



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

**25**

CONSENT CALENDAR  
December 1, 2020

To: Honorable Members of the City Council  
From: Vice Mayor Sophie Hahn (Author), Councilmember Wengraf (Co-Sponsor)  
Subject: Personal Liability Protection for Small Businesses

RECOMMENDATION

1. Direct the City Manager and City Attorney to draft and submit to the City Council for consideration an emergency ordinance to prohibit the enforcement of personal liability provisions in commercial leases and commercial rental agreements in the City of Berkeley for lessees/renters who have experienced financial impacts related to the Covid-19 pandemic.
2. Direct the City Manager to conduct outreach to all commercial tenants regarding any protections enacted by the City Council, with a particular focus on businesses that were required to stop serving food or beverages (e.g., restaurants, bars); close to the public (e.g., hair salons, barbershops, tattoo parlors); cease operations (e.g., gyms, fitness centers); or sharply limit operations (e.g., schools, retail shops, nurseries) due to the COVID-19 crisis.

BACKGROUND

The outbreak of the COVID-19 pandemic and subsequent orders to stay at home and practice social distancing have had a profound impact on Berkeley. Although Berkelyans have exercised extraordinary patience and cooperation as the City has worked to contain the coronavirus and reopen our challenged economy, the pandemic has been crushing for vulnerable families and individuals, and for small businesses, the arts sector, schools, not-for-profits, and other local organizations.

This spring, many Berkeley businesses and organizations saw a 25-75% drop in gross receipts due to the shutdown.<sup>1</sup> Unable to absorb such a steep loss of revenue, many were forced to reduce services, lay off workers, or even shutter their establishments. Some owners and organizations face the possibility that the enterprises into which they have poured their lives may never return.

---

<sup>1</sup> March 13, 2020, Letter from the Berkeley Chamber, Downtown Berkeley Association, Telegraph Business Improvement District and Visit Berkeley

Small, local businesses, as well as nonprofit and arts organizations, are key to Berkeley's economic health -- not only through economic activity, but also because they give life to our community, impacting our perception of economic well being.

This spring, the Berkeley City Council acted quickly to meet the crisis, creating a tax-exempt relief fund to provide gap resources to small businesses, arts organizations, and renters significantly impacted by the COVID-19 emergency. Through this program, grants of up to \$10,000 were made available. The City's Economic Development staff worked quickly to support businesses and organizations in many other ways, including to ensure access to resources made available by the state and federal governments.

On April 14, 2020, the City Council approved the creation of a special structured financial recovery loan fund -- the Save Our Small (SOS) Business Loan Fund -- to provide a supplemental source of capital for small businesses impacted by the COVID-19 emergency. Under the SOS Business Loan Fund, the City would act as a sponsor of the fund, working with one or more financial institutions to pool capital from private investors and the City to lower the risk of the loans and support low interest rates.

The State of California has announced a statewide loan fund based on the SOS model Berkeley passed, making these kinds of loans available to small businesses across the state.

Despite these and other bold actions by the City of Berkeley, our small businesses and organizations including arts, not-for-profits and schools, continue to face extraordinary hardship. In addition to risks to their businesses and organizations, many owners and operators in Berkeley face significant personal financial risk as well. A small business owner in Downtown Berkeley, and local resident of 20 years, recently wrote to my office and lays out the situation in very stark terms:

"I own a [business] in Downtown Berkeley which has been shut since March 16<sup>th</sup> due to Covid 19 lockdown orders. While I am still hopeful that we might reopen at some point, we are very behind on rent, and the possibility of closing permanently is very real. My business partner and I, like most small tenants, were required to personally guaranty our commercial lease in order to do business with our landlord. This means that, in the event of a default, after evicting us the landlord can come after our personal assets to recover unpaid rent; we could lose what little we have left even after losing our entire business: our homes, our kids' savings, everything is at risk. And all due to no fault of our own."

Unfortunately, personal liability guarantees are all too common in small businesses leases. Such provisions mean, with respect to a commercial lease or other rental agreement, that a small business owner becomes wholly or partially personally liable for an obligation arising under the lease or agreement in the case of a default or other event.

In cases where the Covid shutdown has deprived a small business owner of sufficient revenue to keep up with rent payments, the owner might be able to access personal assets including the business owner's home and savings.

This measure will help ensure that small business owners, and arts, not-for-profit, schools and other organizations in Berkeley that are impacted by the Covid-19 health emergency do not face the potential for personal financial ruin, including loss of their homes, as a result of this pandemic.

These enterprises -- restaurants, salons, arts organizations, schools, and others -- have been damaged through no fault of their own. Protecting the owners and operators of Berkeley businesses and organizations -- and their families -- is not only fair, it is also essential to ensuring that Berkeley is able to recover from the COVID-19 emergency and economic downturn.

#### FISCAL IMPACTS

Staff time and expenses for outreach and communications to impacted businesses.

#### CONTACT INFORMATION

Vice Mayor Sophie Hahn, Council District 5, 510-682-5905 (cell)

#### ATTACHMENTS

1. [NYC Council Int. No. 1932-A](#)

