



Office of the City Manager

ACTION CALENDAR

April 28, 2015

(Continued from March 24, 2015)

To: Honorable Mayor and Members of the City Council

From:  Christine Daniel, City Manager

Submitted by: Eric Angstadt, Director, Planning and Development Department

Subject: Amending BMC Chapter 13.42 to Adopt Additional Operating Standards for Mini-Dorms and Group Living Accommodations

RECOMMENDATION

Adopt first reading of an Ordinance amending the title of Chapter 13.42 and Sections 13.42.010, 13.42.020, 13.42.030, 13.42.035, and 13.42.040 of the Berkeley Municipal Code (“BMC”) to adopt additional operating standards for Mini-dorms and to extend these standards to all group living accommodations (“GLAs”), in specified districts.

SUMMARY

The proposed ordinance would amend portions of BMC Chapter 13.42 to impose additional operating standards for Mini-dorms and extend those operating standards to GLAs. These additional conditions are intended to help reduce any potential detrimental impacts from the operation of GLAs on the neighborhoods in which they are located, as well as to protect residents and guests of the GLAs. The standard conditions include the designation of a resident manager with accompanying duties, notices to surrounding neighbors, limitations on large events, and nuisance designation based upon sexual assaults occurring at the Mini-dorm or GLA. The proposed amendments to the ordinance are attached as Attachment 1.

Its major provisions are as follows, and apply to both GLAs and Mini-dorms unless otherwise noted.

The Resident Manager

The owner shall designate a resident manager who shall:

- Reside on the property;
- ensure that all refuse and materials to be recycled are properly managed and collected, and that all refuse and recycling containers are returned to their appropriate locations after collection;
- establish a written regular maintenance schedule that details the tasks required to keep the property in compliance with Chapters 12.32 and 12.34, free and clear from accumulations of solid waste, overgrown vegetation, graffiti, and rodent harborage;

- respond to all complaints within 24 hours;
- keep a log of all complaints and a copy of the response to the complaint and the resolution which shall be retained for no less than 24 months and shall be made available to City staff on request; and
- ensure that no violations of BMC Chapters 13.42, 13.48 or 23B.64 occur at the property.

Notices to Neighbors

The owner or property manager shall provide notice to all residents within 300 feet of the property of the existence and location of the Mini-dorm or GLA, and the contact information for the resident manager(s), which shall include at least a telephone number or numbers at which the resident manager(s) can be reached at any time. Such notice shall be provided at least annually during the month of January, and whenever the identity or contact information for the resident manager changes.

Large Events and Gatherings

Events that draw 50 or more individuals are already subject to the regulations governing indoor entertainment events. (BMC Section 13.46.020.C.) The proposed ordinance expands these regulations to events involving 10 or more non-residents at any property and places additional conditions on Mini-dorms and GLAs that wish to host larger gatherings.

- For any event or gathering involving more 50 or more individuals, the resident manager shall retain an adequate number of qualified security personnel. The adequacy and qualifications of security personnel shall be subject to prior approval by the City.
- Access to the roof shall be prohibited.
- Any gathering of 10 or more non-residents shall end by 10 pm Sunday through Thursday, and 12 am on Fridays and Saturdays and any day preceding a national holiday.
- Alcoholic beverages are prohibited in rooms occupied by a resident under the age of 21 years.
- Alcoholic beverages are prohibited in common areas where they are accessible to persons under the age of 21.
- Kegs of alcoholic beverages and alcoholic beverage consumption games are prohibited.
- Alcoholic beverages may not be served to any person under the age of 21 years.
- The resident manager must attend Alcohol Beverage Control training on alcohol service.
- No gathering may involve more than 100 persons at any time, including those on the public right of way outside it.
- For any gathering involving 50 or more persons, the resident manager shall notify the residents of all adjacent properties no less than 48 hours prior to the gathering

and provide a contact number at which he/she can be reached during the course of the gathering.

Felony Assaults Deemed to be a Public Nuisance

If a resident or any guest of a resident of the GLA is either convicted of or enters a plea of no contest to violation of Penal Code Section 220, 243.4, 244, 245, 261, 261.5, 261.6, 261.7, 261.9, 273.5, 286, 288(a), 288a, 288.5, 289, or any other felony assault or felony sexual assault and the crime was committed at a Mini-dorm or GLA, or the Center for Student Conduct of the University of California at Berkeley determines that a resident or guest of a resident violated the Student Code of Conduct by committing a sexual assault at the Mini-dorm or GLA, then the Mini-dorm or GLA shall be deemed a nuisance.

FISCAL IMPACTS OF RECOMMENDATION

The City may realize reduced emergency responder costs due to the increased public safety and will free up City resources to respond to other emergencies. There will be some increase in demand on enforcement staff and associated resources.

CURRENT SITUATION AND ITS EFFECTS

The heavy demand for student housing in Berkeley, especially in low density areas near the University of California campus, has resulted in many existing single family and multifamily residential buildings being significantly modified by the addition of numerous bedrooms.

Because prior to enactment of BMC Section 23D.32.050 many such modifications were allowed as a matter of right without triggering discretionary review, there has been a proliferation of buildings that are occupied by a far larger number of persons than was ever contemplated by the General Plan or Zoning Ordinance in those districts. In addition, there are already many pre-existing GLAs, including but not limited to fraternities and sororities, in these affected areas.

Because of the number of residents in such buildings and, in many cases, the lack of on-site managers, GLAs tend to impair the quiet enjoyment of the surrounding neighborhoods by creating trash and litter, creating excess parking demand, and being the location of numerous loud and unruly parties

It is often the case that the loud and unruly parties involve the consumption of large amounts of alcoholic beverages, which are often consumed by individuals under the age of 21 who either reside in such buildings or attend such parties. Consumption of alcohol by minors is harmful to the minors and consumption of large amounts of alcohol by individuals of all ages at these gatherings contributes to the nuisance conditions affecting the surrounding neighborhood.

Police officers and Fire Department personnel frequently have been required to respond to calls for assistance in order to disperse uncooperative participants, and provide medical assistance and transportation to individuals suffering from alcohol intoxication causing a drain of manpower and resources and, in some cases, leaving other areas of the city with inadequate police and fire protection.

In the last five months, two individuals have suffered alcohol-related death at UC Berkeley fraternities. It is reported that 95% of all injuries and deaths at Fraternities nationwide are alcohol- or drug-related. In addition, UC Berkeley's 2014 Annual Security Report lists 33 forcible sexual offenses on campus or in the adjacent area for the year 2013, and at least nine sexual assaults were reported in the campus area in the first two months of the 2014-2015 school year. These include five individuals who allege they were drugged and sexually assaulted at one fraternity in October 2014.

Due to recent pressure by the University and the Department of Education to abate these conditions, efforts are underway to limit or eliminate the presence of alcohol at Greek events. As of today, all sororities and several fraternities at UC Berkeley have an alcohol-free premises policy, including Fiji, ATO and SAE, three of the largest on campus. Each of these fraternities is having success with this model, and others are considering adopting the same policies for the protection of their members and guests.

BACKGROUND

In October 2011, the Berkeley City Council created the Southside Mixed Use Residential Districts (R-SMU) in Ordinance No. 7,209-N.S, which is codified in. BMC Chapter 23D.52. Section 23D.52.030 authorizes the creation of GLAs within those districts after an application and public hearing.

In February 2012, the City Council added Chapter 13.42, "Operating Standards for Mini-dorms." The Council intended that the ordinance would temper the neighborhood impacts of Mini-dorms by requiring that they have resident managers.

In June 2014, Chapter 13.42 was amended to expand the applicability of the operating conditions and increase the number of remedies available to the City. The Council added to the findings information regarding the acute impact on the South Campus neighborhood. It also amended the definition of a Mini-dorm to include residences within R-1 and R-3 districts and those that had six or more residents, not just five or more bedrooms. The ordinance also added Section 13.42.035, declaring "unruly gatherings" of ten or more people at Mini-dorms to be public nuisances.

The adoption of operating standards for Mini-dorms, intended to mitigate the nuisance of unruly gatherings in the South Campus neighborhood, did not extend to GLAs such as fraternities and sororities within R-SMU districts. The proposed ordinance would extend the operating conditions to GLAs.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

The proposed ordinance would improve the City's ability to protect neighborhoods from the disturbances caused by ongoing large gatherings and unruly parties at Mini-dorms and GLAs. The ordinance also protects the public safety by minimizing opportunities for alcohol-related deaths or sexual assaults.

ALTERNATIVE ACTIONS CONSIDERED

Staff considered a number of combinations of different operating standards, and based on meetings with a number of fraternities and sororities determined that an ordinance applying these conditions to all GLAs uniformly would be the fairest and most effective.

CONTACT PERSON

Eric Angstadt, Director, Planning and Development, 981-7400
Zach Cowan, City Attorney, 981-6998

Attachments:

- 1: Ordinance

ORDINANCE NO. #,###

AMENDING THE TITLE AND SECTIONS 13.42.010, 13.42.020, 13.42.030, 13.42.035 AND 13.42.040 OF THE BERKELEY MUNICIPAL CODE ADOPTING OPERATING STANDARDS FOR MINI-DORMS AND GROUP LIVING ACCOMMODATIONS

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

Section 1. That the title of Chapter 13.42 of the Berkeley Municipal Code is amended to read as follows:

OPERATING STANDARDS FOR MINI-DORMS AND GROUP LIVING ACCOMMODATIONS

Section 2. That Section 13.42.010 of the Berkeley Municipal Code is amended to read as follows:

13.42.010 Findings and purpose.

A. The heavy demand for student housing in Berkeley, especially in low density areas near the University of California campus, has resulted in numerous existing single family and multifamily residential buildings being significantly modified by the addition of numerous bedrooms.

B. Because prior to enactment of BMC Section 23D.32.050 such modifications have been previously allowed as a matter of right without triggering discretionary review prior to enactment of BMC Section 23D.32.050, there has been a proliferation of buildings that are occupied by a far larger number of persons than was ever contemplated by the General Plan or Zoning Ordinance in those districts. In addition, there are already numerous pre-existing Group Living Accommodations, including but not limited to fraternities and sororities, in these affected areas.

C. Because of the number of residents in such buildings and, in many cases, the lack of on-site managers, such buildings tend to impair the quiet enjoyment of the surrounding neighborhoods by creating trash and litter, creating excess parking demand, and being the location of numerous loud and unruly parties.

D. It is often the case that the loud and unruly parties involve the consumption of large amounts of alcoholic beverages, which often are consumed by individuals under the age of 21 who either reside in such buildings or attend such parties. Consumption of alcohol by minors is harmful to the minors and consumption of large amounts of alcohol by individuals of all ages at these gatherings contributes to the nuisance conditions affecting the surrounding neighborhood.

E. Police officers frequently have been required to make calls to a location of a party, in order to disperse uncooperative participants, causing a drain of manpower and resources and, in some cases, leaving other areas of the city with inadequate police protection.

F. In areas most affected by the proliferation of such buildings and the resulting density and intensity of use, disturbances that would be considered minor and tolerable in less

intensely inhabited areas become much more severe and intolerable because they are no longer occasional, but have become chronic.

G. The purpose of this Chapter is to remedy these and other associated problems by adopting and providing for the enforcement of operating standards for such buildings, and by defining these disturbances as a public nuisance in areas that are most affected by them. (Ord. 7337-NS § 1, 2014; Ord. 7226-NS § 1 (part), 2012)

Section 3. That Section 13.42.020 of the Berkeley Municipal Code is amended to read as follows:

13.42.020 Definitions.

The definitions set forth in this Section shall govern the application and interpretation of this Chapter.

A. "Mini-dorm" means any building in an R-1, R-1A, R-2, R-2A, ~~or R-3,~~ or R-SMU Zoning District that contains a dwelling unit that is occupied by six or more ~~unrelated~~ persons over the age of eighteen years. Permitted and Legal non-conforming Sororities, Fraternities, and Student Co-ops shall not be considered Mini-Dorms, as long as they have a resident manager, but are Group Living Accommodations whether or not they have a resident manager.

B. "Bedroom" means any Habitable Space in a Dwelling Unit or habitable Accessory Structure other than a kitchen or living room that is intended for or capable of being used for sleeping with a door that closes the room off from other common space such as living and kitchen areas that is at least 70 square feet in area, exclusive of closets and other appurtenant space, and meets Building Code standards for egress, light and ventilation. A room identified as a den, library, study, loft, dining room, or other extra room that satisfies this definition will be considered a bedroom for the purposes of applying this requirement.

C. "Accessory Structure," "Gross Floor Area," "Dwelling Unit" and "Group Living Accommodation" have the same meanings as set forth in Chapter 23F.04.

D. "Alcoholic Beverage" shall have the same meaning as Vehicle Code section 109 or any successor section.

Section 4. That Section 13.42.030 of the Berkeley Municipal Code is amended to read as follows:

13.42.030 Operating standards.

~~Mini-dorms shall be operated and managed in compliance with the standards set forth in this Section.~~

A. The owner or property manager shall designate a resident manager for each Mini-dorm or GLA, who shall reside in the Mini-dorm or GLA ~~and be responsible for:~~

1. The resident manager shall ensure ing that all refuse and materials to be recycled are properly managed and collected, and that all refuse and recycling

containers are returned to their appropriate locations after collection, and shall establish a written regular maintenance schedule that details the tasks required to keep the property in compliance with Chapters 12.32 and 12.34, free and clear from accumulations of solid waste, overgrown vegetation, graffiti, and rodent harborage. A copy of the maintenance schedule shall be made available to City staff on request.;

2. The resident manager shall responding to all complaints regarding the Mini-dorm or GLA within 24 hours; ~~and~~. The resident manager shall keep a log of all complaints, the response to the complaint and the resolution of the complaint, which shall be retained for no less than 24 months and shall be made available to City staff on request.

3. The resident manager shall ensure that no violations of Chapter 13.48 or Chapter 23B.64 occur. ~~at the Mini-dorm.~~

B. The owner or property manager shall provide notice to all residents within 300 feet ~~of a Mini-dorm~~ of the existence and location of the Mini-dorm or GLA, and the contact information for the resident manager(s), which shall include at least a telephone number or numbers at which the resident manager(s) can be reached at any time. Such notice shall be provided at least annually during the month of January, and whenever the identity or contact information for the resident manager changes.

Section 5. That Section 13.42.035 of the Berkeley Municipal Code is amended to read as follows:

13.42.035 Large events and Unruly gatherings.

A. ~~This Section is applicable only to Mini-dorms as defined herein.~~
Events involving 10 or more non-residents at any Mini-dorm or GLA shall comply with the requirements of Sections 13.46.040 and 13.46.050. For any event or gathering involving more 50 or more individuals, the resident manager shall retain an adequate number of qualified security personnel. The adequacy and qualifications of security personnel shall be subject to prior approval by the City.

B. Any event or gathering involving of ten10 or more persons ~~at~~ any Mini-dorm or GLA in a manner ~~that which~~ constitutes a substantial disturbance of the quiet enjoyment of private or public property in a significant segment of a neighborhood, such as excessive noise or traffic, obstruction of public streets by crowds or vehicles, public intoxication, the service to or consumption of alcohol by minors, fights, disturbances of the peace, litter or other similar conditions, constitutes a public nuisance.

C. Gatherings at Mini-dorms and GLAs shall comply with the following additional requirements.

1. Access to the roof shall be prohibited.

2. Any gathering of 10 or more non-residents s shall end by 10 pm Sunday through Thursday, and 12 am on Fridays and Saturdays and any day preceding a national holiday.

3. Alcoholic beverages are prohibited in rooms occupied by a residents under the age of 21 years.

4. Alcoholic beverages are prohibited in common areas of the Mini-dorm or GLA where they are accessible to persons under the age of 21.

5. Kegs of alcoholic beverages and alcoholic beverage consumption games are prohibited.

6. Alcoholic beverages may not be served to any person under the age of 21 years.

7. The resident manager must attend Department of Alcohol Beverage Control training on alcohol service.

8. No gathering may involve more than 100 persons at any time, including at the Mini-dorm or GLA and on the public right of way outside it.

9. For any gathering involving 50 or more persons, the resident manager shall notify the residents of all adjacent properties no less than 48 hours prior to the gathering and provide a contact number at which he/she can be reached during the entire course of the gathering.

GD. If a resident or any guest of a resident of the GLA is either convicted of or enters a plea of no contest to violation of Penal Code Section 220, 243.4, 244, 245, 261, 261.5, 261.6, 261.7, 261.9, 273.5, 286, 288(a), 288a, 288.5, 289, or any other felony assault or felony sexual assault and the crime was committed at a GLA, or the Center for Student Conduct of the University of California at Berkeley determines that a resident or guest of a resident violated the Student Code of Conduct by committing a sexual assault at the GLA, then the GLA shall be deemed a nuisance.

E. Notwithstanding any provision of Chapter 13.48 to the contrary, a public nuisance as defined in this Section shall be subject to the remedies set forth in Section 13.42.040.

Section 6. That Section 13.42.040 of the Berkeley Municipal Code is amended to read as follows:

13.42.040 Remedies.

A. This Chapter may be enforced as set forth in Chapters 1.20 and 1.28.

B. Violation of any provision of this Chapter is hereby declared to be a public nuisance subject to abatement under Chapters 1.24, 1.26 and 23B.64.

C. In any enforcement action, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs; provided that, pursuant to Government Code Section 38773.5, attorneys' fees shall only be available in an action or proceeding in which the City has elected, at the commencement of such action or proceeding, to seek recovery of its own attorneys' fees. In no action or proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding.

D. In cases where the owner of a Mini-dorm or GLA has been unwilling or unable to control the use of that Mini-dorm or GLA so as to prevent repeated violations of this Chapter, the City may require removal of bedrooms from that Mini-dorm or GLA or

require changes in the use of rooms used as bedrooms to their original non-bedroom uses under Chapter 23B.64.

Section 7. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.