Clerk are hereby authorized to execute this Ordinance to give evidence of its adoption by the voters.

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### **City Attorney's Impartial Analysis**

This measure would prohibit any person from sitting on a sidewalk in a commercial zoning district from 7:00 a.m. until 10:00 p.m., subject to the following exceptions:

1. Due to a medical emergency;
2. On a wheelchair or other device that is needed for mobility;
3. On a public bench or bus stop bench that is permanently affixed to the sidewalk; or
4. As authorized by a City-issued permit, such as a permit for a Street Event, or for public benches or outside café seating.

This measure would also provide that it could not be applied or enforced in a manner that violates the United States or California constitutions, and would require the City to develop and adopt rules, regulations and procedures to ensure that it is not applied or enforced in a manner that violates the United States or California constitutions, prior to enforcement.

This measure would provide that a first violation would be an infraction subject to either a \$75 fine or community service, but that subsequent violations could be charged as either an infraction or a misdemeanor.

The measure would require that before a person could be cited he or she would have to be warned by a

peace officer and given an opportunity to comply. A single warning would be sufficient for a 30-day period.

The measure would also allow the Council to amend or repeal the prohibition without further voter approval.

If approved, the measure would not go into effect until July 1, 2013.

s/ZACH COWAN  
Berkeley City Attorney

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### Argument in Favor of Measure S

Berkeley takes pride in being a humanitarian city. Berkeley was early in setting up services for people who were forced out of State institutions. Berkeley taxpayer's yearly fund more than \$2,800,000 to those in need. Yet, there are some who resist our help, preferring to encamp on shopping streets creating unsanitary conditions for themselves and residents. **Drugs, alcohol, and/or mental illness cause behavior that can be perceived as menacing, keeping shoppers away and hurting local merchants trying to make ends meet in a tough economy.**

Living on the street is unhealthy. It sends people into a downward spiral. Berkeley offers comprehensive social services that are successful in finding treatment and homes for people who participate.

Measure S (Berkeley Civil Sidewalks) has two goals: taking the initiative to help people into services and preventing street encampments that keep shoppers away from our businesses. Measure S will prevent sitting on commercial sidewalks during the day. **Outreach will take place before implementation, and Ambassadors will encourage individuals into city services.** If the Ambassadors are repeatedly unsuccessful, citations will follow. However, Berkeley will erase those citations from the person entering and participating in services.

Measure S is supported by a broad coalition of neighborhood merchants, residents and parent groups. **Confrontational behaviors from people who block sidewalks for hours at a time create an unacceptable environment for the "mom and pop" merchants who pay the taxes that fund the services, grow local jobs and make Berkeley a special place to live.**

Measure S is based on successful laws implemented in over 60 cities, but with the addition of several improvements that ensure we are helping people find

services.

**Vote Yes on S. Help people get social services, help merchants grow local jobs, and ensure civil and welcoming sidewalks for everyone.**

Proponents:

Tom Bates	Major, City of Berkeley
James Young	Partner, Paul's Shoe Repair
Erin Rhoades	Chair, Livable Berkeley
Craig Becker	Owner, Caffè Mediterraneo
Susan Wengraf	Berkeley City Councilmember

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### Rebuttal to Argument in Favor of Measure S

Our community has a tradition of compassionate, sensible problem-solving. Where other cities scapegoat, Berkeley seeks real solutions.

**Criminalizing sitting is a proven failure:** San Francisco's law has failed "to improve merchant corridors, serve as a useful tool for SFPD, connect services to those who violate the law, and positively contribute to public safety," according to a report commissioned by the San Francisco Controller's Office. Imitating other cities' failures doesn't help businesses and hurts poor people. This is not how Berkeley solves problems.

**Measure S will divert police resources from preventing and solving real crimes.** It will push unsheltered teens into a futile cycle of warrants, jail time, and back into the streets. The ACLU calls measure S "an infringement of civil rights and civil liberties."

**Poor people do not choose to rest in public.** We have no drop-in center for homeless youth. Our youth shelter is open only six months a year. Neither the youth shelter nor the adult shelter is open during the day. There are four homeless people in Berkeley for every shelter bed. The "ambassadors" – hired to clean downtown streets – are not trained in mental health or homeless outreach.

*We can do better than this.* Instead of wasting city money on proven failures, we can fully fund a youth shelter, provide enough shelter beds, and more public restrooms. Instead of pushing people out of our shared public spaces, we can unite to create *real* solutions for the economic problems that plague small business. **Vote No on Proposition S.**

Jesse Arreguín	Berkeley City Councilmember
Elisa Della-Piana	Civil Rights Attorney, East Bay

Branden Figueroa  
Mary Dirks  
Rabbi David Cooper

Community Law Center  
Student Coordinator  
Owner, Café  
Kehilla Community Synagogue

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### Argument Against Measure S

Can you imagine getting arrested for sitting down on a public sidewalk? In Berkeley? If Measure S passes, anybody could be cited or arrested for this simple act – yet another law restricting the public space we all share. But it also sets a dangerous precedent, discriminating against an entire class of people who happen to be poor. These are not Berkeley values.

The street behavior used to justify this measure is already illegal. This measure will harm public safety by diverting police resources away from solving real crimes.

Measure S won't help business. A similar law in San Francisco had no effect on improving merchant corridors, helping homeless people obtain services, reducing the number of homeless people on the street, or increasing public safety.

Throwing people in jail is no solution to homelessness. Instead, it creates a problem for all of us. The U.S. Interagency Council on Homelessness has found that when people are arrested or fined for "act of living" crimes in public spaces, it makes it *more* difficult for them to find work and receive services and housing. This measure is a step backwards.

Berkeley has the largest gap between rich and poor in the Bay Area – we need serious solutions, not laws criminalizing the act of sitting down. This measure offers no solutions for businesses, customers, or homeless people.

Join the ACLU, small businesses, Berkeley community organizations, and faith groups to VOTE NO on this extraordinary waste of money and police resources. Stand up for the simple human right to sit down, to rest, and to share our common public space.

Let's come together, as one Berkeley, and find real solutions that help our communities. Visit [www.noonsberkeley.com](http://www.noonsberkeley.com). **KEEP SITTING LEGAL. Vote NO on Measure S.**

Max Anderson  
Kriss Worthington  
Satinder Boona Cheema

Nolan Pack  
Eleanor Walden

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### Rebuttal to Argument Against Measure S

**Don't believe the scare tactics being used by the opponents of Measure S the Berkeley Civil Sidewalks Ordinance.**

Ordinances like Measure S have already saved jobs in merchant areas and have slowed the downward spiral that comes with living on the sidewalks. **Yes on S will help people get the critical services they NEED to transform their lives.**

**Similar ordinances have improved commercial areas in Santa Cruz, Santa Monica, San Francisco and 60 cities.** It has passed extensive judicial review and only Berkeley's version includes both outreach from our Ambassadors and waiving citations in exchange for services.

**It is not a progressive value to watch people wither away on sidewalks day after day,** becoming more unstable and abusing their bodies with alcohol and drugs.

**It is not responsible to disregard that reality and ignore its impact on neighborhood businesses.** Local jobs are critical for working families who are barely staying afloat in an economy that has been too harsh for too long.

**It is not compassionate to do nothing** about a harmful situation and support the status quo.

**Yes on S will help people get the services they need to transform their lives.** Berkeley spends over \$2,800,000 on comprehensive social services **and we have real solutions to help people transition from the streets to stable environments. That will continue.**

**Measure S will help people and will save local jobs.** Measure S encourages alternatives to street life and safer sidewalks for everyone.

**Vote Yes on S, Berkeley Civil Sidewalks.**

[Berkeleysidewalks.com](http://Berkeleysidewalks.com)

Laurie Capitelli  
James Young  
Erin Rhoades  
Craig Becker  
Tom Bates

Berkeley City Councilmember  
Partner, Paul's Shoe Repair  
Chair, Livable Berkeley  
Owner, Caffè Mediterraneo  
Mayor, City of Berkeley

## Notes

<sup>1</sup> The text of Measure S, the city attorney's impartial analysis and ballot arguments are provided in an Appendix.

<sup>2</sup> The organized campaign in favor of Measure S is the "Coalition for Berkeley Civil Sidewalks, Yes on S," whose website is available at: <http://berkeleycivilsidewalks.com/>.

<sup>3</sup> The organized campaign against Measure S is the "Stand Up for the Right to Sit Down: A Committee in Opposition to Measure S," whose website is available at: <http://www.noonsberkeley.com/>.

<sup>4</sup> Paul Ocobock, *CAST OUT: VAGRANCY AND HOMELESSNESS IN GLOBAL AND HISTORICAL PERSPECTIVE* 6 (A.L. Beier & Paul Ocobock eds., 2008); Leonard C. Feldman, *CITIZENS WITHOUT SHELTER*, 27 (2004).

<sup>5</sup> Harry Simon, *Towns without Pity: A Constitutional and Historical Analysis of Official Efforts to Drive Homeless Persons from American Cities*, 66 TUL. L. REV. 631, 640 (1992).

<sup>6</sup> Feldman, *supra* note 4, at 34; Simon, *supra* note 5, at 638; Ocobock, *supra* note, 4 at 18-19.

<sup>7</sup> Simon, *supra* note 5, at 639. Other laws used to control the homeless included loitering laws and early versions of Sit-Lie bans. *Id.* at 633; Max Jacobs, *SF's Sit/Lie law: civil sidewalks or disguised discrimination?*, CROSSCURRENTS, KALW NEWS (October 26, 2010), available at:

[http://kalwnews.org/audio/2010/10/26/sfs-sitlie-law-civil-sidewalks-or-disguised-discrimination\\_658889.html](http://kalwnews.org/audio/2010/10/26/sfs-sitlie-law-civil-sidewalks-or-disguised-discrimination_658889.html).

<sup>8</sup> Simon, *supra* note 5, at 642-644. The bases for striking down vagrancy laws included discrimination, cruel and unusual punishment, impermissible restrictions on the right to travel, and impermissible punishment of innocent conduct. *Id.* In *Parker v. Municipal Judge* (1967), the Nevada Supreme Court noted, "It is simply not a crime to be unemployed, without funds, and in a public place. To punish the unfortunate for this circumstance debases society." *Id.* at 643.

<sup>9</sup> Papachristou v. City of Jacksonville, 405 U.S. 156 (1972).

<sup>10</sup> Simon, *supra* note 5, at 645-646; National Coalition for the Homeless, *MENTAL ILLNESS AND HOMELESSNESS* 8 (2006), available at:

[http://www.nationalhomeless.org/publications/facts/Mental\\_Illness.pdf](http://www.nationalhomeless.org/publications/facts/Mental_Illness.pdf).

<sup>11</sup> Don Mitchell, *The Annihilation of Space by Law: The Roots and Implications of Anti-homeless Laws in the United States*, 3 ANTIPODE 303, 305 (1997).

<sup>12</sup> Seattle Municipal Code 15.48.040; Heather Knight, *San Francisco Looks Like Seattle: Did Sidewalk Sitting Ban Help?*, S.F. CHRON., March 29, 2010, available at: <http://www.seattlepi.com/local/article/San-Francisco-looks-to-Seattle-Did-sidewalk-888774.php#page-3>.

<sup>13</sup> Elisabeth Traugott, *Palo Alto's Not Alone Dealing with Sit-Lie Law*, PALO ALTO ONLINE (May 21, 1997), available at: [http://www.paloaltoonline.com/news\\_features/homeless/homeless\\_story2.php](http://www.paloaltoonline.com/news_features/homeless/homeless_story2.php).

<sup>14</sup> *Roulette v. City of Seattle*, 97 F.3d 300, 302 (9th Cir. 1996).

<sup>15</sup> Traugott, *supra* note 13; *Berkeley Community Health Project v. City of Berkeley*, 902 F.Supp. 1084, 1091 (N.D. Cal. 1995) [hereinafter *Community Health I*].

<sup>16</sup> *Roulette*, *supra* note 14, at 305. Generally, when a law is facially challenged the court looks only to the text of the statute. *Community Health I*, *supra* note 15, at 1091-1092.

<sup>17</sup> See *Roulette*, *supra* note 14, at 304, 306; *Berkeley Community Health Project v. City of Berkeley*, 966 F. Supp. 941 (N.D. Cal. 1997) (vacating injunction, dismissing action and providing for Attorneys' Fees). In 1998, the Berkeley City Council passed an ordinance that prohibited lying on commercial sidewalks, which is still in force today. BMC 13.36.015. The ban on lying was extended to additional commercial areas in 2007 under Berkeley's "Public Commons for Everyone Initiative," which also reduced warning and complaint requirements regarding lodging in public, P.C. §647e, and prohibited smoking in commercial zones. BMC 12.07. Although the court in *Community Health I* believed that a challenge to the sit law was likely to prevail on the merits, the court did not believe that the Plaintiff showed a likelihood of prevailing on the merits of the ban on lying. *Community Health I*, *supra* note 13, at 1095.

<sup>18</sup> Santa Cruz Municipal Code § 9.50.012; Santa Barbara Municipal Code § 9.97.010; Modesto Municipal Code § 4-7.1502.1; Santa Monica Municipal Code § 3.12.350; San Bruno Municipal Code § 6.12.060; Palo Alto Municipal Code 9.48.025.

<sup>19</sup> San Francisco Municipal Code § 168 (2010); Jessica Casella Et Al., *IMPLEMENTATION, ENFORCEMENT AND IMPACT: SAN FRANCISCO'S SIT/LIE ORDINANCE ONE YEAR LATER* 10 (2012), available at: <http://wraphome.org/downloads/sitLieCHFReport.pdf>. San Francisco already had a Sit-Lie ban in place in the 1960s. It was initially enforced against hippies and then challenged and repealed in the 1970s after being used to harass gay men in the Castro. Jacobs, *supra* note 7.

<sup>20</sup> Casella, *supra* note 19, at 12.

<sup>21</sup> Frances Dinkelspiel, *Berkeley Sitting Ban Progresses Toward November Ballot*, BERKELEYSIDE (June 13, 2012), available at: <http://www.berkeleyside.com/2012/06/13/sit-lie-ordinance-progresses-toward-november-ballot/>.

<sup>22</sup> Proponents regularly argue that Sit-Lie ordinances have been enacted in more than 60 cities. Our research suggests that roughly one dozen cities impose criminal or civil penalties for sitting in commercial areas during specific times of the day. Dozens of other cities impose penalties for a variety of other activities, some of which are more limited than the restrictions contained in Measure S and some of which are broader (though perhaps enforced more narrowly).

<sup>23</sup> *TAXABLE SALES IN CALIFORNIA*, available at: <http://boe.ca.gov/news/tsalescont.htm> (last visited Oct. 12, 2012).

<sup>24</sup> San Francisco's Sit-Lie ordinance went into effect in March 2011, so we do not have post-enactment data. San Francisco is also a single city and county, which does not allow for comparison between the two jurisdictions.

<sup>25</sup> For example, when calculating the growth of Santa Barbara County, we excluded the retail sales revenues from the City of Santa Barbara for both time periods.

<sup>26</sup> Measure S, Finding G.

<sup>27</sup> In a 2011 non-scientific survey of UC Berkeley students, a majority of respondents agreed or strongly agreed with the statement that they would frequent Telegraph Avenue and Downtown Berkeley more if “there were fewer people sitting on the sidewalk.” The ASSOCIATED STUDENTS OF THE UNIVERSITY OF CALIFORNIA AND GRADUATE ASSEMBLY POLL (October 2011), available at:

[http://www.surveymonkey.com/sr.aspx?sm=3f\\_2f3kxCPrRqbrrJmVHKISjI\\_2bnQwh4fEMhNzKQ0Z\\_2f0WA\\_3d](http://www.surveymonkey.com/sr.aspx?sm=3f_2f3kxCPrRqbrrJmVHKISjI_2bnQwh4fEMhNzKQ0Z_2f0WA_3d).

Majorities of students surveyed also said that they would frequent these areas more if “there were more retail shops I like” and “there were more restaurants I like.” *Id.* From such opinion polling, it is as difficult to infer a causal connection between the presence of homeless people and economic activity as it is between economic activity and the particular mix of services and restaurants in certain districts.

<sup>28</sup> Craig Becker, *Measure S, We Can Do Better With Civil Sidewalks*, BERKELEYSIDE (September 19, 2012), available at: <http://www.berkeleyside.com/2012/09/19/measure-s-we-can-do-better-with-civil-sidewalks/>.

<sup>29</sup> Phil Kamlarz, DECLINE IN TAXABLE RETAIL SALES IN BERKELEY WITH CORRESPONDING DECLINE IN CITY REVENUE FROM THE STATE SALES TAX 9 (October 2010).

<sup>30</sup> We contacted the City of Berkeley’s Office of Economic Development for updated data, but these are the most recent numbers we were able to obtain.

<sup>31</sup> E.g. Rebuttal to Argument in Favor of Measure S; SB 64 (The Associated Students of the University of California 2012), available at: <http://nolanpack.com/sb64/>.

<sup>32</sup> Berkeley Civil Sidewalks, *Frequently Asked Questions*, (Oct. 12, 2012, 5:30 PM), available at: <http://berkeleycivilsidewalks.com/faq/>.

<sup>33</sup> *Id.* at 26.

<sup>34</sup> See Casella, *supra* note 19, appendix C-F.

<sup>35</sup> Measure S, Finding H.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Roulette, *supra* note 14, at 304, 306.

<sup>39</sup> Alan Schlosser, *ACLU Opposes Anti-Sitting Measure: Letter to the Berkeley City Council*, THE BERKELEY DAILY PLANET (July 9, 2012), available at:

<http://www.berkeleydailyplanet.com/issue/2012-07-06/article/39961?headline=ACLU-Opposes-Anti-Sitting-Measure-Letter-to-the-Berkeley-City-Council--By-Alan-Schlosser-Legal-Director>.

<sup>40</sup> See note 17 and accompanying text.

<sup>41</sup> More information on this lawsuit can be found here: [https://www.aclunc.org/news/press\\_releases/berkeley\\_drops\\_anti-solicitation\\_anti-sitting\\_laws\\_council's\\_vote\\_will\\_settle\\_aclu\\_class\\_action\\_lawsuit.shtml](https://www.aclunc.org/news/press_releases/berkeley_drops_anti-solicitation_anti-sitting_laws_council's_vote_will_settle_aclu_class_action_lawsuit.shtml).

<sup>42</sup> *Id.*

<sup>43</sup> Argument in Favor of Measure S.

<sup>44</sup> *Id.*

<sup>45</sup> The National Law Center on Homelessness and Poverty. CRIMINALIZING CRISIS: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES 6 (November 2011), available at:

<http://www.nlchp.org/content/pubs/11.14.11%20Criminalization%20Report%20&%20Advocacy%20Manual,%20FINAL1.pdf>.

<sup>46</sup> United States Interagency Council on Homelessness, OPENING DOORS: FEDERAL STRATEGIC PLAN TO PREVENT AND END HOMELESSNESS 49 (2010), available at: [http://www.ich.gov/PDF/OpeningDoors\\_2010\\_FSPPPreventEndHomeless.pdf](http://www.ich.gov/PDF/OpeningDoors_2010_FSPPPreventEndHomeless.pdf). The USICH is an independent agency within the executive branch comprised of leaders from the Veterans Association, the Social Security Administration, the Department of Housing and Urban Development, and other federal agencies.

<sup>47</sup> *Id.*

<sup>48</sup> Casella, *supra* note 19 at 14.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 24. At Park Station, the district at the epicenter of support for Sit-Lie, over 90% of citations were given to nineteen repeat offenders. More than 50% of those citations went to only four individuals. *Id.* at 22.

<sup>51</sup> *Id.* at 24.

<sup>52</sup> Measure S, Finding H.

<sup>53</sup> Argument in Favor of Measure S.

<sup>54</sup> Christine Daniel, ASSESSMENTS: DOWNTOWN BERKELEY PROPERTY AND BUSINESS IMPROVEMENT DISTRICT 2 (July 17, 2012), available at:

[http://www.ci.berkeley.ca.us/uploadedFiles/Clerk/Level\\_3\\_-\\_City\\_Council/2012/07Jul/2012-07-17%20Item%2029%20Assessments%20Downtown%20Berkeley.pdf](http://www.ci.berkeley.ca.us/uploadedFiles/Clerk/Level_3_-_City_Council/2012/07Jul/2012-07-17%20Item%2029%20Assessments%20Downtown%20Berkeley.pdf).

<sup>55</sup> Rebuttal to Argument Against Measure S.

<sup>56</sup> Argument in Favor of Measure S.

<sup>57</sup> Rebuttal to Argument Against Measure S.

<sup>58</sup> Section 13.36.025 - Prohibiting Sitting on Commercial Sidewalks at Certain Times.

<sup>59</sup> Phil Kamlarz, STATUS REPORT ON PUBLIC COMMONS FOR EVERYONE INITIATIVE 8 (May 17, 2011), available at: <http://www.ci.berkeley.ca.us/uploadedFiles/2011-05-17%20Item%2029%20Status%20Report%20on%20Public%20Commons%20for%20Everyone.pdf>.

<sup>60</sup> Argument in Favor of Measure S.

<sup>61</sup> *Id.*

<sup>62</sup> Jane Micallef. Director of Berkeley City Housing, Health and Community Services. Interview conducted September 4, 2012.

<sup>63</sup> Mary Kay Cluneis-Ross, City of Berkeley Public Information Officer. NUMBER OF CHRONICALLY HOMELESS IN BERKELEY DECREASES BY HALF: CITY-COMMUNITY AGENCY PARTNERSHIPS HAVE LED TO COORDINATED SERVICES AND MORE SUPPORTIVE HOUSING (July 8, 2009), available at:

<http://www.ci.berkeley.ca.us/PressReleaseMain.aspx?id=41902>.

<sup>64</sup> City of Berkeley, ANNUAL ACTION PLAN (DRAFT) 31 (March 13, 2012), available at: [http://www.ci.berkeley.ca.us/uploadedFiles/Housing/Level\\_3\\_-\\_General/AAP2\\_PY2012\\_March13PublicCommentDraftwithAttachments.pdf](http://www.ci.berkeley.ca.us/uploadedFiles/Housing/Level_3_-_General/AAP2_PY2012_March13PublicCommentDraftwithAttachments.pdf).

<sup>65</sup> *Id.*  
<sup>66</sup> National Law Center on Homelessness and Poverty, *supra* note 45, at 33.

<sup>67</sup> Measure S, Section 2. F.

<sup>68</sup> United States Conference of Mayors, HUNGER AND HOMELESSNESS SURVEY 23 (December 2011), available at: <http://usmayors.org/pressreleases/uploads/2011-hhreport.pdf> (finding that 26% of homeless adults are severely mentally ill and 16% are physically disabled).

<sup>69</sup> Cal. Penal Code §§ 853.6 (i) (5)-(9) (West Supp. 2010). Police may lawfully arrest someone charged with a misdemeanor for a variety of reasons, including a person's inability to provide satisfactory proof of identification, a reasonable likelihood that the prosecution of the offense would be jeopardized by immediate release, or a reasonable likelihood that the offense would continue.

<sup>70</sup> National Law Center on Homelessness and Poverty, *supra* note 45, at 33.

<sup>71</sup> *Id.* at 31.

<sup>72</sup> Society of Human Resources Management, BACKGROUND CHECKING: CONDUCTING CRIMINAL BACKGROUND CHECKS 3 (2010), available at: <http://www.shrm.org/Research/SurveyFindings/Articles/Pages/BackgroundCheckCriminalChecks.aspx> (finding that over ninety percent of respondents conducted a criminal background check on some or all job applicants).

<sup>73</sup> Measure S, Finding D.

<sup>74</sup> Phil Kamlarz, *supra* note 29, at 2.

<sup>75</sup> *Id.* at 11.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* at 11-13.

<sup>78</sup> The Lewin Group, COSTS OF SERVING HOMELESS INDIVIDUALS IN NINE CITIES: CHARTBOOK (November 19, 2004), available at <http://www.lewin.com/publications/publication/270/> (finding that jails, prisons, and mental institutions are much more expensive solutions to homelessness than housing).

<sup>79</sup> United States Conference of Mayors, *supra* note 68 at 3.

<sup>80</sup> United States Interagency Council on Homelessness, SEARCHING OUT SOLUTIONS: CONSTRUCTIVE ALTERNATIVES TO CRIMINALIZATION 12 (2010), available at: [http://www.usich.gov/resources/uploads/asset\\_library/RPT\\_SoS\\_March2012.pdf](http://www.usich.gov/resources/uploads/asset_library/RPT_SoS_March2012.pdf).

<sup>81</sup> Halil Toros, et al., PROJECT 50: THE COST EFFECTIVENESS OF THE PERMANENT SUPPORTIVE HOUSING MODEL IN THE SKID ROW SECTION OF LOS ANGELES COUNTY 5 (June 2012), available at: [http://zev.lacounty.gov/wp-](http://zev.lacounty.gov/wp-content/uploads/Project-50-Cost-Effectiveness-report-FINAL-6-6-12.pdf)

[content/uploads/Project-50-Cost-Effectiveness-report-FINAL-6-6-12.pdf](http://zev.lacounty.gov/wp-content/uploads/Project-50-Cost-Effectiveness-report-FINAL-6-6-12.pdf).

<sup>82</sup> Common Ground, Section on Who We Serve, *Chronically Homeless*, available at: <http://www.commonground.org/who-we-serve/chronically-homeless> (last visited October 13, 2012).

<sup>83</sup> Jennifer Perlman, et al., DENVER HOUSING FIRST COLLABORATIVE, COST BENEFIT ANALYSIS AND PROGRAM OUTCOMES REPORT 2 (December 11, 2006), available at: <http://mdhi.org/download/files/Final%20DHFC%20Cost%20Study.pdf>.

<sup>84</sup> Halil Toros, et al., *supra* note 81, at 22-24.

<sup>85</sup> *Id.* at 23.

<sup>86</sup> *Id.*

<sup>87</sup> Phil Kamlarz, *supra* note 59, at 4. Of the seventeen individuals originally enrolled in Square One, fourteen remain in the housing provided by the program, one passed away due to illness, one has obtained federally subsidized housing, and one has returned to jail for violating parole but is expected to rejoin Square One upon release. *Id.* at 4.

<sup>88</sup> *Id.* at 5.

<sup>89</sup> *Id.* at 4.

<sup>90</sup> *Id.*

<sup>91</sup> United States Interagency Council on Homelessness, *supra* note 80 and accompanying text.

<sup>92</sup> *Id.* at 3.