



Office of the City Manager

ACTION CALENDAR  
July 31, 2018

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Farimah F. Brown, City Attorney  
Subject: Urgency Ordinance to Authorize the City Manager to Issue Rules for Street Events without Permits

RECOMMENDATION

Adopt an Urgency Ordinance adding a new Chapter 13.45 to the Berkeley Municipal Code Title 13 (Public Peace, Morals and Welfare) to authorize the City Manager to issue rules for unpermitted street events.

CURRENT SITUATION AND ITS EFFECTS

With increasing regularity, persons and groups are planning sizeable demonstrations and events in the City without first obtaining permits required by the City's regulations found in the Municipal Code Chapter 13.44. Significantly, in the recent past, some groups and individuals attending such events have brought with them items that can be used as weapons to commit unlawful or violent acts, posing threats to life, safety, general welfare, and property. Some recent unpermitted events in 2017 have turned violent, causing serious injuries to persons and destruction of private and public property.

Some unpermitted events in City parks have spilled over into City streets where the City's regulations promulgated for parks may not apply. Although the City currently has regulations that require a permit for events proposed for City streets and sidewalks and the City Manager is empowered to impose conditions and restrictions on granting permits for these locations, staff has come to realize that our current regulations do not address how to deal with spillover effect on streets and sidewalks where there is no permit for the event. To remedy this, staff is proposing some additions to the City's Municipal Code to authorize the City Manager to issue rules for unpermitted street events.

It is imperative that an urgency ordinance be adopted and become effective immediately for preservation of public health and safety and preservation of property. Accordingly, staff is recommending that Chapter 13.45 of the Berkeley Municipal Code be added to allow the City Manager or his or her designee to issue regulations that are deemed necessary to preserve public health, welfare, safety, and property on City streets and

sidewalks during events planned or proposed to be held in the City and for which no permit has been obtained by Chapter 13.44 of the Berkeley Municipal Code.

FISCAL IMPACTS OF RECOMMENDATION

There is no immediate fiscal impact from the adoption of the proposed Ordinance, however, there may be a cost related to the implementation of the Ordinance for specific events. Such costs are not identifiable at this time.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

Staff believes that immediate adoption of the proposed Urgency Ordinance is needed for the immediate preservation of the public peace, health, and safety in the City of Berkeley.

CONTACT PERSON

Lynne Bourgault, Deputy City Attorney, (510) 981-6998

Attachments:

1. Urgency Ordinance

ORDINANCE NO. -N.S.

URGENCY ORDINANCE ADDING A NEW CHAPTER 13.45 TO THE BERKELEY MUNICIPAL CODE TITLE 13 (PUBLIC PEACE, MORALS AND WELFARE) TO AUTHORIZE THE CITY MANAGER TO ISSUE RULES FOR UNPERMITTED STREET EVENTS

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

Section 1. Findings.

The City Council finds that:

A. With increasing regularity, persons and groups are planning sizeable demonstrations and events in the City without complying with the permit requirements of Chapter 13.44.

B. Of late, groups and individuals attending such events in the City have brought with them weapons, and/or other items that can be used as weapons, and implements of riot, to commit unlawful and/or violent acts during an event, posing serious threats to life, safety and property. Some recent unpermitted events have turned violent, causing serious injuries to persons and significant destruction of private and public property.

C. Recent unpermitted events have required significant dedication of public funds and resources, including but not limited to public safety and public works personnel and equipment.

D. On occasion, events proposed or planned for City parks have spilled over into City streets and sidewalks where rules promulgated for parks may not apply. On occasion, such events have migrated via streets and sidewalks to various locations within the City making it hard to control the crowds and maximize public safety.

E. Currently, Chapter 13.44 requires a permit for events proposed for the City's streets and sidewalks, and allows the City Manager to impose conditions and restrictions on the granting of such a permit in order to protect public health and safety, and property. However, current law does not allow such conditions and restrictions to be imposed for events on streets and sidewalks in the absence of a permit, and such conditions and restrictions often need to be tailored to the particular exigencies and risks posed by a proposed event.

F. Because the City has been experiencing regular and repeated occurrences of unpermitted events that have turned violent and unlawful, and migrated into City streets and sidewalks, it is imperative that an urgency ordinance be adopted and become effective as soon as possible for the immediate preservation of public health and safety and preservation of property.

Section 2. That Chapter 13.45 of the Berkeley Municipal Code is added to read as follows:

**13.45 STREETS AND SIDEWALKS –  
USE RESTRICTIONS FOR UNPERMITTED EVENTS**

**Sections:**

- 13.45.010 Definitions**
- 13.45.020 City Manager Authorization**
- 13.45.030 Warning required in certain cases**
- 13.45.040 Applicability – Exceptions**
- 13.45.100 Violation – Penalty**
- 13.45.110 Sunset – Expiration of Ordinance**

**13.45.010 Definitions.**

- A. “Streets” means those streets defined in the circulation element of the Berkeley General Plan as local streets.
- B. “Sidewalk” has the same meaning as stated in Berkeley Municipal Code Section 1.04.010.
- C. “Street event” includes any march, demonstration, assembly, parade, festival, or street fair expected to draw 100 people or more.
- D. “City Manager” shall mean the City Manager of the City of Berkeley and any designee of the City Manager, except as context dictates otherwise.

**13.45.020 City Manager Authorization.**

The City Manager or his or her designee is authorized to issue such narrowly tailored temporary regulations in a defined area of the City and consistent with the First Amendment to the United States Constitution and take such other narrowly tailored actions as are necessary to preserve public health, public safety and property on City streets and sidewalks during street events planned or proposed to be held in the City and for which no permit has been obtained pursuant to Chapter 13.44 of this Title, limited to establishing perimeters or separations, and prohibiting certain items that have been known to be used as weapons or are hazardous or restricting them to certain times and/or locations. Failure to obey any directive issued by the City Manager or his or her designee pursuant to this section shall be a violation of this chapter.

**13.45.030 Warning required in certain cases.**

When possible, a warning shall be issued before enforcement of the regulations authorized by this chapter, except that no warning shall be required in exigent circumstances. A warning will be sufficient if it is provided either verbally, by posted signage, or by amplified announcement.

**13.45.040 Applicability – Exceptions.**

Authorized officers, employees, agents or representatives of the City shall be excepted from the provisions of any regulations promulgated by the City Manager

pursuant to this chapter when such officer, employee, agent or representative is on the official business of the City.

**13.45.100 Violation – Penalty.**

A violation of this Chapter is a misdemeanor punishable as set forth in Chapter 1.20 of this code, but may be charged, in the discretion of the prosecutor, as an infraction.

**13.45.110 Sunset – Expiration of Ordinance**

This ordinance shall expire on September 30, 2018 unless extended by the City Council.

**Section 3. Vote Required, Immediately Effective**

Based on the findings and evidence in Section 1 of this Urgency Ordinance, the Council determines that this Ordinance is necessary for the immediate preservation of the public health, peace and safety in accordance with Article XIV Section 93 of the Charter of the City of Berkeley and must therefore go into effect immediately. This ordinance shall go into effect immediately upon a seven-ninths vote of the City Council, in satisfaction of the Charter of the City of Berkeley. Adoption of this ordinance is without waiver of the City's right to enforce any other city laws or rules, including but not limited to Chapter 13.44.

